

CRA-S- 1879-SB of 2002

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In the High Court of Punjab and Haryana at Chandigarh

CRA-S- 1879-SB of 2002(O&M)

Date of Decision:6.2.2017

Karam Singh

---Appellant

vs.

State of Punjab

---Respondent

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. D.S.Pheruman, Advocate
for the appellant

Mr. Mikhail Kad, AAG, Punjab

Rekha Mittal, J.

The present appeal directs challenge against the judgment of conviction and order of sentence dated 18.11.2002 whereby the appellant has been convicted for offence punishable under Section 376 of the Indian Penal Code (in short "IPC") and sentenced for the said offence, extracted hereinbelow:-

"To undergo rigorous imprisonment for a period of seven years and to pay a fine of Rs. 2000/-. In default of payment of fine, to further undergo rigorous imprisonment for a period of one month under Section 376 IPC."

The facts relevant for disposal of the present appeal are that on 11.7.1999, the prosecutrix 'X' (name kept concealed) got recorded her

statement that about 1½ months before the incident, her mother-in-law had died. Her husband Nishan Singh got set back due to death of his mother. Gurmej Singh, younger brother of Nishan Singh is married with daughter of Kewal Singh resident of Nandpur. In-laws family of Gurmej Singh suggested to the prosecutrix that Karam Singh accused had a *dera* at Patti, used to recite '*Chandi da Path*' and was likely to cure her husband. They took Nishan Singh to *dera* of the accused. The accused expressed his intention to do *hawan* at the house of Nishan Singh on 4.7.1999 and then to tell them the disease with which Nishan Singh was afflicted. On 4.7.1999 the accused was brought to their house where he did *simran* for about one hour and demanded an amount of Rs. 5000/-. They paid him Rs. 3000/- and promised to pay the balance amount later. The accused suggested the prosecutrix and Nishan Singh to meet him at his *dera* on the evening of 7.7.1999. Accordingly, on 7.7.1999, the prosecutrix alongwith Nishan Singh went to *dera* of the accused. After taking dinner, the accused went upstairs on the roof of his house where the prosecutrix was called by him. The accused enquired from her if she had committed sexual intercourse with any person and when she replied in negative, he (accused) quizzed her that he was sure that she had sexual intercourse with her brother in law or younger brother of her husband. When the accused came down stairs followed by her, she enquired about her husband and was told by the accused that he was doing *seva* (service) in the gurudwara. The accused again went to his room where she was called by him at about 11-00 p.m. on the pretext that he was to do *simran* to get rid of their problem. She went there and sat on the ground. The accused forced her to sit on his bed,

forcibly removed her *salwar* and committed sexual intercourse against her consent. Thereafter, the accused intimated the prosecutrix that in case of her talking to any one about rape, he would destroy them with the aid of black magic. She did not narrate this incident to her husband or any other family member. As she could not keep this to her mind indefinitely and as such on 11.7.1999, she disclosed all this to her husband and wife of his younger brother. Statement Ex. PA was recorded on the basis whereof FIR was registered. The prosecutrix was got medico legally examined from Civil Hospital, Patti. Rough site plan of the place of occurrence was prepared, statements of the witnesses were recorded, *salwar* of the prosecutrix which was worn by her on the day of occurrence was taken into police possession. The accused was arrested on 23.8.1999.

On completion of necessary investigation formalities, challan was presented in the Court of Illaqa Magistrate. The case was committed to the Court of Sessions as offence under Section 376 IPC being exclusively triable by the said court.

Finding a *prima facie* case, the accused was charged for committing offence punishable under Sections 376, 506 IPC to which he pleaded not guilty and claimed trial.

To prove its case, prosecution examined ASI Darbara Singh PW1, the prosecutrix PW2, Nishan Singh PW3, Inspector Swaran Singh (Investigating Officer) PW4, Constable Jaswant Singh PW5, Dr. Amrit PW6, Constable Balbir Singh PW7 and Rishi Ram PW8.

