

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Appeal No.S-1826-SB of 2015 (O&M)

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Date of decision:14.10.2015

Gagan alias Gagandeep

...Appellant

v.

State of Haryana

...Respondent

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Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Gourav Jain, Advocate for the appellant.

Mr. Himmat Singh, Assistant Advocate General, Haryana for
the respondent-State.

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Inderjit Singh, J.

This criminal appeal has been filed against the impugned judgment of conviction and order of sentence dated 28.5.2014 passed by learned Additional Sessions Judge-I, Fatehabad, vide which accused-appellant Gagan alias Gagandeep has been held guilty and convicted for the offence under Section 376 read with Section 511 of the Indian Penal Code (hereinafter referred to as 'IPC'). He has been sentenced to undergo rigorous imprisonment for five years and to pay a fine of ₹10,000/- and in default of payment of fine to further undergo rigorous imprisonment for one month for the offence under Section 376 read with Section 511 IPC.

Notice of motion has been issued in this case.

Mr. Himmat Singh, learned Assistant Advocate General, Haryana has put in appearance on behalf of the respondent-State and contested this appeal.

The brief facts of the prosecution case are that the FIR in the present case has been registered on the statement of complainant Baby Rani, who moved an application Ex.P.5 to the Station House Officer, Police Station City, Fatehabad alleging that her sister-in-law (prosecutrix) aged 28 years is a mentally retarded lady and spinster. On previous day i.e. 15.1.2014 at about 5.00 p.m., the prosecutrix went to search Prince (the son of the complainant) at Nagpal Chowk and she did not return for a long time. After that, the complainant searched the prosecutrix and went to Ravidass Dharamshala, where Gagan was kissing the prosecutrix. On being asked, what he was doing, Gagan fled away. She witnessed the knot of prosecutrix's trouser/salwar opened. She suspected that Gagan had committed sexual assault on the prosecutrix. She prayed to get the prosecutrix medically examined and to set the criminal law in motion. On the basis of this application, formal FIR was registered and the prosecutrix was got medically examined. The Investigating Officer went to the site and prepared rough site plan. Statement of the prosecutrix was got recorded under Section 164 Cr.P.C. from the Illaqa Magistrate, Fatehabad. The accused was arrested. The accused was also medically examined. Statements of witnesses under Section 161 Cr.P.C. were recorded. After completion of necessary investigation, challan was presented in the Court.

On presentation of challan, the trial Court finding *prima facie* case against the accused, framed charges for the offence under Section 376 (2)(L) IPC, to which he pleaded not guilty and claimed trial.

In support of its case, the prosecution examined PW-1 Chander Pal Singh, Lecturer Biology, who mainly deposed regarding issuing date of birth certificate of accused Gagan alias Gagandeep to the Police as per the school record. The date of birth of accused Gagan alias Gagandeep is 26.1.1993. PW-2 Sub Inspector Malha Ram mainly deposed regarding lodging of formal FIR Ex.P.6 on the basis of application Ex.P.5. He also stated regarding handing over special report to Illaqa Magistrate and superior Police officials through Head Constable Rajender Singh. PW-3 Balwant Singh, Draftsman mainly proved the scaled site plan Ex.P.7. PW-4 HC Jaiveer Singh is a formal witness, who tendered into evidence his affidavit Ex.P.8. PW-5 HC Devender Singh is a formal witness, who tendered into evidence his affidavit Ex.P.9. PW-6 Inspector Gaurav, SHO, Police Station, City Fatehabad mainly deposed regarding presenting the challan under Section 173 Cr.P.C. He also deposed that he deleted Section 354-B IPC and added Section 376(2)(L) IPC. PW-7 ASI Damod deposed regarding the investigation conducted by him in this case. PW-8 Dr. Amit Kumar Saini mainly deposed regarding medico-legal examination of accused Gagandeep alias Gagan. PW-9 Dr. Kiran Solanki, Medical Officer, PHC, Dhansu (Hisar) deposed regarding medico-legal examination of the prosecutrix aged about 30 years. PW-10 Baby Rani-complainant deposed as per the prosecution version. PW-11 prosecutrix was examined in

question answer form as the Court held that it transpired that she has some inability to speak and has less understanding. She was also cross-examined in question answer form.

