

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Criminal Misc. A-1128-MA of 2014

Date of Decision : March 24, 2015

Kuldip Raj

....Applicant

Versus

Prem Kumar and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE T.P.S. MANN
HON'BLE MR. JUSTICE MAHAVIR S. CHAUHAN

Present : Mr. A.S.Manaise, Advocate
for the applicant.

T.P.S. MANN, J.

The respondents were tried for committing offences punishable under Sections 366, 343, 376, 506 and 120-B IPC on a private criminal complaint instituted by the prosecutrix on the allegations that three of them, namely, Prem Kumar, Gopal Krishan and Surinder Kumar had forcibly abducted her on 5.2.2000 at about 9-10 PM and was, thereafter, brought in the room of respondent Prem Kumar where they subjected her to rape against her wish. Respondent Prem Kumar had also given bite on her left cheek whereas respondent Veena had told her that she would be sent with some other person on the following day. All the respondents also threatened the prosecutrix with

dire consequences if she disclosed about the incident to anyone. It was further alleged that on the following day, she was made to sit in the bus and was later-on dropped on the way. Vide impugned judgment dated 11.4.2014, the Additional Sessions Judge, Pathankot, acquitted the respondents of the charges against them. Aggrieved of the same, the applicant, who is husband of the prosecutrix, has filed the present application seeking leave to appeal against the impugned judgment of acquittal.

Having heard learned counsel for the applicant and on going through the impugned judgment, this Court finds that on 11.3.2000 when the complaint was pending before the Illaqa Magistrate, the prosecutrix did not appear. The applicant, who is her husband, filed an application for exempting appearance of the prosecutrix which was allowed and the proceedings adjourned to 28.3.2000. On the same day, a registered letter containing an application submitted by the prosecutrix expressing her desire to withdraw the complaint was received by the Illaqa Magistrate. The said application was supported by an affidavit of the prosecutrix. Simultaneously, the prosecutrix, alongwith her counsel, appeared in the Court. The counsel also filed his power of attorney. The prosecutrix then suffered a statement wherein she stated that she was not under any pressure from any side and wanted that the complaint be dismissed as withdrawn. Keeping in view her statement, the complaint was dismissed as withdrawn on 11.3.2000 itself. Subsequently, the prosecutrix challenged the order of dismissal of

complaint by filing a revision. Her revision was accepted on the ground that once the Illaqa Magistrate had adjourned the matter, he was not competent to take up the matter again. During the resumed hearing of the complaint, the prosecutrix, once again, went missing and her husband i.e. the applicant duly admitted the said fact. He also moved an application to the Station House Officer Sadar, Pathankot, regarding disappearance of the prosecutrix. Further, during the trial of the case, Prabhjot Singh, Deputy Superintendent of Police, who appeared in the witness box as DW2, testified about another instance of elopement of the prosecutrix. He stated that the husband of the prosecutrix had submitted complaint Ex.D2/A that his wife had been kidnapped and raped with the connivance of the respondents. According to the husband of the prosecutrix, she was kidnapped on 7.8.2012 at about 8.00 PM when she went to answer the call of nature. Said Deputy Superintendent of Police had enquired into the complaint and during the enquiry, the husband of the prosecutrix made statement Ex.D2/C that he had talked to his wife on her mobile and his wife told him of having contracted second marriage and, thus, she did not want to return back. In view of the same, suspicion of husband of the prosecutrix was removed and he stated that he did not want any further enquiry in the matter.

It may also not be out of place to mention here that the prosecutrix kept on visiting the trial Court till 14.6.2012 and, thereafter, she appeared on 5.9.2012 as well as on 17.8.2013 when her statement

was recorded. She, later-on, absented from the Court, though her counsel was present, who could not assign any plausible reason regarding non-appearance or whereabouts of the prosecutrix.

Apart from the aforementioned developments, the uncorroborated testimony of the prosecutrix and her parents neither being cited nor summoned as witnesses during the trial of the case is a major blow to the very substratum of the prosecution case.

In view of what has been discussed above, this Court is of the considered view that the prosecution has not been successful in establishing the guilt of the accused-respondents. Thus, no case is made out for any interference in the impugned judgment.

Resultantly, the acquittal of the accused-respondents is upheld and the application is dismissed. Leave to appeal is declined.

(T.P.S. MANN)
JUDGE

(MAHAVIR S. CHAUHAN)
JUDGE

March 24, 2015
pds.