

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRA-S-4-SB of 2014 (O&M)
Date of Decision: 27.5.2015

Kanta Devi

....Appellant

Versus

State of Haryana and another

....Respondents

CORAM: HON'BLE MS. JUSTICE NAVITA SINGH

Present: Mr. B.S. Bairagi, Advocate for the appellant.

Ms. Harpreet Kaur, AAG, Haryana for respondent No.1.

Mr. Vikram Punia, Advocate for respondent No.2.

NAVITA SINGH, J.

1. The appellant, who was the complainant, had made a complaint by way of FIR No.189 dated 7.9.2007 under Section 354 of the Indian Penal Code, Police Station Kharkhoda, District Sonapat that on 4.9.2007 at about 2.00 pm, the accused i.e. respondent No.2 herein, had made an attempt to outrage her modesty. She, at that time along with her daughter Sweety, had gone to their 'gitwar' for making cow dung cakes and Sweety had gone to answer the call of nature. Respondent No.2 Sandeep came there and caught hold of the complainant from behind and held her from the breasts. She raised a noise, on which her daughter came running and on seeing her Sandeep fled from there. The matter was not reported to the police immediately as husband of the complainant came back on 7.9.2007 from Delhi where he used to work and then the matter was reported.

2. The trial Court found the accused guilty and convicted and sentenced him. Sandeep filed an appeal and the Appellate Court acquitted him on 7.8.2013.

3. Counsel for the appellant argued that the Appellate Court wrongly held that the delay in lodging the FIR was unexplained and this point was logically dealt with by the trial Court. The trial Court rightly observed that the complainant very candidly stated that she had waited for her husband before informing the police and her husband could not come earlier as he did not get leave. Statement of the complainant was sufficient especially when her version was corroborated by her daughter.

4. Counsel for respondent No.2 argued that there was an unexplained delay in lodging the FIR as was rightly held by the Appellate Court and that it was not believable that the appellant simply waited for her husband to come back and did not inform either any of the relatives, friends or neighbours regarding the incident. It came in the statement of the complainant that two of her brothers and her paternal uncle were there though they lived separately but she did not report anything to them.

5. The arguments advanced by counsel for respondent No.2 are not convincing because in cases like the present one and in other cases relating to crime against women, allowance has to be given to female as it is not always possible for them to go to the police on their own. Also it may not be possible for a woman to speak about such incident to the male members of the family i.e. her brothers and paternal uncle. Some women are also scared to take steps at their own in the absence of the husband so that the latter may not be annoyed with her for that reason. Also it came in the statement of the complainant that her husband had advised her to wait for him and not to go to the Police Station alone.

6. The Appellate Court then held that the complainant stated that her bangles had broken at the time of incident and the broken pieces were taken by the police. This fact was affirmed by the Investigating Officer. The court had

observed that it was not possible that if the bangles broke as alleged and as was also stated by Sweety, PW3, there was no injury mark on the forearm of the complainant. This observation by the court below is not reasonable because it is not always necessary that some pieces of the bangles would always penetrate the skin in case the bangle broke. It may be that there was some superficial scratch or little abrasion which the complainant ignored. It was sufficient that her version stood corroborated that her bangles, which had broken, were taken into possession by the police.

7. The court then held that Sweety stated in her cross examination that when she came back to the spot, she saw her mother grappling with the accused, beating the accused with her hand but that statement was contrary to the statement in the examination-in-chief as that version came only in the cross examination. It is not unnatural for the daughter to be a little overenthusiastic in such like matter because her mother was the victim and this rather corroborates the fact that the bangles of the complainant must have broken at that time, pieces of which were collected by the Investigating Officer.

8. It is felt that respondent No.2 was acquitted on flimsy ground and there was no such material contradiction in the statements of the witnesses nor there was an un-explained delay in lodging the FIR as to entitle respondent No.2 to acquittal.

9. The appeal is, therefore, allowed. The judgment passed by Additional Sessions Judge, Sonapat in Criminal Appeal No.2 of 2011/2013 on 7.8.2013 is set aside and the judgment passed by the trial Court on 25.8.2011 is upheld convicting and sentencing respondent No.2. The sentence awarded by the trial Court is maintained.

10. Since the judgment of the learned Additional Sessions Judge, Sonapat, acquitting the accused, has been set aside, respondent No.2, through

his counsel is hereby directed to surrender before the trial Court on 09.6.2015 so as to serve the sentence awarded to him. In case, the convict fails to surrender before the trial Court on the date fixed, the trial Court shall take further action in accordance with law.

(NAVITA SINGH)
JUDGE

27.5.2015
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