

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

CRR-1341-2009

Date of decision:-30.8.2018

Ran Singh

...Petitioner

Versus

Surender @ Lala and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Tapan Yadav, Advocate
for the petitioner.

Ms.Aditi Girdhar, AAG, Haryana for respondent No.3.

Mr.N.C. Kinra, Advocate for respondent No.1 & 2.

H.S. MADAAN, J.

Accused Surender @ Lala and Mahesh Kumar @ Rinku
faced trial by learned Additional Sessions Judge, Jhajjar and vide
judgment dated 22.11.2008, they were acquitted of the charge framed
against them.

Feeling aggrieved, the complainant has approached this
Court by way of filing the present revision petition.

Briefly stated, facts of the case, as per prosecution story are,
that on 3.2.2006 at about 11:00/12:00 O'clock during day hours, the

complainant Ran Singh along with his wife Urmila Devi had gone to village Bans Lambi, District Gurgaon to attend a marriage function leaving his mother and sister (name not being mentioned to conceal her identity and referred to as '*the prosecutrix/victim*'), aged 19 years; at home that Bhagwan Singh, the father of the complainant had already gone to his fields for watering of the standing crop; that at about 4:00 p.m., the complainant received a telephonic message from his mother that the prosecutrix, who had gone to the fields to serve tea to her father had not returned home; that the complainant started return journey and reached home at about 6:00 p.m.; that the complainant had a suspicion that Surender @ Lala and Mahesh Kumar @ Rinku had kidnapped his sister, since about two months earlier, accused Surender @ Lala had an obscene conversation with his said sister on telephone; the complainant had admonished him and started keeping watch on movements of his sister – the prosecutrix; that Surender @ Lala nursed a grudge and was determined to bring bad name to the family of the complainant; that Mahesh Kumar @ Rinku serving in Indian Army posted at Rajouri in Jammu & Kashmir, a friend of Surender @ Lala was also there in the village having come on leave; that on 1.2.2006, accused Surender @ Lala and Mahesh Kumar @ Rinku came to fields of the complainant and accused Mahesh Kumar @ Rinku inquired from him as to why he had rebuked his friend Surender @ Lala, therefore, an altercation took place between Surender @ Lala and Mahesh Kumar @ Rinku on one side and the complainant on the other side; that both the accused threatened the complainant that they would deal with him in such a manner that he

would not be able to show his face to anybody; that accused Mahesh Kumar @ Rinku threatened the complainant that he would get him eliminated with the help of terrorists of Jammu & Kashmir as he was having links with them; that the complainant submitted a written complaint dated 7.2.2006 to the police, on the basis of which formal FIR was recorded at Police Station Beri; that the investigation in the case got started; that accused Surender @ Lala was arrested by the police, who while being interrogated suffered a disclosure statement and in pursuance thereof led the police party to Dinesh Hotel, Jind (Haryana), where the prosecutrix was found to be in custody of Mahesh Kumar @ Rinku; that Mahesh Kumar @ Rinku was arrested by the police, from where the prosecutrix was taken into protective custody. During the course of investigation, the Investigation Officer recorded statements of witnesses, took into possession various documents. The prosecutrix was got medico legally examined.

After completion of investigation and other formalities, challan against the accused was prepared and filed in the Court of Judicial Magistrate, Jhajjar.

On presentation of challan in the Court of Judicial Magistrate, Jhajjar, he supplied copies of documents relied upon in the challan to the accused free of cost as provided under Section 207 Cr.P.C. Then finding that offences under Sections 366 and 376 IPC are exclusively triable by Court of Sessions, learned Judicial Magistrate, Jhajjar committed the case to the Court of learned Additional Sessions Judge, Jhajjar.

Learned Additional Sessions Judge, Jhajjar finding that charge for offences under Sections 366, 376(2)(g) and 506 IPC read with Section 34 IPC was disclosed against both the accused, charge-sheeted the accused for the said offences, to which, they pleaded not guilty and claimed trial. The case was fixed for evidence of the prosecution.

