

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Criminal Appeal No. D-937-DB of 2015

Date of Pronouncement: 15.09.2015

Satish Kumar

...Appellant

Versus

State of Punjab & Another

...Respondents

**Coram: Hon'ble Mr. Justice Hemant Gupta
Hon'ble Mrs. Justice Raj Rahul Garg**

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not? Yes
3. Whether the judgment should be reported in the Digest?

**Argued By: Ms. Manjeet Kaur, Advocate for
Mr. Karanjit Singh, Advocate for the appellant.**

Raj Rahul Garg, J.

This is an appeal against acquittal instituted by Satish Kumar, complainant, assailing the impugned judgment dated 22.04.2015 rendered by learned Additional Sessions Judge, Exclusive Court, Amritsar, whereby respondent Shelly was acquitted.

Satish Kumar, father of the prosecutrix, got registered the present case against accused-Ashwani Kumar @ Baba son of Naresh Kumar and Shelly wife of Vicky. As per the case of prosecution, prosecutrix, aged 14 years, was studying in 8th class in Anupam Montessary School, Bagh Ramanand,

Amritsar. Ashwani Kumar-accused used to follow her. On 30.07.2014, prosecutrix had gone to school as usual but she didn't return. A search was made for her but she could not be traced out. Complainant expressed his firm belief against Ashwani Kumar that he is the person who had enticed away prosecutrix on the pretext of marriage. On the basis of this complaint, Ex. PA, FIR was registered. Investigations were conducted. During the course of investigations, on 03.08.2014, accused-Ashwani Kumar @ Baba was arrested and the prosecutrix was recovered from his custody. Prosecutrix was got medico-legally examined on the same day. Statement of prosecutrix under Section 164 Cr.P.C. was recorded before Duty Magistrate. In her statement Ex. PW-2/B, prosecutrix gave her age as 14 years and deposed that Ashwani Kumar was known to her. She was in love with him. His sister-in-law (*Bhabhi*) namely Shelly had taken her from her house. She gave her *Chooda* (red bangles to be worn by bride) and a suit. Shelly then asked them to run away, whereupon, they did the same. Ashwani Kumar married her. Thereafter, he violated her person twice. Prosecutrix further deposed that on 30.07.2014 they had run away from their house. She had ATM card of her father with her. Shelly had withdrawn a sum of Rs. 17,000/- through the aforesaid ATM card. She had gone with Ashwani Kumar to the house of his sister at Jalandhar. His sister, namely Preeti, also co-operated with them. On 02.08.2014, police had apprehended them. On 14.08.2014, accused-Ashwani Kumar was got medico-legally examined. On 06.08.2014, accused-Shelly was arrested. On 27.08.2014, certificate of prosecutrix was obtained from Principal, Anupam Montessary School, Amritsar showing date of birth of prosecutrix as 22.11.2000. On

30.08.2014, Preeti was arrested. Thereafter, on 02.09.2014, application was moved regarding innocence of accused-Preeti regarding which inquiry was conducted by Manvinder Singh, PPS, Assistant Commissioner of Police, Amritsar City and in the said inquiry, Preeti was found to be innocent. Thereafter, opinion of D.A. (Legal) was obtained who approved the inquiry report, vide which accused was declared innocent. Statement of witnesses were recorded. After completion of necessary investigations, the accused were challaned in this case.

Finding a prima-facie case against accused, they were charge-sheeted for committing offence punishable under Sections 363/366/376/120-B of IPC and under Section 4 of Protection of Children from Sexual Offences Act, 2012. To the charge, accused did not plead guilty but claimed trial. After taking entire prosecution evidence, statements of accused under Section 313 Cr.P.C. were recorded.

As we are concerned with accused-Shelly in this appeal, therefore, we would take into consideration the case against accused-Shelly alone. Shelly in her statement, recorded under Section 313 Cr.P.C., denied each allegation of the prosecution and pleaded her innocence. She also alleged her false implication in this case.

After hearing both the sides and appraising the entire evidence and material coming on record, the learned Trial Court, vide impugned judgment dated 22.04.2015, convicted accused-Ashwani Kumar for the offence punishable under Section 363/366 IPC and under Section 4 of the Protection of Children from Sexual Offences Act, 2012. As the prosecution has failed to

prove the charge against Shelly beyond reasonable shadow of doubt, therefore, by giving the benefit of doubt Shelly was acquitted of the charge framed against them.

We have heard Ms. Manjeet Kaur, Advocate, learned counsel for the appellant besides appraising the entire material coming on record.

It was the main argument of learned counsel for the appellant-complainant that accused Ashwani Kumar had enticed away prosecutrix in connivance with his sister-in-law (*Bhabhi*) namely Shelly. Prosecutrix as stated in her statement, recorded under Section 164 Cr.P.C., that Shelly had bought *Chooda* and suit for her and had also gave the same to her. It is Shelly who had taken her from her house. Prosecutrix when appeared as witness deposed that accused-Shelly used to call her to her house. She had been making her talk to Ashwani Kumar-accused by calling her at her house. Whenever, she used to come back from school or otherwise, Shelly used to call her at her house on one pretext or the other. Shelly had been asking her to make friendship with Ashwani Kumar and had been telling her to talk to him. Even on 31.07.2014, in the morning at about 9.00 AM, she was to go to school and when she was passing in front of her house, Shelly called her to her house and she had gone to her. Accused-Ashwani Kumar was present there in the house. She was having ATM card of her father with her. Accused-Shelly had told her to withdraw money from the ATM card of his father but she refused. Then Shelly told her that she would accompany her and she also accompanied her to ATM. Prosecutrix was sent inside the ATM cabin for withdrawal of money, whereupon, prosecutrix withdrew a sum of Rs. 17,000/- from ATM card of her

father. Prosecutrix further stated that she then gave the aforesaid money to Shelly. Shelly purchased one Suit, *Chooda* (red bangles to be worn by bride) and Make-up Kit. The balance was kept by Shelly with her. Thereafter, she was sent with accused-Ashwani Kumar by bus to Jalandhar. Accused-Shelly dropped both of them to Bus Stand, Amritsar. As such, since Ashwani Kumar kidnapped prosecutrix in connivance with Shelly, therefore, she is liable to be convicted along with Ashwani Kumar and the judgment of acquittal is bad in law.