On evidence of the prosecution being closed, statement of the accused under Section 313 of the Code of Criminal Procedure (in short

“Cr.P.C.”) was recorded wherein he denied all the incriminating circumstances put to him and pleaded his innocence and false implication. However, it was pleaded that Nishan Singh husband of the prosecutrix alongwith Kewal Singh, Waryam Singh and Harbans Singh caused injuries to him when he went to their house to collect money. FIR No. 90 dated 12.7.1999 was got registered against them for causing injuries to him. DSP Nishan Singh conducted enquiry in this case and found him innocent. The prosecutrix had given in writing that he had not committed rape upon her and the writing is mark 'A'. He examined Dr. Jaswant Singh DW1, Dial Singh DW2, Jagtar Singh DW3, Daljit Singh DW4 and Surinder Pal Singh DW5.

On due consideration of evidence adduced by the prosecution and the accused in the light of rival submissions made by counsel for the parties, the trial court arrived at a conclusion that the accused is guilty of committing offence punishable under Section 376 IPC and accordingly he was convicted and sentenced for the said offence, noticed hereinbefore.

Feeling aggrieved by the judgment of the trial court, the appellant filed the appeal in the year 2002 and the same has now matured for hearing.

Counsel for the appellant has assailed judgment of the trial court primarily on two counts. The first submission made by counsel is that with regard to the alleged occurrence dated 7.7.1999, the FIR has been registered on 11.7.1999. To substantiate his arguments in the context of delay, it is argued that as a matter of fact, husband of the prosecutrix alongwith Gurmej Singh, Kewal Singh and others caused injuries including

grievous injury to the accused on 10.7.1999. The accused was admitted in the hospital on the intervening night of 10/11.7.1999, medico legally examined on 11.7.1999 at 5-00 a.m. as proved by Dr. Jaswant Singh DW-1 and FIR No. 90 dated 12.7.1999 in regard to the occurrence was registered against Nishan Singh and others. It is further argued that in connivance with the police, the present FIR was registered on 11.7.1999 by antedating the date of alleged occurrence of rape.

The second submission made by counsel is that testimony of the prosecutrix with regard to story of rape recorded on 29.8.2001 gets demolished, falsified and belied in view of her statement recorded on 19.10.2002 when she was recalled for further cross examination, admitted execution of documents Ex. 'DD' and 'DE' and further failed to support the prosecution when she was re-examined by the public prosecutor and further put questions after getting her declared as hostile.

Counsel for the State has supported the judgment with the submission that delay in lodging the FIR ordinarily is not of consequence in such cases involving sexual assault when otherwise, delay of 3-4 days has been sufficiently explained by the prosecutrix. Further argued that plea of the accused that he received injuries at the hands of Nishan Singh and others on 10.7.1999 has no legs to stand as Nishan Singh and others have been acquitted of the offence charged against them and Karam Singh (accused herein) (complainant in the said case), failed to support the prosecution version much less to connect the accused in FIR No. 80 dated 12.7.1999 with the crime. It is argued with vehemence that the prosecutrix strongly supported her version given to the police and her testimony finds

corroboration from statement of her husband with regard to visit of the prosecutrix and her husband to the *dera* of the accused on 7.7.1999 and overnight stay of the prosecutrix in the *dera* on the intervening night of 7-8.7.1999. According to counsel, after recording her first version before the Court on 29.8.2001, statement of the accused was recorded on 27.8.2002. It appears that due to some influence exerted by the accused or may be because of pendency of criminal case against Nishan Singh and others lodged at the behest of the accused, the prosecutrix changed her stance and for that reason, an application was filed by the accused for recalling her for further cross examination and thereafter the accused could extract something favourable to him. It is submitted that this illegal act of the accused cannot enure to benefit of the accused against whom the prosecutrix recorded a duly sworn testimony in the open court, reiterating her stand taken in her first version recorded on 11.7.1999, by the police.

I have heard counsel for the parties, perused the paper book and the records.

Counsel for the appellant has tried to draw some mileage from the delay in lodging the FIR viz occurrence took place on 7.7.1999 but the FIR was lodged on 11.7.1999.

