

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRA-D-1318-DB-2015

Date of decision: 04.05.2016

Paramjit Singh

..... Appellant

Versus

Gajender Sharma and another

..... Respondents

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

1. *Whether Reporters of the local papers 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?*

PRESENT: Mr. Surjit Singh Salar, Advocate
for the appellant.

RAMENDRA JAIN, J.

The appellant-complainant has filed the present appeal against acquittal of respondent No. 1-Gajender Sharma under Section 305 of the Indian Penal Code and Section 17 of the Protection of Children from Sexual Offences Act, 2012 (for short 'the Act').

2. Put pithily, around 1.00/1.30 A.M. in the intervening night of 31.05.2014/01.06.2014 daughter of the appellant namely, Kulwinder Kaur (since deceased) was found missing from the house along with his mobile phone. Around 2.05 A.M., the complainant party found Kulwinder Kaur climbing on the wall of their house with the help of heap of bricks lying in one corner of the house to proceed to the terrace. She

was also having the mobile phone of the appellant. They also noticed a scooterist turning back. Upon asking, Kulwinder Kaur disclosed to them that respondent No. 1 had taken her away on a scooter on the pretext of meeting as he had told his intention to marry her. However, she refused to accede to his request, despite the fact respondent No. 1 was very serious to marry her. The complainant party tried to calm down Kulwinder Kaur and asked her to sleep. However, around 4.00 A.M., she was again found missing from her room. The appellant's son went on the roof and found Kulwinder Kaur lying on the roof top and froth was coming from her mouth. She was unable to speak. The complainant party shifted her to Government Hospital, Sector-16, Chandigarh where she breathed her last. She might have committed suicide by consuming some poisonous substance being exhausted from the harassment of respondent No. 1.

3. On the basis of above statement made by the appellant-complainant, formal FIR was registered. Police swung into action. Inquest proceedings and post-mortem examination of the dead body of Kulwinder Kaur were got conducted. Statements of relevant witnesses were recorded. After completion of investigation, final report under Section 173 (2) Cr.P.C. was presented before the learned Area Magistrate.

4. On commitment of the case to the Court of Sessions, respondent No. 1 was charge-sheeted under Section 305 IPC and, in the alternative, Section 17 of the Act, to which he pleaded not guilty and claimed trial.

5. The prosecution in support of its case examined as many as 18 witnesses and relied upon certain documents.

6. In his statement under Section 313 Cr.P.C., respondent No. 1 denied the entire incriminating evidence brought on record against him and pleaded his false implication.

7. On appraisal of evidence led by the prosecution and hearing learned counsel for both the sides, the learned trial Court did not find itself in favour of the prosecution story and thus, acquitted respondent No. 1 vide impugned judgment dated 10.04.2015.

8. Learned counsel for the appellant contended that the impugned judgment is based on surmises and conjectures. There was ample evidence on the record that Kulwinder Kaur (deceased) had committed suicide by consuming some poisonous substance being fed up from the harassment of respondent No. 1. Minor discrepancies in the statements of prosecution witnesses were given undue weight by the trial Court.

9. After giving our thoughtful consideration to the submissions made by learned counsel for the appellant, we find no merit in the instant appeal for the reasons to follow.

- (i) There is no eye-witness account in this case. The entire prosecution story is based on circumstantial evidence. Admittedly, around 1.00/1.30 A.M. in the intervening night of 31.05.2014/01.06.2014, Kulwinder Kaur (deceased) was found missing from her room. She had also taken the mobile phone of her

father-appellant/complainant. Thereafter, around 02.05 A.M. she was found climbing the wall of her house to go to the terrace with the help of heap of bricks lying in one corner of the house, after alighting from the scooter. The appellant/complainant-Paramjit Singh as PW-3 has testified that on asking, his daughter-Kulwinder Kaur (deceased) disclosed that she was very upset with respondent No. 1, who had called her in the night to meet him. She had agreed to meet him under fear as he threatened to eliminate her family. She had also disclosed to him that respondent No. 1 had also tried to commit rape with her and when she resisted, beatings were given to her by him. They (complainant party) tried to make the deceased understand with assurance to take up the matter with respondent No. 1 in the morning. However, around 3.30 A.M. his daughter Kulwinder Kaur was again found missing and when his son Hardeep went upstairs, he found her lying on the floor and froth was coming out from her mouth. Thereafter, she was shifted to Government Hospital, Sector-16, Chandigarh.

- (ii) PW-11 Dr. Satyam Tyagi, testified that Kulwinder Kaur was admitted in the hospital around 05.25 A.M. on 01.06.2014. Injuries on the person of deceased

were fresh injuries. There was no colour change in the injuries of the deceased. This witness clarified that no change occurs in the colour of injuries even after first two hours or four hours. Thus, it is evident on the record that when the deceased was shifted to hospital, she was having fresh injuries on her person. Now, it has to be seen whether Kulwinder Kaur, had received injuries while climbing over the wall of her house or at the hands of respondent No. 1. In case, any injury would have been caused by respondent No. 1 to Kulwinder Kaur, in that eventuality, it was very difficult for her to climb the wall. Therefore, it can safely be inferred that she had received injuries while climbing the wall, but it is not the case of the prosecution.

- (iii) There are major omissions and improvements in the prosecution story. The appellant-complainant did not mention in his initial statement Ex. PC recorded by the police under Section 161 Cr.P.C. that he had searched his daughter-Kulwinder Kaur within the house or surrounding area or had seen her alighting from the scooter. He also did not disclose to the police that his daughter-Kulwinder Kaur had disclosed to him that respondent No. 1 had tried to commit rape with her and when she resisted, he gave beatings to her. He

also did not mention in his complaint that he tried to make his daughter understand that he would talk to respondent No. 1 in the morning. He also omitted to mention in his statement that Kulwinder Kaur wanted to say something, but could only make some gestures before being shifting to Government Hospital, Sector-16, Chandigarh.

That apart, PW-16-ASI Karan Singh, did not show any injury of Kulwinder Kaur (deceased) at the time of preparing report under Section 175 Cr.P.C. As per admission of appellant-complainant as PW-3, the factum of injury on the body of the deceased was disclosed to him by the doctor and police and thus, the same assumes great significance, because in all there were six injuries on the person of Kulwinder Kaur i.e. on her right arm, left eye, left arm, right shoulder, right knee and on neck and cheek. It does not appeal to the reason that such injuries could not be noticed by the complainant party and thus, the omission of disclosing this fact by the complainant to the police must be with ulterior motive to shield the real culprits. The above omission by the complainant also proves the collusion of complainant party with the police to hide the true facts.

(iv) As per own case of the prosecution, Kulwinder Kaur

(since deceased) was found returning home in a clandestine manner at odd hours and thus, it fortifies the stand taken by respondent No. 1 that on noticing the fact that her family members have come to know about her clandestine activity, she out of frustration ended her life by consuming some poisonous substance. No incriminating material was found on the vaginal swab of Kulwinder Kaur (deceased) as per the FSL report as well as the post-mortem report duly proved by PW-18 Dr. Kirpal Singh. Therefore, it is evident that no rape was ever committed with deceased Kulwinder Kaur.

10. Learned counsel for the appellant has not been able to put any dent in any of the above findings of the learned trial Court. Hence, finding no other option the same are to be upheld.

11. In view of the above discussion, the instant appeal being completely devoid of any merit is dismissed.

(T.P.S. MANN)
JUDGE

(RAMENDRA JAIN)
JUDGE

May 04, 2016
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