

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRA-D-573-DB-2015 (O&M)

Date of decision: 15.02.2016

Kulwinder Kaur

..... Appellant

Versus

State of Punjab 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: Ms. G.K. Mann, Advocate
for the appellant.

RAMENDRA JAIN, J.

CRM-12161-2015

Sufficient cause has been shown to condone the delay of 10 days in filing the instant appeal.

Hence, the application is allowed and delay of 10 days in filing the instant appeal is condoned.

CRA-D-573-DB-2015

The appellant has preferred the present appeal against the judgment dated 11.12.2014, passed by the learned Additional Sessions Judge, Pathankot acquitting respondent No. 2-Gurmukh Singh under Sections 452/376/511/506 of the Indian Penal Code (IPC).

2. In nutshell, on 06.08.2014, the appellant made statement

before Women Cell, Pathankot that around 11.00 A.M. on 29.07.2014, respondent No. 2 had entered into her house and forcibly attempted to commit rape upon her against her wishes. In the meantime, her eldest daughter-Gurnam Kaur had returned home. On seeing her, respondent No. 2 fled away from the spot with threat of dire consequences, in case, they dare to reveal the incident. Hence, out of fear she did not disclose the incident to anyone till that date.

3. On the basis of above statement of the appellant, formal FIR was registered. Respondent No. 2 was arrested. Statements of relevant witnesses were also recorded. After completion of necessary 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, the learned Additional Sessions Judge, Pathankot framed charges under Sections 452/376/511 and 506 IPC against respondent No. 2 to which he pleaded not guilty and claimed trial.

5. The prosecution in support of its case examined as many as 6 witnesses, namely, PW-1 the appellant, PW-2 Gurnam Kaur, PW-3 Harpreet Singh, PW-4 SI Inderbir Kaur, PW-5 ASI Rakesh Kumar and PW-6 PHC Rajinder Kumar.

6. After the closure of prosecution evidence, statement of respondent No. 2 under Section 313 Cr.P.C. was recorded, putting entire incriminating evidence brought on record against him to which he denied and pleaded his innocence. He took the stand that the appellant was the daughter of his father's sister (Bhua). She was thrown out of her

matrimonial home by her husband. Earlier also she had filed a case under Section 125 Cr.P.C. against her husband. Thereafter, her father Amrik Singh gave her a plot and asked them to help her in building a house on the said plot. They contributed ₹ 7.20 lacs by supplying bricks, cement, sand and other material. She along with her children also stayed in his house for three months. She had shifted to her own house in March, 2011. Her father Amrik Singh had promised him to return the money, but unfortunately, he died on 31.05.2014. After his death, the appellant assured him to return his money on receipt of maintenance amount from her husband. On 28.07.2014, he had left for Patti with a loaded truck and returned around 5.00 P.M. on 29.07.2014. On coming to know that the appellant had received ₹ 2 lacs from her husband, around 6.00 P.M. on the same day he along with his wife went to her house. Appellant met them on the gate. On their demanding money, she started abusing them, which attracted her mother and uncle Harbhajan Singh. She threatened to involve him in a false case.

7. In defence, respondent No. 2 examined DW-1 Ashok Kumar, DW-2 Neelam Kumari, DW-3 Harbhajan Singh, DW-4 Madhur Mahajan and DW-5 Sonu.

8. After hearing learned counsel for the parties and going through the evidence brought on record, the learned trial Court acquitted respondent No. 2 vide impugned judgment.

9. Learned counsel for the appellant argued that the impugned judgment of learned trial Court is based on surmises and conjectures.

There was sufficient evidence on record that respondent No. 2 had

forcibly attempted to commit rape with the appellant. The learned trial Court has wrongly and illegally ignored the same by giving much emphasis to the self contradictory defence of respondent No. 2.

10. After giving our thoughtful consideration to the above submissions made by learned counsel for the appellant, we find the present appeal completely devoid of any merit for the reasons to follow:-

- (i) As per own version of the appellant, respondent No. 2 tried to commit rape upon her around 11.00 A.M. on 29.07.2014. However, as per call details Ex. DD, the appellant had contacted the police at helpline No. 181 around 11.01 P.M. on that day asking for police help, as respondent No. 2 was threatening her on daily basis. Had there been any alleged attempt by respondent No. 2 to commit rape of the appellant, in that eventuality, she must have complained about the same to the police. Non-referring of any such incident of rape by the appellant at helpline No. 181, requires to draw an adverse inference against her that the things did not happen in the manner as narrated by her. More so, it is also un-explained on the file that what refrained the appellant for about 12 hours in not complaining about her rape by respondent No. 2 to the police. Hence, the above conduct of the appellant creates a grave suspicion in her story coupled with other circumstances which are discussed in the foregoing

paras.

