

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CRA-D-795-DB of 2015(O&M)
Date of decision :15.1.2016**

X (name withheld to protect identity of the victim)

.....Appellant

Versus

State of Punjab and another

.....Respondents

**CORAM : HON'BLE MR.JUSTICE S.S. SARON
HON'BLE MR.JUSTICE GURMIT RAM

1. To be referred to the Reporters or not? Yes / No
2. Whether the judgment should be reported in the Digest? Yes / No

Present :- Mr.A.K. Walia, Advocate
for the appellant.

GURMIT RAM, J.

CRM-16758 of 2015

Heard. Sufficient cause has been shown for condonation of delay in filing of the appeal. The application is, therefore, accepted and the delay of 48 days in filing of the appeal is condoned.

CRA-D-795-DB of 2015

1. This appeal is preferred by above-said appellant whereby assailing the judgment dated 16.12.2014 passed by the learned Additional Sessions Judge, Bathinda in criminal case bearing FIR No.3 dated 8.1.2014 u/Ss 354, 376/511 of the Indian Penal Code, 1860 (*'IPC'* – for short) and 3, 4 of the Protection of Children from Sexual Offences Act, 2012 (*'the Act'* –

for short), Police Station Sadar, Rampura, Bathinda, vide which accused (now respondent No.2) was acquitted of the charges framed against him in this case by giving him benefit of doubt.

2. The prosecution version, in brief, as put forth before the learned trial Court was that the victim (PW2) after completing her education up to 10+2 was doing graduation privately. About three days ago, Gurmail Singh (respondent No.2) who was a teacher in Government school of their village had come to their house. He asked her father that if complainant intends to do IELTS course, then she can join the centre opened by the son of his brother-in-law. On 8.1.2014 at about 9:30 A.M., respondent No.2 came to their house on Alto car, when the complainant and her sister-in-law were present in the house. At that time her father was taking bath and mother and brother were not present in the house. Accused said to her that his relative who is running IELTS centre is now available at bus-stand and instigated her to accompany him. When the complainant requested him to wait for some time, then he told her that he has to go to his school in order to attend his duty and thereafter he has no time. In this situation, complainant accompanied him on his car who after crossing bus-stand of the village, turned his vehicle towards Tapa side. On this, she became suspicious about his dishonest intention. He also started molesting her. When she resisted, then he tried to loosen string of her *salwar* with intention to violate her sexually. In the meantime, they reached near Dera Baba Inder Dass. On hearing her noise, 3-4 young persons, who were standing therein looked at them. When she tried to stop the car by gripping the steering, then accused fled away from the spot after alighting her there. After arranging mobile phone from said young persons, she informed about this incident to her

mother and brother who reached at the spot.

After recording the above statement of complainant, it was read over to her, upon which ASI Sukhdev Singh made his endorsement and sent ruqqa to the police station, on the basis of which FIR was registered in this case. Site-plan of the place of occurrence was prepared. Statements of witnesses were recorded. Accused was arrested. Above-said Alto car bearing registration No.HR25C-9725 along with its registered cover was also taken into police possession. On completion of investigation, challan against the accused was presented in the Court of learned Illaqa Magistrate who after making compliance of the provisions of Section 207, Cr.P.C., committed this case to the Court of learned Sessions Judge, Bathinda for its trial.

3. Finding a prima facie case punishable u/Ss 354, 366 and 376 read with Section 511 of the IPC against the accused, he was charge-sheeted accordingly, to which, he pleaded not guilty and claimed trial.

