

CRR-171-2005(O&M) and connected appeal

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

1. CRR-171-2005 (O&M)
Reserved on : February 24, 2020
Date of Decision: September 18, 2020

Minakshi @ Guddal ...Petitioner

Versus

Pinku @ Vinod Kumar and others ...Respondents

2. CRA-D-377-DBA-2005 (O&M)

State of Haryana ...Appellant

Versus

Pinku @ Vinod Kumar and others ...Respondents

**CORAM: HON'BLE MR. JUSTICE RAJIV SHARMA,
HON'BLE MR. JUSTICE HARINDER SINGH SIDHU**

Present: Mr.Sunil Panwar, Advocate for
the petitioner in CRR-171-2005.

Mr.Vivek Saini, Deputy Advocate General, Haryana
for the appellant in CRA-D-377-DBA-2005.

Mr.Mahavir Singh, Advocate for respondent Nos.1 and 2
in both CRA-D-377-DBA-2005 and CRR-171-2005.

Mr. Hemant Bassi, Advocate for respondent No.3
in CRA-D-377-DBA-2005 and CRR-171-2005.

HARINDER SINGH SIDHU, J.

Since common questions of law and facts are involved in the
aforesaid cases, arising out of the same FIR, these are taken up together and

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disposed of by a common judgment.

2. In Criminal Revision No.171 of 2004 filed by the prosecutrix (name not being mentioned) and Criminal Appeal No.D-377-DBA of 2005 filed by the State of Haryana, challenge is to the acquittal of the accused vide judgment dated 23.08.2004 passed by Additional Sessions Judge, Fast Track Court, Bhiwani.

3. The case of the prosecution in brief was that on 12.01.2004 the prosecutrix and her father Narender Kumar met SI Hawa Singh. The prosecutrix got recorded her statement. She stated that her father was serving in the CRPF. Her brother was a student of 11th Class. She was a student of 9th Class. Pinku alias Vinod who was posted as a PTI Master in their village used to visit their house. Whenever she was alone in her house he used to rape her under the pretext that he would marry her. He also told her not to tell about this fact to anybody. Pinku introduced her to Pawan son of Kewal Singh resident of Hisar. On 06.01.2004 Pinku came to her house and told her to reach Maharana Partap Chowk, Hansi Gate, Bhiwani at 4.00 PM the next day as they would go to Hisar. On 07.01.2004 at about 2/3 PM she reached at Hansi Gate, Bhiwani. She had taken Rs. 3500/- and four suits. Pinku met her there and took her to the railway station where Pawan and Upinder were present. Pinku spoke with Pawan and Upinder. He told her to go to Hisar with them and he would reach Hisar the next day. She went with Pawan and Upinder to Hisar. They took her to a room and kept her there till 11.01.2004. Pawan and Upinder committed rape upon her from 07.01.2004 to 11.01.2004 at Hisar. She started to weep. Then on 11.01.2004 Pawan left her at Hansi Gate, Bhiwani. From there she went to her house. She narrated everything to her parents.

4. On the basis of her statement FIR was registered. Investigation was

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commenced. When accused Upinder was shown to the prosecutrix, she did not identify him and stated that he was not the person who had committed rape upon her. She stated that the person who had committed rape upon her was addressing himself as son of a Thanedar. The name of Upinder was deleted and accused Amit was arrayed as accused. The accused were arrested. They were got medico-legally examined.

5. PW6 Dr. Anil Sharma gave his opinion Ex. PK/1 in respect of accused Pawan Kumar and Ex. PL/1 in respect of Pinku alias Vinod. PW 22 Dr. Rajinder Rai who medico-legally examined Accused Amit on 22.01.2004 at G.H. Bhiwani proved his MLR Ex. PGG. PW 7 Dr. Sudha Garg medico-legally examined the prosecutrix. She proved copy of MLR. After receipt of report of FSL she opined that the possibility of sexual intercourse could not be ruled out. In cross examination by Counsel for the accused she stated that the prosecutrix may be habitual of sexual intercourse. The statement of the prosecutrix under Section 164 Cr. P. C. was recorded on 15.01.2004. It was proved by PW 8 Vivek Bharti, the then ACJM, Bhiwani.

