

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Criminal Appeal No.S-1859-SB of 2002
Date of Decision : July 01, 2015

Kailash Chand	VERSUS	Appellant
State of Haryana		Respondent

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

Present : Mr. B.S. Saroha, Advocate.

Mr. Munish Sharma, Assistant Advocate General, Haryana.

T.P.S. MANN, J. (Oral)

The appellant was tried for committing the offence punishable under Sections 363, 366, 302 IPC (in the alternative Sections 306 IPC), 342, 376 and 201 IPC. Vide impugned judgment and order dated 18/22.10.2002, learned Additional Sessions Judge, Panchkula held the appellant guilty under Section 376 IPC only and sentenced him to undergo rigorous imprisonment for seven years and to pay a fine of Rs.2,000/- and in default of payment of fine, to undergo simple imprisonment for one month.

The case of the prosecution, in nutshell, is that on 28.9.2001, the prosecutrix, who was daughter of PW1 Raunki Ram and more than 17 years of age, went to her Bara at about noon time. She was seen by PW Lajja Ram at the Bara who also saw Nisha, sister of the appellant, calling the prosecutrix, on which the prosecutrix went to the house of the appellant. When the prosecutrix did not return home, her family members started searching for her. Aforementioned Lajja Ram informed complainant Raunki Ram that he had seen the prosecutrix going to the house of the appellant.

Accordingly, complainant Raunki Ram and Lajja Ram went to the

house of the appellant where they met him and his sister Nisha. They enquired from him about the prosecutrix but the appellant and his sister denied about the prosecutrix visiting their house. On the next day, a Panchayat (gathering of respectables) was convened in which the appellant first denied everything but, later on, admitted that the prosecutrix was with him from 3.00 p.m. to 7.30 p.m. on the previous day. Complainant Raunki Ram made statement Ex.PA which was recorded by ASI Amar Singh and on its basis, FIR Ex.PA/2 was registered against the appellant at Police Station Chandimandir under Sections 363, 366, 342, 506 and 120-B IPC.

During investigation of the case, the dead body of the prosecutrix was recovered from a well on 1.10.2001. The dead body was subjected to post mortem by PW12 Dr. Rupinder Singh Saini, who opined that the possibility of rape having being committed upon the prosecutrix could not be ruled out. The appellant was arrested on 3.10.2001 and was got medically examined. Upon completion of the investigation, the appellant was challaned and subsequently, charged for the aforementioned offences, to which he pleaded not guilty and claimed trial.

In support of its case, the prosecution examined PW1 Raunki Ram, father of the prosecutrix, PW2 Sher Singh, who was present in the Panchayat which was convened on 29.9.2001, PW3 Prem Chand, in whose presence the dead body of the prosecutrix was taken out from the well, PW5 Lajja Ram, who had seen the deceased at her Bara on 28.9.2001 and, thereafter, going to the house of the appellant after being signalled by his sister, PW7 Hem Raj, who had

seen one Shambu coming to the house of the appellant at 5.00 p.m. and going back at 6.30 p.m. on 28.9.2001, PW12 Dr. Rupinder Singh Saini, who had subjected the dead body of the prosecutrix to post mortem and also medically examined the appellant, PW13 Subhash Chand, Photographer and PW14 Constable Manohar Lal, Draftsman, who proved the scaled site plan Ex.PV. The investigation part of the case was narrated by PW4 ASI Pardeep Kumar, PW6 ASI Amar Singh, PW8 ASI Mam Raj, PW9 HC Ramesh Kumar, PW10 HC Bant Singh, PW11 Inspector Mange Ram, PW15 Constable Kuldeep Singh and PW16 EHC Soren Lal.

When examined under Section 313 Cr.P.C., the appellant pleaded that he was falsely implicated in the case as the parents of the deceased suspected that she was in love with him. He belonged to a backward class whereas the deceased belonged to Gujjar community and, accordingly, her parents did not approve her affair with the appellant. In defence, the appellant did not produce any evidence.

