

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

CRA-D-765-DB of 2013 (O&M)
Date of decision: August 31, 2018

Ashwani Kumar Sachdeva and another

.....Appellants

Versus

Bikramjit Singh @ Bikram and others

....Respondents

CORAM: HON'BLE MR. JUSTICE A.B. CHAUDHARI
HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr. H.S. Bhullar, Advocate for the appellants.

Mr. A.P.S. Deol, Sr. Advocate with
Mr. Vishal R. Lamba, Advocate, for respondent No.1.

Mr. S.P.S. Sidhu, Advocate for respondents No.2 and 3.

Mr. H.S. Sullar, DAG Punjab.

A.B. CHAUDHARI, J

Being aggrieved by judgment and order dated 27.05.2013, in Sessions case No.03 dated 16.01.2013, passed by the learned Sessions Judge, Faridkot, by which the learned trial Court acquitted accused/respondents No.1 to 3, namely Bikramjit Singh alias Bikram, Navjot Kaur and Maninderjit Singh alias Dimpy Samra, respectively, for offences for which they were charged, the present appeal has been filed against them by the appellants-complainant-Ashwani Kumar Sachdeva and his daughter-S.

FACTS

2. The complainant-Ashwani Kumar Sachdeva has two daughters.

The elder daughter was studying in B.Sc while younger daughter, the

prosecutrix 'S' whose date of birth was 01.05.1997, was the student of 10th standard in Saint Marry Convent School, Faridkot. The accused-Nishan Singh was harassing her time and again while proceeding and coming back from her School. The prosecutrix had apprised her parents about it, and therefore, she was being escorted to the School for the last four months. However, during summer vacations the prosecutrix used to remain at home. On 25.06.2012, in connection with study, she had proceeded towards her friend's house and did not return back. The report was, therefore, lodged that the main accused-Nishan Singh along with his companions have enticed away the prosecutrix 'S'. The complaint was investigated and finally, the case was registered by the police and challan was filed. The evidence disclosed that the rape was committed and the girl was below 16 years of age and the story of consent that was propounded by the defence did not find favour with the trial Court. Finally, accused-Nishan Singh was held guilty of kidnapping and rape and sentenced to life imprisonment etc.

3. The present appeal is directed against the acquittal of other accused persons, namely Bikramjit Singh alias Bikram, Navjot Kaur and Maninderjit Singh alias Dimpy Samra.

4. Learned counsel for the appellants/complainant vehemently argued that the trial Court committed an error in acquitting respondents No.1 to 3 when on record, there was evidence against them also. Learned counsel also submitted that the trial Court ought to have seen that these respondents had actively participated in commission of said offences and therefore, they could not have been acquitted by the trial Court. He, therefore, prayed for reversal of judgment of acquittal of these respondents.

5. *Per contra*, learned Senior counsel for respondents No.1 to 3 opposed the appeal and submitted that there is no iota of evidence that was tendered by the prosecution for claiming conviction of these respondents. Finding before the trial Court in respect of these respondents is a possible finding and in appeal against acquittal, no interference can be made. They, therefore, prayed for dismissal of the present appeal against acquittal.

6. We have heard learned counsel for the rival parties at length. We have also seen the entire evidence and rather we have marshalled the entire evidence in the subject matter while deciding the main connected appeal, i.e. CRA-D-781-DB of 2013. Having the complete knowledge of the evidence tendered by the prosecution in the present subject matter, we have gone through the finding recorded by the trial Court. The learned trial Court has recorded the following finding in Paragraphs 31 to 34 of the impugned judgment, which we quote here under:-

“31. Now coming to the role of accused Maninderjit Singh alias Dimpy Samra, Navjot Kaur and Bikramjit Singh alias Vikram. There are accusations against the said accused, having agreed to enter into criminal conspiracy with accused Nishan Singh, to facilitate him, to commit kidnapping of the prosecutrix and further also rendered assistance vis-a-vis commission of rape and assisting him, to detain the prosecutrix, in his custody, by providing him shelter. At the very out, it is pertinent to mention that the prosecutrix in her statement, under section 161 Cr. P.C., which is Ex.DF, has not mentioned the names of the said persons, in the entire wrong doing. It is only, while depositing in the Court as PW4, she has attributed role of conspiracy, to all the aforesaid persons and also about rape, having been committed in the Kothi of accused Bikramjit Singh