6. To prove the age of the prosecutrix PW 4 Arvind Kaushik Clerk Government Girls High School, Tigrana brought the record as per which her date of birth was 27.10.1989. PW 5 Anand Bala, Incharge, Government Girls High School, Tigrana stated that the certificate Ex PJ was issued by her as per which the date of birth of the prosecutrix was 27.10.1989.

7. To substantiate its case, the prosecution further examined the prosecutrix as PW 1, Ajay Kumar (uncle of the prosecutrix) as PW 2. Narender Kumar the father of the prosecutrix as PW 17. They broadly reiterated the version

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as in the FIR. PW 21 SI Hawa Singh inter alia deposed that he along with the prosecutrix, her father and uncle- Ajay Kumar went to Hisar where the prosecutrix pointed out the place where she was allegedly subjected to sexual intercourse. From the room a bed sheet was taken into possession.

8. The accused in their statements u/s 313 Cr. P.C denied the allegations stating that false case had been registered against them and that no recovery had been effected from them.

9. In defence, they examined Ex. Subedar Om Parkash resident of V. Sunderpur as DW1 and Shamsher Singh Malik Handwriting and Fingerprint Expert as DW2. DW1 deposed that on 10.1.2004 the prosecutrix was noticed roaming at about 4.30/5.00 PM at Jind Bye-Pass, Rohtak. She was in search of a room. On enquiry she disclosed the names of her father, uncle and maternal uncle and their telephone numbers. They succeeded in telephonically contacting her maternal uncle. On being so informed the persons as mentioned in Mark D-1 came in a Tata Sumo bearing registration No.HR-16-B 3999. In the presence of Ajay Kumar uncle of the prosecutrix and the other persons accompanying him her bag was searched. Rs.2800/- in cash and clothes were found therein. These were handed over to her Uncle and others accompanying him. A writing Ex. DB was executed which was signed by her uncle and other persons accompanying him. He proved Ex. DB. The persons mentioned in Ex.DB were Captain Raj Pal Singh son of Sagar Singh, Virender Singh son of Bani Singh, Subedar Mahesh Kumar son of Bhawar Singh, Inderjeet son of Sadhu Singh, Sudhir son of Jaipal and Birpal son of Lal Singh.

10. DW2 Shamsher Singh Malik Handwriting and Fingerprint Expert

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opined that the signatures of Ajay Kumar on the document Ex. DB dated 10.01.2004 and his signatures on the recovery memos Ex. PB, PC, PD, PFF and his statement recorded as PW-2 on 15.05.2004 have been written by the same Ajay Kumar.

11. The Trial Court accepted the version of the prosecution that the date of birth of the prosecutrix was 27.10.1989 and that she was a minor. But on appraisal of the evidence it did not accept the prosecution version that the prosecutrix had been taken to Hisar by accused Pawan and Amit at the instance of Vinod alias Pinku and they had committed rape upon her. On the other hand it accepted the defence version that the prosecutrix was found on 10.01.2004 from Rohtak-Jind Bye- Pass road and handed over to her Uncle Ajay Kumar and other relatives. Accordingly the accused were acquitted.