- (ii) At the time of alleged rape of the appellant around 11.00 A.M. on 29.07.2014, all her three daughters had gone to their respective schools. Her raising alarm attracted her eldest daughter-Gurnam Kaur (PW-2). However, the above story put forth by the prosecution has been falsified by DW-2 Neelam Kumari, Teacher of Dr. L.K. Mathur Memorial Tagore Public School, Nalwa Bridge, Pathankot, who testified that on 29.07.2014 their school was closed due to gazetted holiday. Meaning thereby, one of the daughter of prosecutrix was very much at home at the time of alleged incident. Moreover, DW-1 Ashok Kumar, Clerk, MDK Arya Senior Secondary Public School, Pathankot has also put dent in the above story of the prosecution by deposing that on 29.07.2014, their school timings were from 7.20 A.M. to 11.00 A.M. There was no record that PW-2 Gurnam Kaur had applied for her early leaving the school on that day. Thus, it can safely be inferred that presence of PW-2 at around 11.00 A.M. at home has been shown falsely to create evidence against respondent No. 2.
- (iii) Real uncle of the appellant, namely, PW-3 Harbhajan Singh has not supported her. He deposed that on the request of the appellant as well as of her father,

respondent No. 2 had given financial assistance to her to raise construction of her house by supplying her bricks, cement, sand etc. The appellant shifted to her new house in the year 2011. Her father died in May, 2014. After the death of father of the appellant, respondent No. 2 asked the appellant to return his money. She promised to return the same after receiving maintenance from her husband. Since, the appellant had received ₹ 2 lacs on 28.07.2014 towards maintenance from her husband, respondent No. 2 had visited the house of the appellant along with his wife to raise demand of his money. However, the appellant refused to return the same on the pretext that she had lot of expenses on her children. Due to the aforementioned reason some verbal altercation took place in between the appellant and respondent No. 2, outside her house in the presence of the mother of appellant. He pacified both the parties and asked them to resolve their dispute in an amicable manner. Thereafter, respondent No. 2 and his wife returned to their house. He also tried to pacify the appellant, but she asked him to not to interfere in her matters as she wanted to teach a lesson to respondent No. 2. No such incident had ever taken place. The above deposition of DW-3 Harbhajan Singh, real uncle of the appellant

cannot be disbelieved, because he had no ill will or any motive against the appellant in deposing against her.

- (iv) As per own admission of the appellant, her house was nearby the houses of her mother and two brothers. However, it is unexplained on the file that why they did not come to the spot on raising alarm by the appellant to save her. Even none of them appeared in the witness-box in order to support her deposition. The above fact also creates suspicion in the prosecution story.
- (v) The documents produced by respondent No. 2 in defence make it abundantly clear that after registration of the present case, the wife of respondent No. 2 moved an application to the Senior Superintendent of Police, Pathankot pleading his innocence. During enquiry of the said application, the mother of appellant namely Parkash Kaur made statement that no such incident had ever taken place and the present case was registered to settle the money dispute with respondent No. 2.
- (vi) Delay of 9 days in reporting the matter to the police is also fatal to the prosecution, more particularly, when it has come on the record that there was some money dispute in between the appellant and respondent No. 2.
- (vii) Critical analysis of the evidence brought on record by

both the sides shows that the story put forth by the appellant and her daughter is not trustworthy and worth reliance.

(viii) Respondent No. 2 had taken the stand that on the day of alleged incident, he was not present at Pathankot rather was away to Patti. In support of his above assertion, he had examined DW-4 and DW-5 namely, Madhur Mahajan and Sonu respectively, who by proving goods receipt Ex. DB testified that 1000 Sq. Ft. CFT Bajri was loaded on 28.07.2014 in truck No. PB-35-Q-5349, having its driver as Gurmukh Singh i.e. respondent No. 2 and the said material was delivered at Patti on 29.07.2014. The prosecution has not been able to rebut the aforesaid plea of alibi taken by respondent No. 2 and thus, there is no circumstance on the file to disbelieve his above plea.

11. In view of the above discussion, we are not inclined to differ with any of the findings recorded by the learned trial Court for acquitting respondent No. 2.

12. The instant appeal is completely devoid of any merit, and, therefore, dismissed.

(T.P.S. MANN)
JUDGE

(RAMENDRA JAIN)
JUDGE

February 15, 2016

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