alias Bikram. Also, further the prosecution has attempted to build linkage of these accused, through Raj Kumar, who is husband of maternal aunt of the prosecutrix and who, as per version of the prosecution, had spotted all the aforesaid three accused along with Nishan Singh and prosecutrix, in a car, at bus stand, Chandigarh. In view of the same, said Raj Kumar was the star witness to nail the aforesaid accused. However, much to the surprise of every one, this witness has been given up by the prosecution, on the basis of separate application, filed on 28.01.2013. No reason, as such, has been assigned by the learned Public Prosecutor for the State for giving up of the said witness, but in the application, it is mentioned that there is no necessity to examine said witness. Thus, such being the state of affairs, the prosecution has overlooked important piece of evidence, which could have sufficiently linked and established the involvement of these accused, in the entire tainted episode. However, it is not so, which sounds death knell to the prosecution version.

32. Perusal of the record further reveals that the prosecution had also made an attempt, to build the connectivity of the aforesaid accused, through one Gurdit Singh, who has also been cited as prosecution witness, but has not been examined. As per version of the prosecution, Inspector Jatinder Singh, Investigating Officer on 17.10.2012 had recorded the statement of Gurdit Singh. However, this witness has not been examined. On 5.3.2013, he had been given up by the prosecution, as won over. Through him, linkage intended to be established, is that Navjot Kaur, Maninderjit Singh alias Dimpy Samra and Bikramjit Singh alias Bikram had made extra-judicial confession about their involvement, in the entire occurrence in question, but for the reasons best known, this witness has not been examined. Had it been truth, that he was won over by the accused, then, the prosecution ought, to have made him step

into witness box and if, required, it would have availed the opportunity to elicit truth by way of cross-examination of said witness, but said option was not chosen by the prosecution and as a result, connectivity of the aforesaid accused, namely Maninderjit Singh alias Dimpy Samra, Navjot Kaur and Bikramjit Singh alias Bikram, through this witness, also does not stand established.

33. *Even though, the prosecutrix PW4 has so named the aforesaid accused, but however, in her statement Ex.DF, which was recorded on 10.8.2012, she has not so stated. As per version of the prosecution, Bikramjit Singh alias Vikram had facilitated the stay of Nishan Singh and prosecutrix, in his Kothi and there prosecutrix was raped by Nishan Singh. It is important to mention that in Ex.DF, which is previous statement of the prosecutrix, she had stated about Nishan Singh, to have taken her, to some unknown big Kothi. Neither the said Kothi to be belonging to Bikramjit Singh alias Vikram or the address of the said Kothi had been given, which would have connected Bikramjit Singh alias Vikram. Things would have been viewed differently, had the statement of the prosecutrix been recorded, soon after the recovery, but it is not so. Thus, naming Bikramjit Singh and identifying him within the kothi, where, rape was committed is an afterthought.*

34. *Learned Public Prosecutrix for the State had also submitted that connectivity of Maninderjit Singh alias Dimpy Samra stands established from the fact that the car, used by Nishan Singh for the purposes of committing kidnapping of the prosecutrix, belongs to his son Arjan Singh and regarding the same, reference has also been made to the testimony of PW20 Shashi Bhushan, who had proved the record, relating to the purchase of the car, bearing number CH-28T-8654 by Arjan Singh, son of Maninderjit Singh. He proved the bill and the other ownership papers of the same. However, the ownership of*

this car by Arjan Singh, son of Maninderjit Singh, as such, does not establish the connectivity of accused Maninderjit Singh with Nishan Singh, in the occurrence in question. Suffice, in this regard, to mention that there is nothing coming on the record about the identity and number of the car, which was used by Nishan Singh, in kidnapping of the prosecutrix and in view of the same, tainted role of accused Maninderjit Singh, as such, does not stand established.”

7. We have compared the above finding with the evidence on record. As stated earlier, we have marshalled the evidence of entire prosecution case and defence while writing the judgment in main connected appeal, i.e. CRA-D-781-DB of 2013. We are quite sure that the trial Court has made no mistake in recording the order of acquittal of respondents No.1 to 3. We agree with the above reasons recorded by the trial Court and hence, we find no merit in the present appeal against acquittal. In the result, we make the following order:-

ORDER

CRA-765-DB of 2013 filed by the appellant No.1-Ashwani Kumar Sachdeva and appellant No.2-S, is dismissed.

(A.B. CHAUDHARI)
JUDGE

(INDERJIT SINGH)
JUDGE

August 31, 2018

mahavir

Whether speaking/ reasoned: Yes/No

Whether Reportable: Yes/No