12. For this, the Ld. Trial Court relied on the superdginama Ex. DB. The said superdginama had been signed by PW2 Ajay Kumar and all the persons who accompanied him namely Captain Raj Pal Singh son of Sagar Singh, Virender Singh son of Bani Singh, Subedar Mahesh Kumar son of Bhawar Singh, Inderjeet son of Sadhu Singh, Sudhir son of Jaipal and Birpal son of Lal Singh. Though PW 2 Ajay Kumar had denied having gone to Rohtak and signed the superdarinama, yet as per DW 2 Shamsheer Singh Malik Handwriting and Fingerprint Expert on comparison of the disputed signatures of Ajay Kumar on the superdginama with his admitted signatures opined that the same had been affixed by the same person. The Trial Court noted that the prosecution on the other hand made no effort to get the disputed signatures of Ajay Kumar on the superdginama compared with his admitted signatures. The Trial Court further noted that when PW 17 Narinder Kumar, father of the prosecutrix was asked to identify the signatures of his brother

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Ajay Kumar, he stated that he could not identify them. The Court found it unbelievable that the brother of Ajay Kumar could not identify his signatures particularly when Ajay Kumar had signed on the various recovery Memos and had also accompanied PW 17 and the prosecutrix for her medical examination.

13. The Ld. Trial Court further noted that on 20.07.2002 an application was moved on behalf of the accused to examine Captain Raj Pal Singh son of Sagar Singh, Virender Singh son of Bani Singh, Subedar Mahesh Kumar son of Bhawar Singh, Inderjeet son of Sadhu Singh, Sudhir son of Jaipal and Birpal son of Lal Singh who had also allegedly signed the superdginama. However they could not be served. The Ld. Trial Court concluded that they were deliberately avoiding service so as to avoid having to admit their signatures on the superdginama. All the aforesaid persons were known to the family of the prosecutrix as admitted by PW2 Ajay Kumar and PW17 Narinder Kumar, the uncle and father respectively of the prosecutrix and some of them were even close relatives.

14. Ld. Trial Court further noticed that in her initial statement under Section 161 Cr. P.C as also in her statement under Section 164 Cr. P.C. the prosecutrix had named Upinder and Pawan as the two persons who had taken her to Hisar. However, when on 18.01.2004 Upinder was shown to her she stated that he was not the person who had committed rape upon her. She stated that the other person called himself as son of a Thanedar. The Trial Court noted that it was not clear as to how accused Amit was introduced as an accused. It had been alleged on behalf of Amit that he had already been illegally detained by the police on 13.01.2004. In this regard a Habeas Corpus petition had been filed in the Punjab and Haryana High Court. In that petition a Warrant Officer was appointed who on visiting Police Station, Bhiwani found Amit present there, hence belying the claim

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of the prosecution that Amit was arrested on 22.01.2004.

15. Ld. Trial Court found some more infirmities in the prosecution case. The father of the prosecutrix, who was serving in the CRPF, had gone back to join duty on 05.01.2004. The prosecutrix had left her home on 07.01.2004. Her father on being informed about her having gone missing reached home on 09.01.2004. Her uncle Ajay Kumar had reached the village on 10.01.2004. However the report came to be lodged only on 12.01.2004. The Ld. Trial Court found it strange as to why no report of her having gone missing was lodged once her father had come back home on 09.01.2004 or even after her uncle had reached the village on 10.01.2004.

16. The prosecutrix had stated that when she left home she had taken four suits. One of them was a pant and shirt. The others were suits. When the prosecutrix was taken for medico-legal examination on 12.01.2004 her pant and shirt were taken into custody. As per the report of the FSL semen was found on the pant of the prosecutrix. The Ld. Trial Court found it strange considering that the prosecutrix had reached home on 11.01.2004 and she had gone to the Police Station the next day. It was not her case that she had not changed her clothes even after reaching home.

17. Further though she stated that during the sexual intercourse in the room at Hisar semen had fallen a number of times on the bedsheet. However as per report of FSL no semen was found on the bed sheet. There were also discrepancies with regard to the room where she had been subjected to sexual intercourse.

18. For these amongst other reasons the Ld. Trial Court did not believe the prosecution version and hence acquitted the accused.

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19. It is well settled the scope of interference with a judgment of acquittal is limited. If the view taken by the Trial Court is a possible view, it is not open to the higher Court to reverse the judgment just because another view is possible.
20. Accordingly, the revision and the appeal are dismissed.

(RAJIV SHARMA)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

September 18, 2020
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Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No