

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRA-D-698-DB-2015

DATE OF DECISION: March 02, 2016

Yogender alias Bhulli

...Appellant

versus

State of Haryana and others

...Respondents

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

Present: Mr. Jagjeet Beniwal, Advocate for the appellant

RAMENDRA JAIN, J.

By way of the present appeal, the appellant has assailed the judgment of acquittal dated 21.02.2015 passed by the Additional Sessions Judge, Bhiwani.

On 29.09.2013, criminal law was set into motion on the complaint (Ex.P.10) made by Yogender alias Bhulli to Police Station Sadar Bhiwani, that his house was situated near the house of Nepal, respondent No.2. Respondent No.4 used to keep her nephew i.e. convict Nasib alias Mintu with her. The prosecutrix i.e. sister of complainant, was student of Class-X.

Respondent No.4 used to call the prosecutrix at her house by

way of allurement. Four-five days before 29.9.2013, respondent No.4 and one Meena allured and called the prosecutrix to their house which was objected to by the family members of the complainant. Respondents No.2 and convict-Nasib alias Mintu misbehaved with the sister of the complainant. Protest was lodged before respondent No.4 and Meena, but they did not respond. On 28.09.2013, examination of prosecutrix was to be held at Bhiwani. Respondent No.4 and Meena sent convict Nasib alias Mintu and respondent No.2 to Bhiwani. Both of them misbehaved with prosecutrix, who was accompanied by complainant. Respondent No.2 and convict Nasib alias Mintu quarrelled with the complainant and threatened him with dire consequences. The complainant reported the matter to his uncle. His family members went to the house of Hari Om (father of respondent No.2). Respondent No.4 and Meena told that respondent No.2 and convict Nasib alias Mintu would not mend their ways. On 29.09.2013, sister of the complainant was found missing from her cot. The complainant enquired about this from respondents No.2 and 4 besides the convict and Meena wife of respondent No.2. Family members of the complainant visited the house of convict Nasib alias Mintu in village Ranila. There respondent No.3, Vikas @ Mange Ram, brother of convict Nasib alias Mintu, assured them that he would call the convict Nasib alias Mintu within four-five hours but, thereafter, he criminally

intimidated them. Respondent No.3 also threatened them that they would kill their girl.

On the basis of the complaint, FIR No.732 dated 29.9.2013 (Ex.P11) was registered under Sections 363 and 120-B IPC. On 7.10.2013, ASI Anand Kumar along with some other police officials and complainant recovered the prosecutrix from the custody of convict Nasib alias Mintu. He was also arrested. Statements of the witnesses were recorded under Section 161 Cr.P.C. and that of the prosecutrix was got recorded under Section 164 Cr.P.C. Prosecutrix was medico legally examined at the General Hospital, Bhiwani. On 8.10.2013, convict Nasib alias Mintu demarcated the place of occurrence vide Memo Ex.P24. Rough Site Plan Ex.P.25 of the place of recovery of prosecutrix was prepared. On 9.10.2013, convict Nasib alias Mintu got recovered motorcycle which was allegedly used by him in the commission of offence vide recovery memo, Ex.P.28. During investigation, polygraph tests of respondent No.4 and Meena were got conducted. They were declared innocent by the DSP and were, thus, kept in column No.2 of the final report. On completion of investigation, final report under Section 173 Cr.P.C. against the accused persons including respondents No.2 and 3 was presented in the Court of Chief Judicial Magistrate, Bhiwani.

After the prosecutrix stepped into the witness box, an application under Section 319 Cr.P.C. was filed for summoning

of respondent No.4 and Meena wife of respondent No.2 as additional accused which was allowed. Consequently, respondent No.4 and Meena were summoned as additional accused for commission of offences punishable under Sections 120-B and 363 IPC as also under Section 17 of the Protection of Children from Sexual Offences Act, 2012.

