

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

Crl. Appeal No.S-1881-SB of 2016 (O&M)
Date of Decision: February 16, 2017

Rohit and another

...Appellants

VERSUS

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Parminder Singh, Advocate
for the appellants.

Mr.B.S.Virk, Deputy Advocate General, Haryana
for the respondent-State.

INDERJIT SINGH, J.

The present appeal has been filed by the appellants against State of Haryana, challenging the judgment of conviction dated 18.03.2016 and order of sentence dated 22.03.2016 passed by learned Addl. Sessions Judge, Panipat, whereby the appellants were held guilty and convicted and sentenced to undergo rigorous imprisonment for a period of 18 months and to pay fine of ₹1,000/- and in default of payment of fine, to undergo rigorous imprisonment for a period of seven days under Section 406 IPC. However, they were acquitted of the charges framed under Sections 120-B, 363 and 366 IPC.

The brief facts of the prosecution case as noted down in the judgment passed by learned Addl. Sessions Judge, Panipat, are as under:-

“The prosecution case, as contained in the complaint Ex.PB, is

that PW2 "B" (real name and antecedents withheld) had four children. PW1 "C" (real name withheld) is his eldest child. His youngest daughter PW3 "A" (real name withheld) is studying in B.Com-IIInd year of a College in Gannuar. On 02.12.2014, at about 12.30 p.m., PW1 "C" had boarded PW3 "A" on a Roadways Bus. She had to take examination on that date from 2.00 p.m. to 5.00 p.m. She had to return to Samalkha at about 5.30 p.m. PW1 "C" waited for her till 6.00 p.m. and then tried to contact her on her Mobile Phone but at that time it was switched off and her Mobile No.8053048248 could not be contacted. When her friend was contacted, it was known that PW3 "A" did not reach College on that date. Mobile number of her friend is 9896088287. Thereafter, PW2 "B" and his family members checked money/jewellery etc. in their house. On such checking, they came to know that 160/170 grams of golden jewellery and 300 grams of silver jewellery was missing therefrom. They doubted that PW3 "A" has been kidnapped by someone. They continued to search for her from 02.12.2014 to 03.12.2014 but did not succeed. On 04.12.2014, they lodged complaint Ex.PB before SHO of Police Station Samalkha. They had doubt that the accused Rohit had taken her away. On the basis of the said complaint, FIR Ex.P1 was registered. On 04.12.2014, PW1 "C" handed over Ration Card Mark A and Adhar Card mark B to the police and the same were taken into police possession vide memo Ex.PA. PW3 "A" was recovered from Bus Stand Shimla in Himachal Pradesh on 09.12.2014. At that time, she was alone. She was taken in police possession through a separate memo Ex.PC. On return to Samalkha, she was produced before Medical Officer of G.H.Panipat for her medico-legal examination, on that very date. In this regard, the Investigating Officer moved an application Ex.P12 before Medical Officer of G.H. Panipat. However, on application Ex.P12, she made an endorsement Ex.PD that no wrong act has been committed on her and therefore she does not want to get her medico-legally examined and she is making the said endorsement of her own will and consent. On that very date, she was produced before the Ld. Area Magistrate for her statement under Section 164 Cr.P.C. In turn, her such statement Ex.PH was recorded by Ms.Mona Singh, the Ld. SDJM, Samalkha. Therein, she stated that on 02.12.2014, the accused Rohit had taken her to Chandigarh on the assurance of marriage and returned after leaving her at Bus Stand alone. He did not commit any wrong act on her. On Phone he told her to go to Shimla. She went to Shimla but the accused Rohit did not come there. After recording such statement, PW3 "A" was handed over to her parents through memo Ex.PE. During investigation, the documents in respect of age of PW3 "A" were collected. The accused Rohit was arrested in the present case on 09.12.2014. In police custody, he was interrogated. On such interrogation, he made disclosure statements Ex.P13,

