

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-A-1315-MA-2014(O&M)
DATE OF DECISION: April 07, 2016

State of UT, Chandigarh

...Applicant

Versus

Surinder Sharma and others

...Respondents

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

Present: Mr.A.S. Sullar, Additional Public Prosecutor
for the applicant.

RAMENDRA JAIN, J.

CRM No.25426 of 2014

Sufficient cause has been shown to condone the
delay in filing the accompanying application.

The application is, therefore, accepted. The delay
of 10 days in filing the accompanying application under
Section 378(3) Cr.P.C. is condoned.

CRM-A-1315-MA-2014

The instant application has been filed by the Union
Territory of Chandigarh, seeking applicant, seeking leave to
file the accompanying appeal against acquittal of
respondents No. 1 to 5, vide impugned judgment dated
31.3.2014 passed by the learned Additional Sessions Judge-
cum-Judge, Special Court, Chandigarh.

Briefly stated, around 4.00 p.m. on 14.8.2002, the prosecutrix had gone to CDAC Computer Centre, Sector 20, Chandigarh. There she met M.K.Jain, who offered her a part time job at his Panchkula office. Consequently, she along with M.K.Jain had travelled in the car No.CH-03E-0125 for Panchkula. On the way, he offered her coke. After consuming it, she became unconscious. She did not know, where she was taken away thereafter and was brought back after sufficient long time and was pushed out of the car. On regaining her consciousness, she found herself admitted in hospital. Her clothes were torn off. Marks of bruises were on her breast. She was sure that M.K.Jain had committed sexual intercourse with her.

On the basis of aforesaid allegations, formal FIR under Sections 328, 376 IPC was registered on 15.8.2002. Investigation was commenced. On the very same day, her statement under Section 164 CrPC was recorded. Statements of relevant witnesses were also recorded.

On 3.9.2002, the prosecutrix made a supplementary statement denying the above earlier statements made on 15.8.2002. She altogether came with a new version that three-four months earlier, she had met respondent No.3 Ram Lal Chaudhary, resident of Sector 47, Chandigarh through one A.K.Sinha, resident of Sector 47, Chandigarh and a girl named Nikki. Nikki was her room

mate and was also knowing A.K.Sinha. The acquaintance of her with respondent No.3 Ram Lal developed to the extent that either he used to come and meet her or she used to make him blank call through the landline of her landlady on his mobile. They became good friends. Their friendship turned into close intimacy. They oftenly used to go for outing. Their friendship reduced to some extent in the months of June and July 2002, as she was away to her home at Shimla. However, she still used to contact respondent No.3 on his mobile Nos.892151 and 9815165726. Towards the end of July 2002, respondent No.3 contacted her and proposed to make a plan, which would enable her to yield good money and job. Consequently, respondent No.3 along with respondent No.1, whom she was knowing earlier, having met her once or twice with respondent No.3, asked her to reach backside road of her house. They took her along in a new Skoda car to explain the said plan and reached in a office in Sector 18 having a sign board "STA". There, they met a policeman to whom respondent No.3 was addressing by the name Narvir. Narvir (respondent No.4) talked with some one through mobile of respondent No.3. Thereafter, all four of them reached at a govt. accommodation in Sector 7. Respondent No.4 Narvir went inside the said residence, whereas, they remained outside in the car. After some time, one man whose name was

disclosed to her as N.K.Jain, a senior Officer in Haryana Govt., (respondent No.5) came outside the said residence and they all five started their journey in the car towards the southern side of the city. They asked her to falsely implicate M.K.Jain in a rape case and in lieu thereof assured to pay a big amount, besides job in Haryana Govt. After traveling for about 45-50 minutes, respondent No.3 dropped respondent No.5 at his residence and respondent No.4 at his office in Sector 18. Respondent No.3 also dropped her in Sector 44 asking her to show the office and photograph of M.K.Jain and the planning as to how to proceed further. On the next day, she was taken by respondent No.3-Ram Lal, respondent No.1-Surinder Sharma and respondent No.4-Narvir outside a big office in Sector 17. She was kept sitting in the car and the aforesaid three had gone up. On return, respondent No.4-Narvir gave her a photograph of M.K.Jain. She was dropped in Sector 44. Around 10.00 a.m., on 13.8.2002, respondent No.3 Ram Lal called her up on her landlady's telephone No.665166 for meeting on the backside main road of Sector 44 at around 12.00 noon. However, by that time, she was not ready, so around 1.15 p.m., she made call twice to respondent No.3 and reached on the road at 1.30 p.m. and met respondent No.3-Ram Lal and respondent No.1-Surinder Sharma in the Skoda car. They all three reached outside the CDAC Office in Sector 20.

