

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

Crl. Rev. No.1907 of 2016 (O&M)
Date of decision : 05.12.2016

Gurwinder Singh @ Minta

.....Petitioner(s)

Versus

State of Punjab

...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Atul Lakhanpal, Senior Advocate with
Mr. R.S. Chahal, Advocate
for the petitioner.

Mr. V.S.S. Sidhu, AAG, Punjab.

ANITA CHAUDHRY, J.

This revision is directed against the orders of both the Courts below vide which the revisionist had been convicted and sentenced to the following punishment:-

Sections	Rigorous Imprisonment	Fine	In default of payment of fine
452 IPC	2 years	Rs.500/-	1 month
354 IPC	1 year	Rs.500/-	1 month
354-D IPC	3 years	Rs.500/-	1 month
506 IPC	1 year	Rs.500/-	1 month
66-A IT Act	1 year	Rs.500/-	1 month

Noticing the facts first. Raj Kaur was married to Rajwinder Singh

in December, 1998. She has a son and a daughter from the wedlock. On 22.05.2014, she had alleged to have received a number of calls on her mobile no. XXXXX29595 from mobile No. XXXXX12835. The caller was harassing her and was insisting on a friendship with him. The complainant asked his name, which was disclosed as Minta. Two days later, the complainant along with her children went to stay at her father's house in village Landwanjara. She was alone at home on 10.06.2014. The rest of the family were away. Her mother and sister-in-law had left for some domestic work. Her brother and father had gone to the fields. Allegations were made that at 11:30 AM Gurvinder Singh illegally trespassed into the house. The complainant was working in the kitchen. The accused molested her and harassed her sexually. The complainant cried for help, upon which the accused threatened to kill her son and fled from the spot.

The police investigated the case and took the call details and they found 2 – 3 calls made on 22.05.2015. It investigated the case and filed the challan under Sections 452, 506, 354, 354-D IPC and Section 66-A of the IT Act . Charge was framed under Sections 452, 506, 354, 354-D IPC and under Section 66-A of the IT Act.

The accused pleaded not guilty and claimed trial.

The prosecutrix stepping into the witness box stated that she received a number of calls from 3:00 PM to 7:00 PM on 22.05.2014 and the calls were made from mobile no. XXXXX12835 and the caller was repeatedly asking her to be friend with him and he was irritating her. She stated that she asked his name which was disclosed as Minta. She stated that on 24.05.2014 (there appears to be a mistake as in the complaint the date given was

22.05.2014) she had gone to her in-laws village as the children had vacations and on 10.06.2014 her mother and sister-in-law had gone for some domestic work to Patran and her brother and father had gone to the field and she was alone at home and the main door was closed but it was not locked. At about 11:30 AM Gurvinder Singh trespassed into her house from the window of the door and when she came out of the kitchen, Gurvinder Singh physically teased her and she raised noise and he threatened her that in case the incident was narrated, he would kill her. She narrated the incident to her sister-in-law and her mother on their return that evening and the matter was reported to the police. In the cross-examination, she revealed that her husband was in Kenya for the last three years. She stated that no mobile phone had been issued in her name and she had obtained the record of the mobile phone of the accused through her brother. She stated that they had not handed over the sim to the police. She stated that she did not possess the sim. She stated that the main gate of the house could be seen from the kitchen and she had seen the accused entering the gate and she had raised noise and then the accused fled. She stated that the main gate was at a distance of 30 -35 feet from the kitchen. She stated that her children were in the age group of 14 – 16 years and both of them were not at home. She admitted that their house can be seen from the house of Satnam Singh, Gurnam Singh and she had not called any of the neighbours. She stated that they had no dispute with Satnam Singh nor she had made any complaint against him. She denied that Kartar Singh, Sarpanch had got a compromise effected between them. She stated that none of the neighbours came out nor she had gone to the neighbourhood to tell them of the incident nor she had called her father or brother on phone. She stated that her

father returned at 8:00 PM and her mother had returned at 5 O'clock. She stated that they did not visit the police station nor informed the Sarpanch but she had informed her husband on telephone. She stated that accused was her brother in relation in the village. She could not say that she was 15 years older to the accused. She stated that she had never met the accused earlier. She denied that false allegations have been levelled in connivance with her father and brother on account of elections. She stated that the accused was an accountant in a Gurudwara.

Dalwar Singh – PW2, brother of Raj Kaur stated that they were at the fields and when they returned in the evening then her sister told them about the incident that the accused had illegally trespassed in the house and had physically abused and teased her and had threatened her. He stated that they went to the police station on the next day.

ASI Barkha Singh had carried out the investigation. He stated that a complaint was lodged on 11.06.2014 and he had investigated the case and on the demarcation of Dilwar Singh site plan Ex. PW3/C was prepared. He stated that neither the complainant or any of her family members had contacted them between 22.05.2014 to 10.06.2014. He stated that the complainant was asked to give the name of one of her neighbours but she did not give any name and stated that she did not want to get their statements recorded and none of the neighbours had stated that any incident had happened. He stated that the sim card used by the accused was not recovered. He could not remember whether the complainant had any sim card of her own or not.

