

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**Criminal Appeal No.D-644-DB of 2014
Date of Decision: 31.03.2015**

Harpreet Singh

..... Appellant

Versus

State of Punjab and another

.....Respondents

**CORAM: HON'BLE MR. JUSTICE S.S. SARON
HON'BLE MR. JUSTICE SURINDER GUPTA**

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Present: None.

S.S. SARON, J.

The appeal has been filed by the appellant Harpreet Singh against the acquittal of Sukhbir Singh (respondent No.2) by the learned Sessions Judge, Patiala vide his judgment and order dated 30.09.2013.

Sukhbir Singh (respondent No.2) was in fact the complainant in the case. However, in the police report that was filed, he was nominated as an accused. Sukhbir Singh (respondent No.2) submitted before ASI Sunil Dutt (PW-10) on 09.10.2011 that on the night of 30.09.2011 at about 10.30 pm, when he returned home after doing his work in the fields, he found his minor daughter Sarabjit Kaur alias Rozy was missing from the house. His wife and other family members were, however, in the house. He searched for his daughter but all in vain. After nine days, he suspected that his daughter had been abducted by Harjit Singh son of Paramjit Singh, Harpreet Singh

(appellant) son of Bhajan Singh and Manjit Singh son of Paramjit Singh of village Shambhu Kalan. The police on the basis of the said statement of Sukhbir Singh registered FIR against Harpreet Singh (appellant), Harjit Singh and Manjit Singh for the offences under Sections 363 and 366-A of the Indian Penal Code ('I.P.C.'-for short).

During investigation, ASI Sunil Dutt found the matter to be suspicious and he kept the investigation pending. Later a 'Panchayatinama' compromise was effected on 26.12.2011, whereby, Sukhbir Singh (respondent No.2) expressed his satisfaction that the aforesaid three persons, who were accused, had assured him that in case his missing daughter was found in their possession or if they were found involved in her disappearance, they shall be liable for punishment. Besides, assurances were also given by Harbhajan Singh son of Santa Singh as well as Himmat Singh and other persons on behalf of the said three accused for cancelling the FIR. The investigation, therefore, remained dormant.

Later Harpreet Singh (appellant) on 03.06.2012 disclosed to Sub-Inspector Kuldeep Singh that he had an affair with Sarabjit Kaur alias Rozy while he was a student. He used to talk to her from his mobile phone to her mobile phone. However, Sukhbir Singh (respondent No.2) was not accepting their affair, therefore, he had withdrawn his minor daughter from school. Harpreet Singh (appellant) also disclosed that on the intervening night of 28/29.09.2011, Sarabjit Kaur alias Rozy had informed him while weeping that her family members were making a plan to kill

her. They had restricted her movements. During the night of 29.09.2011 at about 12.30 am (midnight), Sarabjit Kaur alias Rozy informed him (Harpreet Singh appellant) that her family members were carrying out discussions to kill her. At the same moment, Sarabjit Kaur alias Rozy informed Harpreet Singh (appellant) that her family members were knocking at her door. Thereafter, she switched off her mobile phone. She never called him on his mobile telephone. Thereafter, whenever he made an endeavour to contact her, he found that her mobile phone was switched off. The said Harpreet Singh further informed the Investigating Officer that he himself had made an enquiry and he was fully convinced that Sarabjit Kaur alias Rozy had been killed by her father Sukhbir Singh (respondent No.2), who had disposed of her dead body.

The Investigating Officer produced Harpreet Singh (appellant) before the Sub Divisional Judicial Magistrate, Rajpura on 07.06.2012. His statement was recorded by the learned Magistrate on 07.06.2012 in terms of Section 164 of the Code of Criminal Procedure ('Cr.P.C.-for short). Harpreet Singh reiterated his version that he made before the Investigating Officer. He also stated that he was still having recorded conversation of Sarabjit Kaur alias Rozy in his possession on that day. However, he did not submit the compact disc, mobile phone or other material of his having recorded conversations with Sarabjit Kaur alias Rozy to the learned Magistrate. On the basis of the statement of Harpreet Singh (appellant), the offences under Sections 302, 201 and 182 I.P.C. were added and Sukhbir Singh (respondent No.2), who was

initially the complainant, was nominated as an accused.

Sukhbir Singh (respondent No.2) was arrested on 07.06.2012 and he made a disclosure statement that he had kept concealed the jeep, which was used in disposing the dead body of Sarabjit Kaur alias Rozy in the canal. The jeep was recovered on the basis of the said disclosure statement of Sukhbir Singh (respondent No.2), however, the dead body of Sarabjit Kaur alias Rozy could not be recovered and has not been recovered till date.

Tarsem Singh (PW-2) and Amarjit Singh (PW-3) stated that Sukhbir Singh (respondent No.2) made an extra judicial confession before them that he had killed his daughter by strangulating her and thrown her dead body in the canal. The police visited the spot and prepared rough site plan of the place from where the accused Sukhbir Singh (respondent No.2) had picked up his daughter while she was sleeping on the bed and had taken her to the place where she was strangulated by putting her in the jeep. It was at a distance of 40 ft. from the house of the accused (respondent No.2) in the open 'bara' (court yard). The police prepared site plan showing the spot where the dead body of Sarabjit Kaur alias Rozy was thrown in the canal.

On completing the investigation, the police report was filed against Sukhbir Singh (respondent No.2). He was charge-sheeted for the offences under Sections 302, 201 and 182 I.P.C. The prosecution in order to establish its case examined Harpreet Singh (PW-1) (appellant). He reiterated his statement recorded before the learned Sub Divisional Judicial Magistrate, Rajpura in terms of Section 164 Cr.P.C. During examination-in-chief, he

submitted the Compact Disc and its Punjabi transcription, which was produced on record and later on exhibited as Ex.PB.

