

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

**CRR-2189-2007 (O&M)
Date of Decision : 10.05.2019**

Ravinder Kumar alias Kala

..... Petitioner

Versus

State of Punjab

..... Respondent

CORAM : HON'BLE MR. JUSTICE RAJ SHEKHAR ATTRI

Present : Mr. Gautam Dutt, Advocate for the petitioner.

Mr. Sukhbeer Singh, AAG, Punjab.

RAJ SHEKHAR ATTRI, J. (Oral)

The petitioner has preferred the instant revision petition challenging the judgment of conviction and order of sentence dated 06.04.2005, passed by the Sub Divisional Judicial Magistrate, Khanna vide which he was convicted and sentenced to undergo rigorous imprisonment for a period of 06 months each under Sections 354 and 506 IPC and sentenced to fine of Rs.500/- and in default of payment of fine to undergo rigorous imprisonment for a period of 15 days under Section 294 IPC as well as the judgment dated 14.11.2007, passed by the learned Addl. Sessions Judge, Ludhiana vide which his appeal preferred against the aforesaid judgment of conviction and order of sentence was dismissed.

This case relates to outraging the modesty of the prosecutrix. It seems that both the petitioner and the prosecutrix were acquainted to each other. On 02.10.2000 at about 7:15 a.m., the prosecutrix was going to

school. It was holiday yet the prosecutrix had gone to school for the practice of badminton. The petitioner was also present in the school along with his friend. He caught hold of the prosecutrix from her arm and put his hand around her waist and told her that he liked her. Thus, he misbehaved with her with bad intention. When she raised objection, the petitioner and his co-accused left that place. However, at that time, the petitioner gave a threat to her that in case she informed this fact to anybody, he will abduct her and her parents.

No report was lodged for 22 days. However, on 24.10.2000, the matter was first time reported to the police and the FIR was registered. After investigation, the report under Section 173 Cr.P.C. against the petitioner as well as his friend Kuchi son of Jagpal Singh was presented.

Finding a prima facie case against the petitioner and said Kuchi, they were charge-sheeted for the offences under Sections 294, 354, 506 IPC to which they pleaded not guilty and claimed trial.

In order to prove its case, the prosecution examined PW1 Mega Kalia, PW2 complainant Rakesh Kalia, PW3 ASI Ranjit Singh and PW4 Bagga Singh.

After closure of the prosecution evidence, the petitioner and said Kuchi were examined under Section 313 Cr.P.C. In order to afford them an opportunity to explain the incriminating evidence appeared against them. However, they pleaded their false implication.

After appreciation of evidence, the petitioner was convicted and sentenced as stated above whereas said Kuchi was acquitted. The petitioner also preferred an appeal against the said judgment of conviction and order of sentence which was also dismissed.

I have heard learned counsel for the parties and have gone through the record.

Learned counsel for the petitioner has submitted that there is an unexplained delay of 22 days; that both the accused and the father of the prosecutrix were doing the work of cable network and there was professional rivalry; that petitioner was sportsman of the area and he was a national level boxer and that there are material discrepancies in the prosecution evidence.

On the other hand, learned State counsel has submitted that the prosecution evidence is cogent and reliable and that earlier the parties had compromised the matter, therefore, the delay occurred which stands unexplained.

I have given my thoughtful consideration to the rival contentions.

Firstly, coming to the delay in lodging the FIR. The law requires that the information of every offence be reported promptly to the police or the Magistrate. If there is any delay then it should be explained. If the explanation is satisfactory and acceptable, then the mere delay in lodging the FIR pales into insignificance and in such an eventuality, the prosecution evidence cannot be discarded on this score.

In the cases where there is independent corroboration and wherefrom the evidence available on record is trustworthy, in that situation also, the delay in lodging the FIR has slightest impact on the prosecution story.

But when there is no corroboration and the case is based on the sole testimony of the prosecutrix and the explanation furnished to cover up

the delay, found to be false or unreliable, in that situation, the delay can be considered as fatal to the prosecution case.

In the instant case, the occurrence had taken place on 02.10.2000 at about 7:30 a.m. The FIR was lodged on 24.10.2000 on the basis of statement of the father of the prosecutrix (Ex.PW2/A) which was recorded at 11:00 a.m. on 24.10.2000. It has been recorded in the FIR that earlier the talks for compromise were going on and ultimately the FIR was lodged.

Though the informant Rakesh Kalia made an unsuccessful endeavour to explain the delay by stating that talks for compromise were continued on for 22 days. But the prosecutrix, who appeared as PW1, negated all this. Even in her examination in chief, she has stated that no talk for compromise was ever made. Therefore, the story of compromise has no weight rather it is an after-thought.

Even if it is assumed that parties wanted to settle the matter by way of compromise, even then it will not be taken as an explanation for the delay.

Apart from it, the prosecutrix has given a new shape to her case while appearing as PW1. She has categorically stated that infact she and her father had gone to the police station and their respective statements were recorded on 02.10.2000 and she as well as her father had signed the same. She has categorically stated that her statement was never recorded after 02.10.2000. However, in further cross-examination, she twisted the matter by showing that the petitioner did not met the police. She was not cross-examined by the public prosecutor on her first version which was given by her in the examination-in-chief. Albeit, she has given two

paradoxical versions. It is the golden principle of criminal jurisprudence that the version favourable to the accused is accepted.

Keeping in view the facts and circumstances of the case, this court is of the view that the delay in lodging the FIR in the circumstances of the present case is fatal and it creates a doubt in the prosecution story. Admittedly, on 02.11.2000 there was a holiday in the school. The prosecutrix produced the physical training instructor Sh. Bagga Singh as PW4, who has stated that on 02.10.2000, it was Sunday. He called the players for doing practice for the game of badminton and the prosecutrix was also called. He has categorically stated that no incident, as alleged by the prosecutrix, had taken place on 02.10.2000. He has been cross-examined. This witness was never declared hostile. His evidence has falsified the prosecution story.

On critical examination of the evidence, available on record, it transpires that the prosecution story is based upon the sole testimony of the prosecutrix and the same is not corroborated by any other evidence. Even PW4 Bagga Singh, who is the physical training instructor, has categorically stated that no incident had taken place with the prosecutrix in the school. But all this evidence has not been considered by the courts below. Thus, the impugned orders suffer from illegality. Therefore, the judgment of conviction and order of sentence are not sustainable in the eyes of law. Similarly, the appellate court also failed to evaluate the evidence in a proper manner.

Consequently, the instant petition stands allowed. The impugned judgment of conviction and order of sentence as well as the judgment dated 06.04.2005, passed by the Sub Divisional Judicial

Magistrate, Khanna as well as the judgment dated 14.11.2007, passed by the learned Addl. Sessions Judge, Ludhiana are set aside. The petitioner is acquitted of the charges, as framed against him. His bail/surety bonds stands discharged. He be set at liberty forthwith, if not required in any other case. The amount of fine, if any, be refunded to him against proper receipt and identification.

10.05.2019
mamta

(RAJ SHEKHAR ATTRI)
JUDGE

Whether speaking/reasoned
Whether Reportable :

Yes/No
Yes/No