Munish Bindra – PW6 Nodal Officer of Bharti Airtel stated that

the call details of mobile No.XXXXXX12835 were taken and Ex.PW6/A was the attested copy of the same.

In the statement recorded under Section 313 Cr.P.C., the accused pleaded false implication and examined Karamjit Singh and Gurnam Singh, the neighbours.

Both the Courts below accepted the statements of the prosecutrix and the petitioner was sentenced to the punishment mentioned here-in-before.

I have heard counsels of both the sides.

The submissions on behalf of the revisionist is that the story projected by the prosecutrix is highly improbable and both the Courts below have recorded conviction ignoring the fact that the prosecution had failed to show that the victim was using any mobile phone. It was urged that there is a delay in reporting the incident and the prosecutrix is a married woman and it is indeed surprising that the petitioner would know that the victim had gone to her parent's house in another village and he would follow her there. It was urged that the cross-examination effected on the victim completely demolishes the case. It was urged that in the cross-examination, the prosecutrix had stated that she had seen the accused entering the house and she started crying for help and on hearing the Raula, the accused left, therefore, there was no occasion for him entering the house or molesting her. It was urged that the Investigator did not take into possession the mobile phone of the prosecutrix nor tried to find as to who had purchased the same and the case had been got registered on account of enmity and the case was false.

The State counsel had urged that the victim had given her mobile

number in the complaint itself and the call details of the accused were taken out and on that particular day there are calls between 3:00 to 7:00 PM and there was no reason why the prosecutrix would falsely implicate the accused and there is no suggestion to the prosecutrix that she was not using her phone.

The prosecutrix is the main witness for the prosecution and it has to be seen whether her statement can be relied upon. The other witnesses are her relatives who were not at home. The victim is 38 years old and has grown up children. The mother of the victim had returned at 5:00 PM. The incident was not reported on that day. Therefore, we have to see whether there is any explanation regarding delay and whether the story was probable.

The complainant is 38 years old. She is married and her husband was working in Kenya at the time of incident. It is not in dispute that the accused is younger to her in age by 8 – 10 years. The complainant along with her children live in village Rasulgarh. The complainant had alleged in her complaint that she had received call from mobile No.XXXXXX12835 on her mobile no.XXXXXX29595. In the statement made in the Court on 20.03.2015, she stated that she received call from mobile No. XXXXX29595 and also from mobile no. XXXXX12835 and the person who was calling her was asking her to be friend. Three days later, she went to her in-laws village Ladbanjaran Kalan. After fifteen days, she was alone at home and the family was out when the accused is said to have entered the house at about 11:30 AM. The statement is silent as to the presence of the children. The incident is reported on the next day though the witness says that her mother came home in the evening and her father came at night. The incident was narrated to them but the matter was reported the next day. No-one in the neighbourhood had seen

any person entering the house. A number of witnesses from the neighbourhood were examined by the accused.

It is surprising that the police did not produce the call details of the mobile number of the complainant. The statement of the complainant is silent about the phone she was using. She had said that it was given to her by her brother. There are glaring contradictions in the cross-examination. The complainant in her complaint had stated that she had got calls from mobile phone no. XXXXX12835 on the mobile XXXXX29595 but when she stepped into the witness box she stated that she got calls from both these mobile numbers. The complainant has not been able to clarify this fact and unfortunately the defence did not highlight this point before the Courts below. The police has not investigated the case properly either. They did not make any attempt to find out the mobile number being used by the complainant. The brother does not own up that he had given any mobile phone to his sister. The manner in which the incident was narrated in the complaint and the version which has come out in the Court are contradictory. If the accused had not entered the house, there was no question of any molestation. Had the complainant raised Roula, the neighbourhood would have come out. All these are glaring lacunas in the prosecution case. The revisionist could not have been convicted on the basis of the solitary statement of the complainant. The complainant was not giving the true version and had several things to hide. Since she was not giving true facts, she has made glaring contradiction in examination-in-chief when she stated that she had received calls from the two numbers. In the complaint, one of the numbers was supposedly used by herself and it is on mobile no. XXXXX29595 that she had been receiving the calls. If

that is mobile number which was used by the accused, it just changes the complexion and indicates totally different scenario.

The police failed to verify as to how did the accused know that the victim was present in her in-laws house and that she would be alone at that hour. The story is concocted. It appears that the case had been got registered on account of some enmity.

The revision is allowed and the orders passed by both the Courts below against the petitioner are set aside. Petitioner be released forthwith in this case, if his custody is not required in any other case.

(ANITA CHAUDHRY)
JUDGE

05.12.2016
Sunil

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No