After going through the evidence and hearing learned counsel for the parties, the trial Court acquitted the appellant of the charges punishable under Sections 363, 366, 342 and 302 IPC (and in the alternative under Sections 306 IPC) and 201 IPC by observing as under:-

“The first and second charges are under Sections 363 and 366 IPC. It is proved on the file that Rani had gone to the house of accused Kailash on 28.9.2001. But there is no evidence regarding any

use of force or deceit. The age of Rani has also not been established by any reliable evidence. There is only oral assertion by PW1 that Rani was 16/17 years old. In the post-mortem report the age is mentioned as 17/18 years. The prosecution has not cared to prove the birth certificate of the school certificate of Rani depicting her date of birth. PW1 admits that Rani had studied upto the 5th/6th class. He also could not deny in cross-examination that Rani was born on 25.7.1981. He also admitted that he had given the age by approximation. So, there is no reliable evidence for proving the age of Rani. The benefit of this lapse has to go to the accused and it has to be assumed that Rani was above 18 years of age. So, for all the above reasons, charges under Sections 363 and 366 IPC are not made out against the accused.

The third charge against the accused is regarding illegal confinement. Evidence on the file shows that Rani had voluntarily gone to the house of the accused. There is no further evidence or circumstances on the file from which it could be inferred that Rani had been obstructed or prevented from leaving the confines of the house by the accused.

There are also suggestion of a romance to PW1. It was in his cross-examination that his daughter Rani was having an affair with the accused. It is also mentioned in the FIR Ex.PA/2 that the accused admitted before the Panchayat that he was having a love affair with Rani. All these circumstances help the accused and it cannot be ruled out that Rani was having an affair with accused and it was for this reason that she visited accused on 28.9.2001. Keeping in view these probabilities and the absence of

any evidence of wrongful restraint, the benefit of doubt has to go to the accused and he cannot be convicted for the offence under Section 342 of the Indian Penal Code.

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The last charges against the accused are under Sections 302 IPC and in the alternative under Section 306 IPC and also 201 IPC. The death of Rani has been clearly proved. The dead body was recovered from the well and it was identified by her relatives and one of them Prem Chand has been examined as PW3, who had proved identification of the body. There is not even a suggestion from the side of defence that said dead body does not belong to Rani.

So, it is proved on the file that Rani was last seen going to the house of the accused in the afternoon of 28.9.2001. In the evening the accused was confronted by Raunki Ram and Lajja Ram, he straight away denied that Rani had visited his house on that day. But on the next day in the Panchayat he admitted that Rani was with him from 3.00 p.m. to 7.30 p.m. The search of Rani continued from the evening of 28.9.2001 upto 2.10.2001. So, every one in the village must have been aware that Rani was missing. No one in the village had seen Rani in the village. It was only her dead body which was recovered from the well on 2.10.2001. It has also been proved that Rani had been subjected to rape before her death. It can be logically inferred that there is a nexus between the said incident of 28.9.2001 and the death of Rani. However, there is still a wide chasm. There are many links in the chain which are incomplete. We do not

know the cause of death of Rani. Post mortem report reveals that no external marks of injury were detected on the person of Rani. The report Ex.PC received from FSL shows that no common poison was detected in any of the viscera of Rani which was sent for examination. We also have a report Ex.PU, from FSL pertaining to the inspection of crime scene by a scientific team. This team was unable to collect any evidence from the house of the accused and his relatives, which could lead to the conclusion that Rani had been put to death in the said premises. The histopathological department has also given its report Ex.PS after examining the viscera. As per this report viscera revealed advanced autolytic changes with formation of large autolytic cysts and complete disappearance of nuclei obscuring morphological details and so it was not possible to comment on the presence of any pathological findings. Dr. Rupinder Singh (PW12) after referring to all the reports has stated as follows :-

'Probable cause of death could not be given as the report from FSL Madhuban and Rohtak Medical College, have stated that the body had undergone advanced autolytic changes thereby obscuring morphological findings. The death may also result due to asphyxia. The cause of asphyxia could be due to drowning and presence of gases in the well as already stated in the history of police papers.'