She was shown the car bearing No.CH-03-E-0125 make Lancer and the office from outside. Thereafter, she was dropped at the road outside her house. Around 5.00 p.m. she was called telephonically to come out. After getting ready, she was taken in the car to Hotel Pankaj Green Park near Ramgarh in Panchkula. For some time, they kept on sitting in the lawn. Then, a room was got opened in the Hotel by respondent No.3-Ram Lal. He took her inside and had sexual intercourse with her and then dropped her outside her house. On 14.8.2002, Ram Lal called her and directed her to act as per the commands of respondent No.1-Surinder Sharma and respondent No.2-Baldev. On that day, one Sameena was also staying with her. Around 12 noon, respondent No.1-Surinder Sharma and respondent No.2-Baldev Kumar reached there in a Zen car No.CH-03E-9375 and took her and Sameena for outing. On the way, they took some money from respondent No.4-Narvir Singh in Industrial Area, Phase-2. They all took lunch in Pinjore and around 4.00 p.m., returned back. She again got ready. Around 4.45 p.m., respondent No.2-Baldev and respondent No.1-Surinder Sharma took her to Hotel Pankaj Green Park. In the morning, respondent No.1-Surinder Sharma had shown the office of CDAC to her and Sameena. He had gone upstairs in the office. In the evening, he had collected a visiting card from the office of M.K.Jain. While they were on

the way to the Hotel, respondent No.1-Surinder Sharma had purchased some medicines from a chemist shop. Reaching the Hotel, they kept on sitting in the lawn. Two rooms were booked for having sexual intercourse. However, she refused to do any sexual act. Resultantly, respondent No.3-Ram Lal was called, who tried to convince her that in case, she did not agree, she would not get any money and job. He also convinced her that they would extort a large amount from M.K.Jain., but still she refused to do any sexual act. Whereupon, respondent No.3-Ram Lal threatened her to act according to respondent No.1-Surinder Sharma, otherwise, the result would not be favourable. In order to oblige them, she agreed to go inside the room with respondent No.1-Surinder Sharma. Before going inside, respondent No.1-Surinder Sharma placed order for a glass of water. She was given four tablets to swallow with the assurance that no harm would be caused to her, in case she would consume the same. That being so, she consumed the said tablets and went inside the hotel with respondent No.1-Surinder Sharma. Inside the room, she was given a bottle of Phency to drink. She consumed only half. Sexual intercourse was done with her against her wishes by respondent No.1-Surinder Sharma. While she was slightly under giddiness, respondent No.1-Surinder Sharma had put some scratches on her breast. While she was coming out of the room, after

doing the sexual intercourse, respondent No.1-Surinder Sharma gave two more tablets to her with water. They started their journey towards Chandigarh. Her head was little bit heavy. She was feeling giddy and intoxicated. She along with respondent No.1-Surinder Sharma sat on the rear seat. Respondent No.2-Baldev Kumar was driving the car. Respondent No.1-Surinder Sharma tore the two sides of her shirt and dropped her on the road side and went off. While they were having sexual intercourse in the hotel, respondent No.1-Surinder Sharma was repeatedly asking her to name M.K.Jain as her rapist before the police, only then, she would be able to get money and job. Later, she found herself in General Hospital, Sector 16, Chandigarh, where she falsely narrated to the police and Magistrate that M.K.Jain had raped her as per tutoring of the respondents which was wrong. In fact, respondent No.1-Surinder Sharma had committed rape upon her.

On the basis of the complaint Ex.P43, formal FIR Ex.P124 was registered under Sections 328,376 IPC. Investigation was commenced. Statement of the prosecutrix under Section 164 CrPC was got recorded. Statements of the relevant witnesses were recorded. During investigation, it was found that respondent Nos.1 to 4 had conspired with each other to falsely implicate M.K.Jain for extorting money.

For that purpose, the prosecutrix was allured that she would

get money and job. She was also intimidated to do the sexual intercourse with respondent No.1-Surinder Sharma. Respondent Nos.1 to 4 were arrested. On completion of investigation, final report under Section 173 CrPC was presented for prosecuting them under Sections 328, 376(2)(g), 506, 389, 511, 120-B, 109, 111, 211 IPC before the Area Magistrate.

After supplying the copies of challan, the case qua respondent Nos.1 to 4 was committed to the Court of Sessions vide order dated 30.11.2002.

Thereafter, respondent No.5 was arrested. Separate supplementary challan was presented against him. After complying with the provisions of Section 207 CrPC, his case was also committed to the Court of Sessions vide order dated 22.7.2003.

Accordingly, the respondents were charge sheeted under Sections 120-B, 376(g), 389, 328, 506 read with Section 120-B IPC.

In order to prove its case, the prosecution examined as many as fifty witnesses.

The entire incriminating evidence was put to the respondents. They pleaded their false implication.

After perusing the whole record, scanning the evidence of the prosecution and hearing lengthy arguments from both the sides, the trial Court concluded that the above

charges were not proved against the respondents beyond doubt. Accordingly, the respondent Nos.1 to 5 were acquitted of the charges.

Learned counsel appearing for the applicant has strenuously argued that the evidence available on record suggests that all the respondents had hatched criminal conspiracy to implicate M.K.Jain in a false rape case. From the medical evidence, it was proved that the respondent Nos.1 and 3 had sexually exploited the appellant. The motive behind for projecting the alleged concocted story against M.K.Jain was that he did not oblige and succumb to the will of respondent No.5, who was booked in a corruption case. Various other instances also show that respondent No.5 in order to quench his thirst had made every possible efforts to implicate M.K.Jain in false cases. The trial Court has not appreciated the evidence available on record in a prospective manner and has wrongly acquitted the respondents.