After appearance of respondent No.4 and Meena, charges against all the accused were framed afresh. As a consequence thereof, a prima facie case was found to be made out under Sections 120 read with Section 363 and 366-A IPC against convict Nasib alias Mintu, respondents No.2 and 4 and Meena. A prima facie case under Section 363 IPC and Section 6 of the Protection of Children from Sexual Offences Act, 2012 was found to be made out against convict Nasib alias Mintu. Further, a prima facie was found to be made out against respondent No.3 under Section 506 IPC and a prima facie case was also found to be made out under Section 17 of the Protection of Children from Sexual Offences Act, 2012, against accused Meena, respondent No.2 and respondent No.4. The accused persons were served with charge-sheet to which they pleaded not guilty and claimed trial.

In order to prove its case, the prosecution examined as many as 11 witnesses and relied upon documents-Ex.P.1 to P.29. After closure of evidence by prosecution, the accused were

examined under Section 313 Cr.P.C. putting to them the entire incriminating material. The accused pleaded false implication.

The trial Court analysed the evidence in great detail. However, it found that the evidence of prosecution witnesses lacks credence and unreliable qua respondents No.2 to 4 and accused Meena. Accordingly, it directed the acquittal of these accused.

Learned counsel for the appellant submits that the impugned judgment is based on surmises and conjectures. The trial Court has wrongly acquitted the accused-respondents without appreciating the evidence which is fully corroborated by the complainant and other witnesses. It is further argued that the prosecution examined as many as 11 witnesses as well as documentary evidence – Ex.P1 to P-29 and disclosure statements, but still the court of learned Additional Sessions Judge wrongly came to the conclusion of acquittal of the accused respondents.

We have thoughtfully considered the arguments advanced by learned counsel for the appellant and are of the view that the appeal deserves to be dismissed for the reasons to follow.

No doubt, it is proved on record that the prosecutrix was below the age of 18 years. Convict Nasib alias Mintu came into contact of the prosecutrix on 22.5.2012 at a Bhat ceremony

of Bua of prosecutrix. He developed intimacy with the prosecutrix taking benefit of her minority. On 28.09.2013, convict Nasib alias Mintu took away prosecutrix from Village Kayala on motorcycle bearing registration No.HR-16B-7700 and repeatedly committed penetrative sexual assault on her. Human semen was detected on the vaginal swabs and clothes of prosecutrix. On the basis of disclosure statement of convict Nasib alias Mintu, the aforesaid motorcycle was recovered on 09.10.2013.

But as far as the role of accused/respondents No.2 to 4 is concerned, no clinching evidence has been proved against them which may suggest their involvement directly or indirectly in the commission of crime. The prosecutrix while appearing as PW9 has improved her version qua respondents No.2 to 4. She has attributed different roles to the accused-respondents which shakes her credibility as far as these respondents are concerned. Respondent No.3 was not even named by the prosecutrix in her statement under Section 164 Cr.P.C. There is no evidence that respondent No.3 ever provided any money to convict Nasib alias Mintu and/or ever instigated him to kidnap the prosecutrix. No bank passbook or any other document was recovered by the police from respondent No.3. As far as respondent No.4 Ratni Devi is concerned, she was a mature women and a mother of three married children and one unmarried son. It does not appeal to reason that such a mature

women having two married daughters, would encourage his son to kidnap somebody's daughter and commit rape upon her. Rather, it has come on record that there was a previous enmity between the families of accused persons and complainant and FIR No.84 dated 2.2.1998 was also registered in this regard under Section 436 read with Section 34 IPC at Police Station Sadar Bhiwani against the uncles of the prosecutrix. Even no recovery was effected from respondent No.2 on the basis of disclosure statement. The prosecution has not even examined the parents of the prosecutrix or Uncle of Yogender (PW9) along with whom the complainant party visited the house of accused Meena and respondent No.2 in order to lodge protest.

In view of the aforesaid discussion, we find no merit in the appeal and the same is hereby dismissed.

(T.P.S.MANN)
JUDGE

(RAMENDRA JAIN)
JUDGE

March 02, 2016
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