At the close of prosecution evidence, the accused was examined under Section 313 Cr.P.C. and was confronted with the evidence of the prosecution, but he denied the correctness of the evidence and pleaded himself as innocent. He also deposed that he has been falsely implicated in this case. This case has been falsely got registered against him by the complainant because of previous revenge.

In defence, the accused examined no witness.

After going through the evidence on record, the learned trial Court vide its impugned judgment and order convicted and sentenced the accused-appellant for the offence as mentioned above. Aggrieved against the judgment, the present appeal has been filed.

At the time of arguments, learned counsel for the appellant argued that the prosecution has failed to prove the guilt of the accused/appellant beyond any reasonable doubt. The appellant has been falsely implicated in this case. He further argued that no attempt to rape had been proved by the prosecution by leading cogent evidence. At the most, it is a case for the offence under Section 354 IPC.

On the other hand, learned Assistant Advocate General, Haryana, appearing for the respondent-State argued that the case of the prosecution has been duly proved by leading cogent evidence. There are no material contradictions or improvements which may go to the root of the

case. He further argued that the prosecutrix as well as the complainant, who is also an eye witness to the occurrence, had supported and corroborated the prosecution version which is further supported by medical evidence. Therefore, he argued that the case of the prosecution has been duly proved and there being no merit in this appeal, it should be dismissed.

After hearing learned counsel for the appellant and learned Assistant Advocate General, Haryana and after going through the record, I find that first of all the prosecutrix and the complainant Baby Rani had consistently deposed regarding the prosecution version. There is nothing on the record to show any motive to falsely implicate the appellant. There is nothing on the record to show that the appellant is innocent or has been falsely implicated. Otherwise also, such type of allegation cannot be levelled falsely when there is no enmity or motive. Even in the statement recorded under Section 313 Cr.P.C., the accused/appellant had not specified as to what type of enmity or motive the complainant has against him. In the Indian society nobody generally levels false allegation to put on stake the reputation of the prosecutrix as well as the family. The complainant Baby Rani has consistently deposed that on seeing her face, the accused ran away. The trial Court itself held while recording the statement that the prosecutrix was having some inability to speak and has less understanding. The statement of the prosecutrix had been written in the question answer form and she had specifically stated that some days back Gagan-present in the Court brought her to Dharamshala and brought her upstairs. Gagan had broken string of her salwar and committed rape with her. Though, in cross-

examination, she stated to a question whether any bad act/rape was committed with her. She replied No. By giving the benefit to the accused of this statement and also Baby Rani had also not been saying that the accused committed rape, therefore, the accused/appellant had not been convicted for the offence under Section 376 IPC for committing rape, but it is in the evidence of Baby Rani that at that time the accused had laid down the prosecutrix on the ground, having broken string of her salwar and the accused fled away from the spot after seeing her. The mere fact that the prosecutrix had not received any injury will not create doubt as it is already in the evidence that she was of less understanding. The string of the salwar was broken, she was laid down on the floor upstairs in the Dharamshala and the prosecutrix was taken by the accused to the secluded place, all these facts show that in view of the evidence the accused had attempted to commit rape upon the prosecutrix. In no way, it can be held that the appellant is innocent or has been falsely implicated in this case. The prosecution has duly proved its case while leading cogent evidence. There is nothing on the record to disbelieve the statements of the prosecutrix and the complainant. There is nothing in the cross-examination, which may make their statements unreliable. Further, I find that there is no material contradictions or improvements in the statements of the witnesses, which may go to the root of the case.

In view of the above discussion, I find that the prosecution has duly proved its case while leading cogent evidence beyond any reasonable doubt. The appellant has been rightly convicted and sentenced vide the

impugned judgment and the order.

Therefore, finding no merit in the present appeal, the same is dismissed.

October 14, 2015.

(Inderjit Singh)
Judge

hsp