During the course of its evidence, the prosecution had examined as many as eighteen witnesses.

PW1 Ran Singh – complainant deposed as per the version given by him in the FIR.

PW2 the prosecutrix also toed the line of prosecution stating that on 3.2.2006 at about 3:00 p.m. while she was going to her fields taking tea for her father and had reached near a drain on Karoda road, then both the accused intercepted her taking her to a nearby field of mustard crop and had sexual intercourse with her against her wishes by turns; that thereafter they asked her to accompany them threatening that otherwise they would finish her off with a pistol and hand grenade, which they were holding in their hands; that they also threatened her to finish of her entire family, in case she raised an alarm or tried to run away or to disclose this fact to anybody; that they also gave her severe beatings and forcibly took her to Jhajjar; from Jhajjar they took her to Rohtak in a bus and from Rohtak, she was taken to Chandigarh where after administering some intoxicant mixed in the tea, they took her to Jaipur on the next day; that they stayed at Jaipur for 4-5 days and then they went to Agra and from Agra, they took her to Jhansi and kept her in a hotel at Jhansi; that Surender @ Lala returned from there; that accused Mahesh Kumar @

Rinku took her to different places like Dhulia, Kohlapur, Jaipur, Shikar, Ganganagar in Rajasthan and he continued to have sexual intercourse with her against her wishes, by giving her threats. The prosecutrix further deposed that on 11.5.2006, accused Mahesh Kumar @ Rinku took her to Jind, where she was kept in hotel 'Dinesh' for 4-5 days and the police came there on 15.5.2006 and apprehended accused Mahesh Kumar @ Rinku rescuing her from his custody. She was brought to Jhajjar, where she was got medically examined.

PW6 Dr.Sher Singh, Medical Officer, Civil Hospital, Jhajjar stated that on 15.5.2006, he had medico legally examined accused Mahesh son of Mahender Singh, resident of village Bhindawas, aged 27 years, Male, preparing his MLR observing that he was not having any fresh external injury on his body and his sex organs including pubic hairs were well developed, testicles and penis were developed, as such he was not incapable to perform sexual intercourse.

PW7 Dr.Nitish Kathuria stated that he had medico legally examined accused Surender on 2.3.2006 and he deposed that there was nothing to suggest that he was not capable of doing intercourse.

PW9 Mukesh Chander, Patwari had prepared scaled site-plan of the place of occurrence on identification of brother and father of the prosecutrix.

PW14 ASI Naresh Kumar stated that he had arrested accused Surender and then interrogated him, during the course of which, he had disclosed that on 25.2.2006, he along with Mahesh and the prosecutrix had gone and stayed at Sanay Lodge, Shipuri (M.P.) and then in

pursuance of that statement, while in police custody, he got the hotel identified.

PW18 ASI Satpal Singh, who was member of the police party, which on 15.5.2006 had gone to Jind at Dinesh Hotel finding the prosecutrix to be in custody of Mahesh Kumar @ Rinku deposed regarding the proceedings carried out by the police party there and formal arrest of Mahesh Kumar @ Rinku and the prosecutrix being brought to Jhajjar where they were medically examined, on 16.5.2006 suffering a disclosure statement and getting the place of rape identified etc.

PW16 Constable Ramesh Kumar and PW17 HC Ramesh are formal witnesses, who tendered in evidence their affidavits Ex.PN and Ex.PM, respectively.

PW5 SI Pardeep Kumar had prepared and filed challan against accused Surender @ Lala.

PW8 SI Rajender Singh had prepared and filed challan against accused Mahesh Kumar @ Rinku.

PW13 SI Jai Singh, who had carried out the investigation in this case partly deposed regarding that.

Statements of accused were recorded under Section 313 Cr.P.C. in which the accused while denying the incriminating circumstances appearing against them submitted that they were innocent and had been falsely involved in the case.

