

CRM-A-60-MA-2017

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

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Date of decision : 21.08.2018

Sandeep Kaur

.....Petitioner(s)

Versus

Gurwinder Singh and another

...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. N.S. Dandiwal, Advocate
for the applicant/appellant.

ANITA CHAUDHRY, J.

The applicant seeks grant of special leave to appeal and is aggrieved by the acquittal recorded by the Additional Sessions Judge, Sri Muktsar Sahib.

A complaint was filed by the victim alleging that on 12.10.2014 she was alone at the hand pump situated near the canal and was filling the pitcher when the accused Gurwinder Singh and Jasdeep Singh came from behind and closed her mouth and forcibly took her towards the cremation ground and tried to rape her. She raised alarm which attracted Gurdeep Singh who came to her rescue. The clothes of the complaint were torn. Meanwhile sister-in-law of the complainant also reached. Gurdeep Singh escorted the complainant to her house and the matter was narrated to the parents. The matter was also reported to the police but no action was taken.

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Preliminary evidence was recorded and the complainant examined herself, Gurdeep Singh and Seema Rani and the accused were summoned.

At the trial, after the accused were summoned, charge was framed. In the post-charge evidence, the prosecution examined only the complainant and her sister-in-law. Gurdeep Singh the only eyewitness was not examined as report on the summons was received that he had left that address. The complainant was unable to furnish the correct address.

In the statement recorded under Section 313 Cr.P.C., the accused denied the incriminating evidence and pleaded that the brother and father of the prosecutrix had caused injuries to Baldev Singh, uncle of the accused and FIR had been registered on 19.08.2014 under Sections 326, 324, 323, 148, 149 IPC and this case had been registered to pressurize the family not to depose against them.

In defence, the accused examined the photographer who had taken the photographs of the site where the alleged incident had occurred. They also examined S.P. Malout who had inquired into the complaint. Ahlmad DW-3 was examined to prove the FIR registered against the brother and the father of the complainant. The trial Court on examining the evidence found the statement of the prosecutrix to be discrepant and contradictory. It also noted that there were no injuries though the complainant had alleged that she was dragged. It also noted that no medical had been done. The trial Court noted that the complainant had produced a complaint Ex. P-1 and found that the version given therein was

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contradictory to the one given in the complaint as there the version was that two boys were sitting on the boundary wall and she was filling water when they tried to abduct her. In the first version, there was no reference to the fact that they had tried to make any attempt to rape her or drag her or take her to the cremation ground. The complainant had also produced another complaint given in September 2014 which related to an incident of another date. The trial Court found that the complainant had substantially improved her statement and doubted it as there was no medical evidence to support her statement and gave a finding that the complaint had been given as the counter blast to the FIR which had been registered by the uncle of the accused against the father and brother of the complainant. It would be necessary to reproduce para 19 & 20 of the order and it reads as under:-

19. *Further, it is proved on record that there is enmity between the accused and family of complainant. A criminal case under Section 326 IPC was got registered by uncle of accused against father and brother of complainant and others and thereafter, there is every attempt made by family of complainant to implicate the accused in same case.*

Complainant in her cross examination has deposed that her brother was given severe beatings resulting into multiple fractures and that they had moved applications against the family of accused for causing injuries to her brother. Her brother identifies the person who cause injuries.

PW-2 Seema Rani in cross-examination has admitted that her husband had met with an accident after about 1 year of the occurrence. He remained admitted at Chandigarh and considerable amount was spent on his treatment. She has also admitted that her father in law moved

application to the police that accused present in the Court caused injuries to her husband and that police found their version false.

20. *Defence has proved application moved by father of complainant Ex. DW3/A to Chief Minister, Punjab regarding financial assistance and in that application it has been alleged that his son met with an accident resulting into grievous injuries and they required financial assistance for treatment. Deputy Commissioner marked the application to SDM, Malout for conducting inquiry as per Ex. DW3/B and as per Ex. DW3/C, SDM submitted the report that son of applicant has suffered fracture in the legs and applicant is unable to pay expenses. So, financial assistance be provided to him.*

This clearly shows that family of the complainant had tried to implicate the accused in the false case of causing injuries on the person of brother of complainant after the occurrence. PW2 Seema Rani has admitted that they had filed all the applications regarding harassment by the accused only after the registration of the case against her husband and father in law. The relevant portion of her cross examination is as under:-

It is correct that we filed all the applications regarding harassment by the accused only after registration of case under Section 326 IPC against my husband and father in law.

This clearly proves that when a case was got registered against father and brother of complainant at the instance of uncle of accused, family of complainant tried to implicate accused in false case in order to put pressure upon the family of accused to settle that case.”

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I have heard the counsel for the appellant at great length and I have gone through the evidence.

According to the complainant, the incident had taken place on 12.10.2014 at 6:00 P.M. The allegations are that the accused made an attempt to commit rape and when the complainant had gone to fetch water from the hand pump, the accused caught hold of her and dragged her towards the cremation ground and tore her clothes. The allegations were that Gurdeep Singh had come to rescue of the complainant. At the trial, Gurdeep Singh was not examined. It was stated that he had shifted his house and the new address was not known to the complainant. The sister in law of the complainant had reached the spot later, therefore, her statement is hearsay and the only statement is that of the complainant. No complaint was given to the police. No record was summoned from the police station. Two applications Ex. P-1 and P-3 were produced on record, which are addressed to the Chairman of the SC/ST Commission. In that complaint the complainant had mentioned that she had gone to the police station and her statement was recorded. That statement has been held back and no effort was made to summon the record from the police station. The complaint refers to the fact that the police was harassing her father. The accused had produced details of the case which was registered at their instance against the father and brother of the prosecutrix as injuries were inflicted by the complainant's family in August 2014. The place where the incident had occurred is surrounded by boundary wall, which is not high and several people frequent it. The trial Court had rightly doubted the statement of the

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complainant as not only there are contradictions but the complainant had indulged in improvements. There was no material to show that she had suffered injuries on being dragged on the metaled road. The complaint had been filed only as a counter blast to the case which was registered against the complainant's family members.

I find no infirmity in the findings. The leave to appeal is declined. Consequently, the appeal is dismissed.

21.08.2018

Sunil

**(ANITA CHAUDHRY)
JUDGE**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No