It is appropriate to say that delay in lodging the FIR itself cannot be a ground to extend benefit to the accused but delay certainly puts the court at guard in order to rule out possibility of a coloured version being brought forth after due deliberation etc. This apart, in cases involving sexual assault shaking the victim and her family because of well founded apprehension that making the offence public

may tarnish image of the women, delay in reporting the matter to the police further loses its significance. Above all, delay in lodging the FIR has been sufficiently explained by the prosecutrix as the accused intimidated the prosecutrix that in case she discloses the offence, he would destroy her family by using black magic but later as she could not keep the things to her chest indefinitely, she revealed her tale of woe to her husband and wife of his younger brother (Devrani of the complainant) on 11.7.1999, the day she was medico legally examined and the matter was reported to the police. In view of the above, alleged delay in lodging the FIR does not invite serious consideration.

Examined from another angle, the appellant has raised a plea that husband of the prosecutrix alongwith Kewal Singh, Waryam Singh and Harbans Singh caused injuries to him on the intervening night of 10/11.7.1999 on the basis whereof, FIR No. 90 dated 12.7.1999 was registered and the appellant was medico legally examined on 11.7.1999 at 5-00 a.m., deposed by Dr. Jaswant Singh DW1. It is also undisputed that on completion of investigation in the said case, challan was presented in the court but the appellant failed to support the prosecution version and Nishan Singh and others were acquitted of the offence charged against them. The very fact that the allegations raised by the appellant in regard to receipt of injuries at the hands of Nishan Singh and others on 10.7.1999 did not get substantiated from the mouth of the appellant, he cannot derive any advantage of his contention that a false FIR was registered on

11.7.1999 by antedating the date of occurrence i.e. 7.7.1999 due to occurrence dated 10.7.1999.

Much stress has been laid upon documents Ex. DD and DE and testimony of the prosecutrix recorded on 19.10.2002 when she was recalled for further cross examination. The prosecutrix was examined for the first time on 29.8.2001 and she was cross examined at length by defence counsel but nothing material and tangible has been elicited in her cross examination that she lodged a false case against the appellant. Affidavit dated 6.9.2000 is the only document that relates to a date prior to cross examination of the prosecutrix on 29.8.2001. The original document was not put to the witness on 29.8.2001. Even otherwise, in the affidavit dated 6.9.2000, the prosecutrix has not denied her being subject to rape. It is mentioned that due to darkness, she could not identify the accused and she named him as an accused on the basis of suspicion. The other two documents relied upon by the appellant are writing dated 8.6.2002 and affidavit of even date. It is admitted position of the case that the appellant lodged FIR No. 90 dated 12.7.1999 against Nishan Singh, husband of the prosecutrix and her close relatives and the accused in the case were put to trial. It appears that as the appellant lodged criminal proceedings against family members of the prosecutrix, she succumbed to pressure and entered into an understanding with the appellant to exonerate him of his culpability for committing rape and for that reason, documents dated 8.6.2002 relied upon by the accused were got prepared, on the

basis whereof the accused filed an application for recalling the prosecutrix for her further cross examination wherein she turned hostile and supported cause of the appellant.

Keeping in view that the prosecutrix initially supported cause of the prosecution to its hilt duly corroborated by her husband with regard to the husband and wife being available in the dera of the accused on the night of 7.7.1999, the accused cannot derive any advantage to his contention from the documents dated 8.6.2002. In this view of the matter, I do not find any error much less illegality in the conclusion drawn by the trial court refusing to rely upon the documents or testimony of the prosecutrix when she was recalled for further cross examination on 19.10.2002.

No other point has been raised.

In view of what has been discussed hereinabove, finding no merit, the appeal fails and is accordingly dismissed. The judgment of conviction and order of sentence passed by the trial court are affirmed. The appellant is on bail. He be taken into custody to suffer the remaining sentence.

(Rekha Mittal)
Judge

6.2.2017
paramjit

Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No