In an appeal against acquittal, matter would have to be examined in the light of the observations of Hon'ble Supreme Court made in “***Ashok Kumar vs. State of Rajasthan, 1991 (1) SCC 166***”, which are that:

“interference in an appeal against acquittal would be called for only if the judgment under appeal were perverse or based on a misreading of the evidence and merely because the appellate court was inclined to take a different view, could not be a reason calling for interference.”

The learned Trial Court has gone in detail while examining the criminal liability of accused-Shelly. We have also called the record of this case and perused the same as well. Satish Kumar-complainant, PW-1 as well father of the prosecutrix, did not express any suspicion regarding involvement of Shelly in the kidnapping of prosecutrix by Ashwani Kumar. It is clearly mentioned by the complainant in Ex. PA that Ahwani Kumar-accused, who is resident of their *mohalla*, had been chasing prosecutrix very often and they had been forbidding him from doing so. He further stated before the police that on the pretext of marrying her, Ashwani Kumar had enticed away the prosecutrix.

Had involvement of Shelly been there in any respect, it must have been reflected in Ex. PA. Had Shelly been calling prosecutrix to her house very often on one pretext or the other, the family members of the prosecutrix must have been knowing about it and could name Shelly as well. So has not been done in this case. Even the statement of prosecutrix regarding involvement of Shelly in this case is not consistent. Of-course, in her statement, recorded under Section 164 Cr.P.C., prosecutrix stated that Shelly had taken her from her house but it is not the prosecution case that on the day of occurrence prosecutrix was brought from her house or that she was missing from her house. It is the case of the prosecution that she had gone to school from where she didn't return.

Prosecutrix in her statement, Ex. PW-2/B, deposed that Shelly given her *Chooda* as well suit and then told them to run away. They, accordingly, did the same. Whereas, when prosecutrix appeared as witness, she gave a long story. She even stated that prior to the present occurrence, Shelly had been calling her at her house and making her talk to Ashwani Kumar and asking her to develop friendship with him but so has not been stated by her in her statement, recorded under Section 164 Cr.P.C.

Prosecutrix, when appeared as witness in the court, deposed that Shelly had dropped both of them at Bus Stand, Amritsar, whereas this fact is also missing in her statement, recorded under Section 164 Cr.P.C. Above all, the statement of prosecutrix, given in the court, itself, is not consistent. She deposed that accused-Shelly is also residing in the same house as she is the *Bhabhi* of the accused-Ashwani Kumar. She has stated so, to show that by calling to her house, she had been making her talk to Ashwani Kumar or to

develop relations with him. But during the course of cross-examination, she deposed that accused-Shelly is residing in separate house at Bhushanpura Colony. She further admitted that house of Shelly does not fall on the way if she goes from her house to school. Her house is in totally different side. Thus with this statement of prosecutrix, the case of the prosecution that Shelly has been calling her to her house when prosecutrix used to pass in front of her house while going to school; is smashed. She further deposed in her cross-examination that Shelly had taken her by rickshaw to bus stand whereas Ashwani Kumar had gone on foot. In her examination-in-chief, she deposed that she had dropped both of them at Bus Stand, Amritsar. This inconsistent statement of prosecutrix also does not lend any credence to the prosecution case.

Prosecutrix when appeared in the court has tried to implicate Shelly by stating that she had asked her to withdraw money from the ATM card of her father. When she refused, Shelly accompanied her. She sent her inside the ATM cabin whereupon prosecutrix withdrew a sum of Rs. 17,000/- and the aforesaid amount was given to Shelly who purchased one Suit, *Chooda* and Make-up Kit for the prosecutrix whereas balance was kept by Shelly with her. Prosecutrix in her statement, recorded under Section 164 Cr.P.C., deposed that Shelly had withdrawn a sum of Rs. 17,000/- from the ATM card of her father. There is no material on file to show that Shelly ever asked prosecutrix to withdraw the money from the ATM card of her father and; she ever accompanied prosecutrix for the purpose, to ATM cabin; she ever helped prosecutrix in withdrawing the sum of Rs. 17,000/- from the ATM card of her

father and even there is nothing on record to show that it is Shelly who had bought a suit, *Chooda* and Make-up Kit for the purpose. In the statement under Section 164 Cr.P.C., there is no mention about purchase of Make-up Kit by Shelly for prosecutrix. Also, there is nothing on record to show as to what was the balance kept by Shelly with her. When admittedly, the house of Shelly is separate from the house of accused and when the statement of prosecutrix is not consistent, therefore, the findings of acquittal, recorded by the learned Trial Court, are no in way perverse or misreading of evidence.

For the reasons recorded above, finding no merit in this appeal, maintaining the impugned judgment of conviction dated 24.04.2015 and order on quantum of sentence of the even date, it is ordered to be dismissed.

(Hemant Gupta)
Judge

(Raj Rahul Garg)
Judge

15.09.2015
Waseem Ansari