In the light of aforesaid medical evidence we cannot reach any definite conclusion to the cause of death in this case. There could be two possibilities regarding the death of Rani. Either she was murdered and, thereafter, thrown in the well or secondly, she had

committed suicide by jumping into the well and thereafter drowning to death. Second option seems to be more probable for the reason that no external mark of injury was seen on the person of Rani. It is also clear that it was not a case of poisoning.

In cases based on circumstantial evidence all the facts established should be consistent with the hypothesis of the guilt of the accused and they should be inconsistent with his innocence. This cannot be said of present case. All the above circumstances create many doubts about accused having murdered Rani and then thrown her body in well. So, the charges under Sections 302 and 201 IPC cannot be sustained.

The charge under Section 306 IPC is also not sustainable. There is no evidence or circumstances on the file from which it could be inferred that the accused had instigated the deceased to commit suicide or had abetted the commission of suicide in any manner. The prosecution has also failed to point out any possible motive of the accused for abetting the commission of suicide by Rani. Moreover, the prosecution has also failed to prove the cause of death in this case. So, for all these reasons charge under Section 306 IPC also fails.”

As of date, the appellant stands convicted under Section 376 IPC. The State has not challenged the acquittal of the appellant of the remaining offences by filing any appeal.

It is the case of the prosecution itself that the prosecutrix was aged about 17/18 years. On the day of the incident, when she went to her Bara for giving fodder to her buffalo, she was noticed by PW5 Lajja Ram over there. Said Lajja Ram then noticed that the

sister of the appellant called the prosecutrix by giving her a signal. On receiving the signal, the prosecutrix willingly went to the house of the appellant. As to what happened thereafter is sought to be proved by the prosecution by leading circumstantial evidence as after the prosecutrix reached the house of the appellant, she was not seen in the village on the evening of 28.9.2001 and also on the following day. On 29.9.2001, a Panchayat was convened in the village where the appellant appeared and denied having any hand in the disappearance/missing of the prosecutrix. However, he, later on, reluctantly admitted that on the evening of 28.9.2001, the prosecutrix was with him between 3.00 p.m. and 7.30 p.m. It is nowhere in the evidence that the appellant had committed forcible sexual intercourse with the prosecutrix. The dead body of the prosecutrix was subjected to post mortem examination by PW12 Dr. Rupinder Singh Saini, who did not find any external mark of injury anywhere over the body. Even there was no bleeding from her vagina or hymen. The various clothes worn by the deceased were sent to the Forensic Science Laboratory. As per the report EX.PB of the Forensic Science Laboratory, human semen, alongwith blood was found present on the underwear of the deceased. Merely because human semen was noticed on the underwear of the deceased is not sufficient to hold that the prosecutrix had been subjected to forcible sexual intercourse by the appellant. No injury, whatsoever, was found on the dead body when it was subjected to post-mortem. The admission of the appellant that the prosecutrix remained with him between 3.00 p.m. and 7.30 p.m. on 28.9.2001 cannot also take the case of the prosecution to hold

that the appellant had committed rape upon the prosecutrix. Going by the fact that the appellant claiming to be in love with the prosecutrix which fact was not to the liking of her parents as they belonged to different communities and there was no struggle on the part of the prosecutrix or her being over powered by the appellant and launching a physical assault on her would mean that the prosecutrix had been a consenting party. She was 17/18 years of age on the day of the occurrence and, thus, very well consent to have sexual intercourse with the appellant.

As mentioned above, this Court is not required to consider as to whether the prosecutrix herself committed suicide after the act of sexual intercourse or it was the appellant who had committed her murder and thrown her dead body in the well as the State has not challenged the findings on the aforementioned issues arrived at by the trial Court.

In view of the above, this Court finds it difficult to sustain the impugned judgment of conviction and sentence. The appeal is, accordingly, allowed and the appellant is acquitted of the charge against him. He is on bail. The bonds furnished by him and his sureties shall stand discharged.

July 01, 2015
satish

(T.P.S. MANN)
JUDGE