4. The prosecution in order to establish its case against the accused examined four witnesses in total.

5. Then the accused was duly examined as required u/S 313 of Cr.P.C. Entire incriminating evidence and other circumstances as brought on the file during the trial of the case against him were put to him, which he denied entirely and pleaded innocence and false implication in this case. Then he also took the plea that real facts are that complainant developed love affairs with a boy during her study at Jalandhar and she decided to marry him. When this fact came to the knowledge of her parents, they refused to perform her marriage with that boy. Then her parents requested accused to find suitable match for her. He contacted Harcharan Singh son of

Karanil Singh, resident of Rure Ke Kalan for matrimonial alliance of complainant, who stated that he wanted to meet the girl and her parents. For this purpose, mother and brother of complainant had gone to Rure Ke Kalan. Father of complainant followed them as earlier decided, because parents of the complainant did not disclose this fact to her. When he disclosed this fact to complainant, she started crying loudly and apprehending some wrongs, he alighted her in front of Dera and left towards Rure Ke Kalan. On reaching there, he narrated entire occurrence to mother of complainant and Harcharan Singh. Next day, police called him. He along with Rajinder Singh (Inspector Cooperative Society), Ram Singh, his brother and Sukhdev Singh, Lambardar went to police station. Without any inquiry, he was made to sit in the police station. Other persons accompanying him were asked to go with promise that he will be let off after inquiry. On 11.1.2014, he was produced in Court at Phul. Complainant is like a daughter to him. He did nothing wrong with her nor did he abduct her. Present case was got registered at the instance of Janda Singh, who is inimical towards him and his family.

6. In defence, accused also examined three witnesses.

7. The learned trial Court after hearing the learned counsel for both parties and going through the record as well acquitted the accused of the charges framed against him by giving him benefit of doubt vide the impugned judgment.

8. The appellant being not satisfied with the impugned judgment has come up in the instant appeal. Record of the learned trial Court was requisitioned.

9. We have heard learned counsel for the appellant and perused

the record with his able assistance.

10. Learned counsel for the appellant has contended that the impugned judgment suffers from conjectures and surmises and is the result of misreading of evidence and facts on the record. Then he has also contended that in the case in hand as per the law, the statement of victim was required to be recorded before the woman police officer, but the same was recorded by ASI Sukhdev Singh, the I.O.(PW3) without complying with the provisions of law. It is also his contention that sole statement of prosecutrix as PW2 was quite convincing and reliable and there was no need of any corroboration to her statement by examining any other witness and as such the learned trial Court has wrongly disbelieved the version of prosecutrix. Further he has prayed that this appeal be accepted and the accused be dealt with in accordance with law.

11. The prosecutrix as PW2 made her statement in the Court on the same line as made by her before the police on 8.1.2014 vide her statement Ex.PW2/A with regard to alleged occurrence.

PW3 ASI Sukhdev Singh, the Investigating Officer, proved the said statement of complainant Ex.PW2/A, endorsement Ex.PW3/A made by him upon her said statement and the FIR Ex.PW3/B which was registered in this case qua the alleged occurrence. Further he stated about the arrest of accused and taking into police possession one Alto car along with its RC Ex.P1.

PW4 Jandha Singh was neighbour of the victim. He also corroborated the statement of prosecutrix that on 8.1.2014, accused came to the house of prosecutrix at about 9:30 A.M. and took her in his car on the

plea 'that since she is preparing for IELTS, he wants to introduce her with one boy who is running IELTS centre.' At about 10:30 A.M., Sukhdev Singh, father of the prosecutrix, came to his house and revealed to her that the accused had molested his daughter (victim) and she is now standing in front of Dera Baba Inder Dass.

12. In this case it was admitted by the accused (now respondent No.2) that on the date of alleged occurrence, he went to the house of prosecutrix and took her in his car. In this case, it is to be seen in what circumstances the accused took prosecutrix in his car and also as to whether he did any overt act with her forcibly to assault her sexually in order to hold him guilty in this case. The defence version in detail as discussed above in para No.6 of this judgment revealed that some love affair was developed between the victim and some boy, while she was studying at Jalandhar. Further she also decided to marry with him which proposal was not accepted by her parents. They requested the accused (now respondent No.2) to find out some suitable match for her. For this purpose, he (respondent No.2) contacted one Harcharan Singh son of Karanil Singh, resident of Rure Ke Kalan, who desired to see the girl and her parents. With this object, the mother and brother of complainant had gone to Rure Ke Kalan. Her father was to follow them as already pre-planned since her parents did not want to disclose this fact to her (victim). When this fact was disclosed by respondent No.2 to the complainant while travelling with her in car for going to village Rure Ke Kalan, then she started crying loudly. Apprehending some wrongs, he alighted her from car in front of Dera Baba Inder Dass and left towards Rure Ke Kalan.

