

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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Crl. Rev. No. 1355 of 2014

Date of decision : February 05, 2015

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Avtar Singh

.....Petitioner

Versus

State of Haryana and others

.....Respondents

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CORAM: HON'BLE MS. JUSTICE RITU BAHRI

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Present: Mr. Atul Lakhanpal, Senior Advocate with
Ms. Bably Kumari, Advocate for the petitioner.

Mr. Vikas Chopra, DAG, Haryana.

Mr. A.S Kalra, Advocate for respondents no. 2 & 3.

Mr. T.P.S Bhatti, Advocate for respondents no. 4 to 6.

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1. *Whether Reporters of Local Newspapers may be allowed to see the judgment?*
2. *To be referred to the Reporters or not?*
3. *Whether the judgment should be reported in the digest?*

RITU BAHRI, J

This revision has been filed against the order dated 24.4.2015, whereby an application under Section 319 Cr.P.C to summon Harjeet Singh, Harbhajan Singh @ Kala, Gaurav, Sukhwinder and Gurmeet Kaur as additional accused has been dismissed.

In this case, as per the allegations in the FIR, on the intervening night of 20/21.8.2013 at about 1:00 a.m, when the

prosecutrix was sleeping in her house, she heard someone knocking at the door. She opened the door. Harjit Singh, Harbhajan Singh, Gaurav, Balwinder Singh were standing outside the door. They took the prosecutrix in a car. Balwinder Singh committed rape upon her while the other accused were standing outside the room. Thereafter she was taken to Fatehabad. She was threatened that if she does not go with them they would kill her younger brother. Thereafter, Balwinder Singh took her to Sirsa by bus and after that, he took her to Bhatinda by a train. Balwinder Singh committed rape upon her again at Bhatinda. Then Balwinder Singh took her to Amritsar from Bhatinda by train. Gurmit Kaur, mother of Balwinder Singh and his brother Sukhwinder Singh also came there. They asked Balwinder Singh that the police is search them and he should leave the prosecutrix. Thereafter Balwinder Singh with his brother and mother took her in a car back at Village Dariyapur, District Fatehabad. They pressurized her to give statement in their favour otherwise they would kill her younger brother. At village Dariyapur, police apprehended Balwinder Singh. Prosecutrix was produced before Illaqa Magistrate by the police. Out of fear, she made statement that she went with the aforesaid accused with her sweet will. She was sent to Nari Niketan, Karnal. After being released from Nari Niketan, she deposed against the accused.

Learned senior counsel for the petitioner, Mr. Atul Lakhanpal has argued that the trial Court has wrongly proceeded on the statement made by the prosecutrix under Section 161 Cr.P.C

(Ex.P-6), wherein she stated that out of her own sweet will, she had gone along with Balwinder Singh and no rape was committed upon her by the accused, Balwinder Singh. At the same time, her statement under Section 164 Cr.P.C was recorded by the Area Magistrate, wherein she specifically stated that no rape was committed upon her by the accused, Balwinder Singh. The trial Court has gone wrong in not examining the statements in proper perspective. Prosecutrix was a young girl below the age 16 years and on the intervening night of 20/21.8.2013, she was taken away by Balwinder Singh and the persons who are being summoned to face trial accompanied him in a car to Fatehabad. On a complaint being made to the police, the possibility of threatening the prosecutrix not to depose against these three accused cannot be ruled out. The fact that prosecutrix went to Nari Niketan after getting her statement under Section 161 Cr.P.C amply shows that she was feeling unsafe in the house of her parents as well. The statement made by her under Section 164 cannot be treated to be drastic improvement keeping in view the nature of offence committed on a minor girl.

Counsel for respondents no. 2 & 3 has argued that the name of the accused sought to be summoned were not mentioned in the FIR. In her statement made under Section 161 Cr.P.C (Ex.P-6) when she was recovered by the police, she simply stated that she had accompanied Balwinder Singh of her own sweet will. Even in that statement, the role of these accused to be summoned is not made out. She was thereafter sent to Nari Niketan. She gave a

similar statement before the Judicial Magistrate First Class, Fatehabad under Section 164 Cr.P.C. It is the case of no evidence against the accused sought to be summoned. At the time of recording of statement under Section 164 Cr.P.C, no pressure was exerted on the prosecutrix.

Apart from the statements made under Section 161 Cr.P.C (Ex.P-6) and Section 164 Cr.P.C, while deposing in the Court she levelled allegations against the persons who are being summoned to face a trial. The names of these accused did not find mention in the FIR. After the challan had been presented an application under Section 173 (8) Cr.P.C for further investigation was filed. This application was dismissed on 16.10.2013. As no revision was filed against this order, the present application under Section 319 has only to be examined with the evidence on record during pre trial investigation. The Investigation Officer, Sub Inspector Balbir Singh deposed that on 23.8.2013, he along with Head Constable Ajit Singh and Lady Head Constable Shiksha was going to village Bighar and they received a secret information at Bus stand, Bighar. On receiving secret information, the prosecutrix along with Balwinder Singh was seen standing near grocery shop and both were apprehended. The statement of the prosecutrix under Section 161 Cr.P.C was recorded. The Investigating Officer stated that on enquiry, prosecutrix and Balwinder Singh told that they were making arrangements for their clothes and money and they did not try to run on seeing the police. As per her statement recorded under Section

161 Cr.P.C (Ex.P-6), she had gone with Balwinder Singh out of her own sweet will. She gave a similar statement under Section 164 Cr.P.C. While deposing before the Court she has now made improvements in her statement. The factual aspect as stated by the Investigating Officer was that both the prosecutrix and Balwinder Singh were found standing in a grocery shop. Prosecutrix was not under any threat or fear when she was apprehended from the custody of Balwinder Singh. Hence it cannot be said that she was under threat given by the accused which prevented her from disclosing their names before the Area Magistrate while recording her statement under Section 164 Cr.P.C. The prosecutrix may be a girl below 16 years, but in her own handwriting she admitted that she accompanied Balwinder Singh with her own sweet will and she specifically stated that no rape was committed upon her by the accused. Another fact which requires consideration is that she refused to get her medically examined in her own handwriting on the application (Ex.P-10). The fact that her own application under Section 173(8) Cr.P.C was dismissed by the trial Court on 16.10.2013 further shows that there was no evidence which require the police to further investigate the crime. Balwinder Singh, who had taken the prosecutrix to various places from Fatehabad is facing a trial. The accused sought to be summoned have not actively participated in committing the crime. Their names do not find mention in the FIR and there is no evidence that they extended any threat to the prosecutrix.

In view of all that has been discussed above, present
revision petition is dismissed.

February 05, 2015
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(RITU BAHRI)
JUDGE