Although the arguments on the face of it appears to be attractive, but after going through the records available on the file and hearing learned counsel for the applicant, we find that this is not a case which calls our interference in the conclusion arrived at by the trial Court.

PW-17, the informant is nobody else, but the prosecutrix. She has admitted the first information recorded

on 15.8.2002 before the Police and Magistrate. The explanation furnished by her for her second information to the police on 3.9.2002 and 13.9.2002 and the Magistrate on 6.9.2002 denying the earlier statements made on 15.8.2002 was the result of torture by PW49 DSP S.C. Sagar and two other police officials, namely, Shadi Lal and Jaspal Singh and, therefore, it is evident that her earlier statements were not made by her voluntarily. Not only the identification of the respondents was put in the dock, but she as PW17 even did not connect any of the respondents with the crime.

The first part of the information, that is, the extract of the evidence, purported to have been made by the prosecutrix could not establish that any crime took place. Her testimony as PW17 is not worth reliance, especially, in the light of overwhelming circumstantial evidence falsifying her statement and supporting the plea of false implication of the respondents.

So far as argument that the respondents had hatched criminal conspiracy to implicate M.K.Jain in a false rape case is concerned, that too is without any foundation because the prosecution could not elicit any of the material facts on which a possible argument could have been based. The testimonies of the star witnesses, namely, PW4 Ganesh Dutt, PW5 Parminder Singh and PW9 Ajit Sharma are formal in nature, whereas, PW11 Karan Singh, PW12

Ikhlaq, PW15 Geja Singh, PW16 Sameena, PW17 prosecutrix and PW44 Manoj Godara were declared hostile. The prosecution story rests upon the statement of PW44 Manoj Godara who did not satisfy the allegation of criminal conspiracy simply because, he deposed that no conspiracy was hatched in the Model Jail, Chandigarh, inasmuch as, he denied that no talk had ever taken place with respondent No.5 N.K.Jain.

Even the conclusion arrived at by the trial Court that the prosecution has failed to show that respondents had ever remained in contact with each other or respondent No.5 N.K.Jain had ever met the prosecutrix or her alleged accomplices, is not shown to be suffering from any non-appreciation of evidence. Thus, the allegation that the respondents had hatched a conspiracy with each other and allured the prosecutrix to fit M.K.Jain in the projected story of rape for extorting money in the name of settlement of accounts of Gupradam Investment and Finance Company Pvt. Ltd. has no merit.

The other argument is that the prosecutrix was subjected to sexual intercourse by respondent Nos.1 and 3. PW1 Dr. Avneet Kaur, who medico legally examined the prosecutrix on 14.8.2002 did not find any injury marks on her private parts. Even in the column of "History", the prosecutrix did not say that she was subjected to sexual

intercourse by any of the respondents. The medical evidence falsifies the prosecution story. PW45 Dr.Sanjeev, Assistant Director, CFSL, Sector 36, Chandigarh, who conducted the DNA test, deposed that semen stains on the salwar, underwear and vaginal swabs of the prosecutrix were consistent with respondent No.1 Surinder Sharma. However, this medical evidence lose significance in the light of depositions of PW16 Sameena and PW17 prosecutrix, who did not identify respondent No.1 Surinder Sharma and, therefore, did not connect him with the crime. Moreover, respondent Nos.2, 3 and M.K.Jain were excluded from being the possible contributors of genetic material (DNA material) found on salwar, underwear and both vaginal swabs. Further, in his cross-examination, this witness admitted that DNA of the prosecutrix could be isolated from vaginal swab sample in order to ascertain her identity as to whom the swabs relate. This witness admitted that no DNA test was conducted on swabs and clothes of the prosecutrix to prove identification, but it could have been done. Since there is evidence that the blood sample was taken, it was indispensable to match DNA of the prosecutrix with isolated vaginal swabs and her clothes for endorsing that the samples relate to prosecutrix. Thus, the medical evidence is missing to show that the prosecutrix was ever subjected to sexual intercourse.

The alleged motive for implicating M.K.Jain falsely was that he did not succumb to the will of respondent No.5. Learned counsel for the applicant could not point out any evidence to prove the aforesaid allegation that at any point of time, respondent No.5 in order to quench his thirst for any wrongful gain had made every possible efforts to implicate M.K.Jain in false cases. The trial Court while deciding this point, has taken into consideration the defence of respondent No.5 for reaching to the conclusion that he did not ever make any effort or ever try or conspired or attempted to extort money from M.K.Jain.

All the facts and circumstances, discrepancies, false implication of the prosecutrix and observations in that regard made by the trial Court lead to the inference that the prosecution case in all probabilities is false.

In view of the aforesaid discussion, we find no merit in the present application and, therefore, the same is hereby dismissed. Leave to appeal is declined.

(T.P.S.MANN)
JUDGE

(RAMENDRA JAIN)
JUDGE

April 07,2016
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