

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRA-AD-47-DB-2015 (O&M)
DATE OF DECISION: January 21, 2016

Sukhwinder Singh and another

...Appellants

versus

State of Haryana and another

...Respondents

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

Present: Mr. Ankit Chaudhari, Advocate for the appellants

RAMENDRA JAIN, J.

CRM No.31789 of 2015:

The prayer made in the application is to condone the
delay of 108 days in filing the appeal.

Sufficient cause has been shown in the application
for the condonation of delay. Hence, the delay is condoned.

CRA-D-47-DB-2015:

The appellants have assailed the judgment dated 04.04.2015 passed by the Additional Sessions Judge, Sirsa, acquitting respondent No.2 under Section 366, 506, 376(2) IPC.

Brief facts of the case are that on 26.4.2014, appellant No.1 on return from walk found his wife missing from house and daughter sleeping. He made his best effort to search his wife, but could not find her. He then moved complaint dated 29.04.2014 in the Police Station, Kalanwali. On the basis thereof, formal FIR was registered. On 13.05.2014, appellant No.2 returned home. She was produced before the police. Her statement Ex.P1 was recorded. She was also medico-legally examined vide MLR, Ex.P.6. Her statement was also got recorded under Section 164 Cr.P.C., before the Area Magistrate by moving application Ex.P.18. Respondent No.2 was arrested on the same day. He suffered disclosure statement Ex.P.3 on 14.05.2014. In pursuance thereof, he identified the place where he had allegedly committed rape with appellant No.2 vide Identification Memo, Ex.P.4. He was also got medico-legally examined. On completion of investigation, final report under Section 173 Cr.P.C. was filed before the Area Magistrate.

Aappellant No.2 alleged that she was raped by the accused for the first time in her house in December, 2013 and several times thereafter, but she did not disclose these rape

incidents as the accused had threatened to kill her husband. It was further alleged that on 24.4.2014, the accused asked her to accompany him to Sirsa in a train. When they got down at the railway station, she was given something to eat. After consuming the same, she became unconscious and regained her consciousness at Hazoor Sahib, Nanded (Maharashtra) where she was administered oath of secrecy regarding rape, perpetually drugged and was deserted by the accused at Railway Station, Kalanwali on 12.05.2014.

The prosecution in order to prove its case, examined as many as 10 witnesses. Statement of respondent No.2 under Section 313 Cr.P.C. was recorded putting the entire incriminating evidence came on record against him to which he denied and pleaded false implication.

Learned counsel for the appellants has argued that the impugned judgment of the trial Court is based on surmises and conjectures. Respondent No.2 has been acquitted without appreciation of evidence. The version of the complainant has been duly corroborated by the circumstantial evidence, but despite that respondent No.2 has been wrongly acquitted placing reliance on the defence version.

After giving our thoughtful consideration to the submissions made by learned counsel for the appellants, we find

that the present appeal is completely devoid of merits for the reasons to follow.

(i) The prosecutrix alleged that she lost her consciousness at Sirsa after consuming some food substance. The journey from Sirsa to Nanded, Maharashtra is quite a long journey. It was not believable that accused could have managed such a long journey without arousing any suspicion of the co-passengers.

(ii) Another circumstance to disbelieve the prosecution story is that appellant No.2 denied having used the ATM card and expressed ignorance of the fact whether the same was used by the accused. She admitted having disclosed her ATM password to accused. As per version of prosecutrix and her husband Sukhwinder Singh PW-10, the ATM Card of the prosecutrix was used at Delhi on 24.04.2014 either by the prosecutrix or the accused. If the prosecutrix herself used the ATM card at Delhi or same was used by the accused on 24.04.2014 on disclosure of ATM password to him by the prosecutrix, the version of appellant No.2 gets falsified that she was taken to Maharashtra in unconscious condition. It is also not understandable

why the prosecutrix disclosed her ATM password to accused who allegedly abducted and raped her. The prosecutrix nowhere alleged that the accused had forcibly obtained any information from her.

(iii) Although the prosecutrix, appellant No.2 returned home on 12.05.2014, but appellant No.1 approached the police on 13.05.2014 and her statement was recorded on the very same day. The Police Station Kalanwali from the house of appellants is at a walking distance of 5-10 minutes. It causes a serious dent in the prosecution version and supports the respondent's case regarding his false implication.

(iv) Another story put forth by the prosecution is that the accused got administered oath of secrecy to the prosecutrix regarding rape or abduction at Gurudawara Sahib in Maharashtra. It is unexplained on the record that why the prosecutrix did not raise any alarm to nab the accused at the Gurudwara itself if every thing was not done according to her wishes and consent.

(v) Sukhwinder Singh, husband of the prosecutrix as PW10 deposed that at the time when his wife left the house she was wearing gold bangles, a gold chain, gold tops, three gold rings but when she

returned on 12.5.2014 she was only wearing two tops. Rest of wearing jewellery was missing. However, the prosecutrix in her statement did not depose that she had ever removed the same. Hence, not levelling any allegation of removing her gold ornaments by respondent No.2 in itself shows that she was roaming with him with her free will and consent and her ornaments were sold or kept with her consent.

(vi) The story put forth by the prosecutrix that she remained under threat of respondent No.2 is also not plausible because he was not carrying any weapon with him. Respondent No.2 did sexual intercourse in her own house. It cannot be said that she was raped under threat, rather it can be said that she was a consenting and willing party.

(vii) Even though it is the case of the prosecution that PW8 ASI-Lali Devi collected the call details of appellant No.2 as well as of respondent No.2, but the same were not brought on record, which raises suspicion that the prosecution did not want the Court to know the fact that appellant No.2 and the respondent No.2 were in constant touch with each

other prior to the 24.04.2014 and during the period
24.04.2014 and 12.05.2014

There are several other material contradictions in the
testimony of the prosecution version which demolish the case of
the prosecution.

No other point has been urged

In view of the aforesaid discussion, we find no merit
in the appeal. Accordingly, it is dismissed.

(T.P.S.MANN)
JUDGE

(RAMENDRA JAIN)
JUDGE

January 21, 2016
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