Tarsem Singh, Lambardar (PW-2) and Avtar Singh (PW-3) former Sarpanch before whom Sukhbir Singh (respondent No.2) allegedly made an extra judicial confession did not support the prosecution case and turned hostile. Amarjit Singh (PW-5) and Sukhwinder Singh (PW-6) also did not support the prosecution case and turned hostile. Bhajan Singh (PW-8) father of Harpreet Singh (PW-1) produced the mobile phone registered in his name, which he had given to his son. Damandeep Singh, Nodal Officer (PW-9) produced the call details of the mobile numbers of the appellant Harpreet Singh and Sarabjit Kaur alias Rozy during the period from 01.09.2011 to 13.10.2011. ASI Sunit Dutt, Investigating Officer also appeared in the case and deposed regarding the investigations conducted by him. ASI Kuldeep Singh (PW-11) conducted part of the investigations from 20.10.2011. Inspector Manjit Singh (PW-12) also partly investigated the case. They deposed regarding the investigations conducted by them.

Sukhbir Singh (respondent No.2) in his statement in terms of Section 313 Cr.P.C. stated that he was innocent and had been falsely implicated in connivance with Harpreet Singh (appellant), Manjit Singh and Harjit Singh and further in conspiracy with their father Paramjit Singh and Bhajan Singh. The independent witnesses were falsely introduced. In fact, there is an extra-judicial confession before Amarjit Singh made by Harjit Singh, Manjit Singh and Harpreet Singh (appellant) and their

fathers regarding their involvement of kidnapping, rape and thereafter, Sarabjit Kaur alias Rozy being untraceable. The jeep in question neither remained in his possession nor was owned by him at any point of time. The police did not investigate the case fairly and twisted the investigations against him. He was the only male member in the family, so with the motive the police and Harpreet Singh (appellant) had conspired to put him in jail so that he could not pursue the case against the above said persons. In fact, there was no admissible evidence against him.

The learned trial Court after considering the evidence and material on record has acquitted Sukhbir Singh (respondent No.2). The Compact Disc produced by Harpreet Singh (appellant) was not relied upon inasmuch as it was not given to the Investigating Officer at any point of time. It was produced for the first time during trial by Harpreet Singh (appellant) on 12.11.2012. He had though stated before the learned Magistrate on 07.06.2012 that he was still in possession of the recorded conversation held between him and Sarabjit Kaur alias Rozy during the night on 28/29.09.2011, however, he did not make any request before the learned Magistrate nor submitted the recorded conversation before the learned Magistrate. The late production of the compact disc was held to be doubtful with regard to its authenticity. Inspector Manjit Singh (PW-12) stated that he had taken in possession the compact disc and prepared memo, however, no such memo was placed on record. If the compact disc was taken in possession, then it was not explained as to how the compact disc (Mark A) had been produced by Harpreet Singh

(appellant). The compact disc was held to be neither reliable nor acceptable.

The mobile phone which Sarabjit Kaur alias Rozy was stated to be possessing and through which the conversations were allegedly carried out, was also not produced. The learned trial Court held that the mobile phone which Sarabjit Kaur alias Rozy possessed and was used for conversing with Harpreet Singh (appellant), was not taken in possession during investigation. Harpreet Singh (appellant) and his father Bhajan Singh stated that the mobile phone was given to the police. However, ASI Kuldeep Singh (PW-11) and Inspector Manjit Singh (PW-12) denied this. The conversation between Harpreet Singh (appellant) and Sarabjit Kaur alias Rozy during the intervening night of 28/29.09.2011 was held to be not established.

The learned trial Court also noticed that Harpreet Singh (appellant) received a telephone call from Sarabjit Kaur alias Rozy on the intervening night of 28/29.9.2011 and he came to know that her life was in imminent danger. However, despite that he did not take any steps to save her. Neither did he rush to her house nor informed anybody and his conduct was held to be reprehensible, which had cast doubt on the whole story. The offence under Section 182 I.P.C. was also held to be not made out.

It may be noticed that Harpreet Singh (appellant) is not a 'victim' within the meaning of Section 2(wa) of the Cr.P.C. and his appeal itself is not maintainable. On 15.09.2014, the case was adjourned to 29.11.2014. It was made clear that no adjournment

shall be granted on the next date of hearing and in case, the counsel for the appellant did not appear to address the arguments, it was observed that it shall be presumed that the counsel for the appellant had nothing more to add than what was averred in the application and in the grounds of appeal. The case was not thereafter taken up on 23.01.2015 and 16.02.2015. However, today, when the case had been taken up, no one has put in appearance for the appellant.

We have perused the paper book and find that the reasons recorded by the learned trial Court are just and proper and warrants no interference by this Court. The Supreme Court in the case of "K.S. Panduranga v. State of Karnatka", 2013 (2) R.C.R. (Criminal) 219 has held that in a case of appeal against conviction before High Court where the counsel for the accused failed to appear, High Court can dispose of the appeal after perusing the record and judgment of the trial Court and is not bound to adjourn the matter if both the appellant or his counsel/lawyer are absent.

After perusing the judgment, we find no ground to interfere and dismiss the appeal summarily in terms of Section 384 Cr.P.C.

(S. S. SARON)
JUDGE

(SURINDER GUPTA)
JUDGE

31.03.2015
G. Bhardwaj