Ex.P15, Ex.P16 and Ex.P18 dated 10.12.2014, 11.12.2014 and 12.12.2014 respectively. In consequence thereto, the accused Rohit led the police party to the place wherein he had concealed the above said jewellery and got recovered some of the jewellery therefrom. A recovery memo Ex.PF was prepared in that regard. On 11.12.2014, the Investigating Officer prepared rough site plan Ex.P19 of the place from where part of jewellery of the present case was recovered. In consequence to his disclosure statement dated 12.12.2014, he got silver jewellery and currency notes recovered from the disclosed place. A recovery memo Ex.PG was prepared in that regard. The accused Mohit was arrested in the present case on 12.12.2014. In police custody, he was interrogated. On such interrogation, he made disclosure statement Ex.P14. On 12.12.2014, the Investigating Officer prepared rough site plan Ex.P20 of the place from where the remaining jewellery of the present case was recovered. On completion of investigation, SHO/PSI Amit Kumar prepared final report in the present case and laid it before the Ld. Area Magistrate.”

On presentation of challan against accused-appellants, copies of challan and other documents were supplied to them under Section 207 Cr.P.C. Finding prima facie case, the accused-appellants were charge-sheeted under Sections 120-B, 363, 366 and 406 IPC, to which they pleaded not guilty and claimed trial.

In support of its case, prosecution examined PW-1 brother of the prosecutrix, PW-2 complainant-father of the prosecutrix, PW-3 prosecutrix, PW-4 ASI Brijpal, PW-5 Sandeep Tyagi, Accountant, PW-6 Dr.Shivanjali, PW-7 Head Constable Anup Singh and PW-8 PSI Kavita, Investigating Officer.

At the close of prosecution evidence, the accused-appellants were examined under Section 313 Cr.P.C. They were confronted with the evidence of the prosecution and they denied the correctness of the evidence and pleaded their innocence and false implication. The defence of the accused was that no offence under Sections 120-B, 366 and 363 IPC is

made out against any of the accused and so far as charge under Section 406 IPC is concerned, the prosecutrix in her statement Ex.PH under Section 164 Cr.P.C., did not state that these (accused) persons had induced her to handover the jewellery mentioned in the deposition of the complainant or they misappropriated the same.

No witness was examined in defence.

The learned trial Court, after appreciation of the evidence, convicted and sentenced the accused-appellants as stated above.

I have heard learned counsel for the appellants as well as learned State counsel and have gone through the record.

As per the findings given by learned Addl. Sessions Judge, Panipat, accused have been acquitted under Sections 363, 366 and 120-B IPC. Only offence for which they have been convicted is under Section 406 IPC on the ground that prosecutrix while going from the house, has taken away some jewellery in the bag and said bag was handed over to the accused and they spent money received by selling that jewellery.

Statement of the prosecutrix was recorded under Section 164 Cr.P.C. before the Court and she has been duly confronted with that statement. In that statement, there was no mention regarding handing over the bag of jewellery to the accused on their inducement nor there is any statement that accused have misappropriated the jewellery and sold the same without the consent of the prosecutrix.

I have gone through the statement of the prosecutrix. It is clear from her statement that she had taken away or committed theft of the jewellery from the house of her parents. I have gone through the statement

got recorded by the prosecutrix under Section 164 Cr.P.C. before the Court

on 09.12.2014. There is no mention regarding taking away of jewellery or entrustment of the same to Rohit or selling of the jewellery by him or misappropriation of jewellery without her consent etc. There is also nothing that bag was handed over to him or they misappropriated the jewellery etc. Now, the statement of the prosecutrix in the Court qua these facts amounts to material improvements and these material improvements create reasonable doubt in the prosecution version. It cannot be held that prosecution has proved the guilt of the accused under Section 406 IPC beyond reasonable doubt. The Court below has wrongly come to the conclusion and has not taken note of the material improvements in the statement of the prosecutrix.

In view of the above discussion, I find that the judgment of conviction dated 18.03.2016 and order of sentence dated 22.03.2016 passed by learned Addl. Sessions Judge, Panipat, convicting and sentencing the appellants under Section 406 IPC is not as per law and the same is set aside.

Therefore, finding merit in the present appeal, the same is allowed. Accused-appellants are acquitted of the charges framed against them.

Since, appellants Rohit and Mohit are on bail, their bail/surety bonds stand discharged.

February 16, 2017
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No