13. In the case in hand, no evidence came on the record during

trial of the case in order to make out any offence u/S 376 read with Section 511, IPC. It was plea of prosecutrix that she resisted when the accused started molesting her. So in this process she might have suffered some injuries even minor in nature as well as some wear and tear to her clothes also. She was not medically examined from any doctor nor her clothes which she was allegedly wearing at the time of occurrence were taken into possession during investigation nor produced during trial of the case.

14. Then DW2 Harcharan Singh deposed to the effect that accused (now respondent No.2) who is brother-in-law of his cousin (maternal uncle's son) asked him to find out some suitable match for the matrimonial alliance of daughter of Sukhdev Singh. For this purpose, he suggested one boy who was friend of his cousin (*Masi's* son) and demanded the document with regard to academic qualification of the girl along with her photographs. The said boy also wanted to see the girl personally. Then date 8.1.2014 was fixed to see the girl and also for direct meeting between two families. On this date, brother and mother of girl came to his house at village Rure Ke Kalan at about 8:30 A.M., who apprised him that girl is coming with accused (respondent No.2). When they were taking tea then accused (respondent No.2) reached there alone. He told them that the victim became suspicious when she came to know about the true purpose of taking her in car i.e. about her matrimonial alliance. Since she started raising hue and cry, he dropped her near Dera at Tapa out of fear and came alone to his house. So if the above defence plea as taken by the accused in his statement u/S 313, Cr.P.C. is to be read along with this statement of DW2 Harcharan Singh, then it could safely be concluded that accused did nothing wrong in this case in order to hold him guilty. Whatever allegations were levelled

against him in this case, he did so at the instance of the parents of victim and not at his own with any ulterior motive coupled with any dishonest intention.

15. Then in this case, it came in the statement of prosecutrix (PW2) that after arranging the mobile phone from somebody present at the spot, she informed her brother about this occurrence. But in this case neither the brother of the victim nor any other member of her family had come forward to step into the witness-box in order to support her version. Even mobile phone of her brother and call detail of his mobile were not taken into possession during the investigation of case in order to ascertain the fact that she (complainant) had informed her brother on his mobile phone about the alleged occurrence as stated by her in prosecution version. So non-examination of any other member of the family of victim also smells a rat about correctness of genesis of prosecution version.

16. So far as statement of PW4 Jandha Singh is concerned, he is found to be an interested witness being inimical towards the accused. DW3 Bhola Singh deposed that Gurmail Singh and his family members are supporters of Kissan Union Dakonda Group. Since the family members of accused (respondent No.2) did not contribute any fund to Jhanda Singh Kissan Union Ugraha Group, so he was nourishing a grudge with accused family. This case was got registered against the accused falsely under the pressure of Jhanda Singh who appeared as PW4 in this case during trial of the case. Then this witness (PW4) in his cross-examination admitted that he is Vice President of District Bharti Kissan Union. Then he also admitted that there was party faction of Bharti Kissan Union namely B.K.U. Dakonda, BKU Krantikari, Sidhpur and BKU Lakhowal.

DW1 Harjinder Singh stated that accused (respondent No.2) who was posted as a Teacher in their village school bore good character. He along with Sarpanch Dharam Singh, Bhola Singh, Sukhdev Singh (Lambardar), Ram Singh and others took the accused to police station where accused was made to sit in police station and they were directed to go from there with the assurance that accused will be let off after some inquiry. Thereafter, the present case was planted against him.

17. In the light of above discussion, this appeal being found to be meritless stands dismissed and disposed of accordingly.

Copy of this order be sent to the quarter concerned for strict compliance.

15.1.2016
Brij

(S.S. SARON)
JUDGE

(GURMIT RAM)
JUDGE