Further, accused Mahesh Kuamr @ Rinku took up a plea that the prosecutrix was known to him since school days and she even used to have conversation with him at the station of his posting in the Army; that

on 3.12.2006, the prosecutrix herself called him to bus stand, Jhajjar and forced him to accompany her; that she was having more than Rs.1 lakh, which she had brought from her house and the said amount was spent by him while travelling to various places; that she had remained with him from 3.2.2006 to 15.5.2006 as per her own sweet will and consent without any pressure from any quarter.

Further accused Surender @ Lala took up a plea that he had neither taken away the prosecutrix nor committed rape upon her and he had not made any call to the prosecutrix.

In defence evidence, accused examined Krishan son of Sahi Ram of their village as DW1, who deposed that on the day of incident, he was present in his fields in connection with his agricultural work; that he had cultivated his mustard crop standing in half acre of land and on that day, accused had not come present along with a girl to his fields.

Sh.Deepak Kumar, an official from Vodafone appeared as DW2. He placed on file computerized record of calls made from mobile No.9813020145 for the period from 1.12.2005 to 5.2.2006.

DW3 Hawa Singh, Sarpanch of village of the accused stated that on 3.2.2006 at about 11:00/11:30 a.m., he was present at bus stand of village Bhindawas, when he saw that the prosecutrix was present at bus stand; that thereafter she had gone along with Attar Singh son of Nathu Ram on his motorcycle towards village Chhucakwas.

DW4 Dinesh Kumar, brother of accused Mahesh Kumar @ Rinku supported the defence version on material aspects.

After hearing arguments, the learned trial Court had acquitted

the accused of the charge framed against them, which left the complainant aggrieved and he has approached this Court by filing the present revision petition.

I have heard the learned counsel for the parties besides going through the records and I find that there is no merit in the revision petition.

A perusal of the judgment of acquittal passed by the trial Court goes to show that the trial Court has given the following reasons for returning verdict of acquittal:

- (i) There being delay of four days in reporting the matter to the police inasmuch as the prosecutrix was allegedly kidnapped/abducted at about 11:00/12:00 a.m. on 3.2.2006, whereas the FIR was got registered on 7.2.2006 and no satisfactory explanation for such delay having been furnished by the prosecution.
- (ii) The prosecutrix having made a number of material improvements in her statement in the Court qua her statement made to the police.
- (iii) The prosecutrix having travelled to different places and from the record it transpired that there was close relationship between the prosecutrix and the accused, which fact is corroborated from the photographs of the accused and the prosecutrix reflecting that there was no remorse for the elopement of prosecutrix with the accused.

(iv) There being no marks of violence and injury on the body of prosecutrix. The prosecutrix being a major appearing to be a consenting party wearing bangles, *bindi* on her forehead, nail polish etc. in the photographs giving an impression that she was married.

(v) It being proved on record that the prosecutrix had been in telephonic contact with the accused Mahesh Kumar @ Rinku.

(vi) The prosecutrix had remained in company of accused from 3.2.2006 to 15.5.2006 i.e. for three months. She admittedly being a major at the relevant time had travelled to various places but did not make any attempt to make complaint to anybody. She had met several persons, while in hotel and travelling but did not raise any alarm or hue and cry.

(vii) The medical evidence showing that the prosecutrix had not offered any resistance, rather as per the medical report, she was habitual to intercourse. The facts and circumstances of the case proving that the prosecutrix was a consenting party to have intercourse with the accused.

After hearing the rival contentions, I find that law is well settled that the revisional jurisdiction of this Court is quite limited. This Court is to interfere only if there is an illegality or infirmity apparent on

the face of the judgment/order passed by a Court below or the same is perverse. Merely because another view in the matter is possible, no inference with such judgment is to be done.

In view of the above, I find no illegality or infirmity in the judgment passed by the Court below, the same is upheld and the revision is found to be without any merit and is dismissed accordingly.

Necessary information be sent to the quarter concerned.

30.8.2018

Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No