

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
218 CRM-A-2243-MA-2016 (O&M)
Date of decision: 04.09.2023

Kiran

...Appellant(s)

Vs.

State of Punjab & Another

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present: - Mr. Satyam Arora, Advocate and
Mr. Anmol Mandgill, Advocate
for the appellant.

NIDHI GUPTA, J.

CRM-40148-2016

This is an application under Section 5 of Indian
Limitation Act seeking condonation of delay of 9 days in filing the appeal.

After going through the contents of the application, the
same is allowed subject to all just exceptions.

MAIN CASE

Prayer in the present appeal is for setting aside
judgment and order of acquittal dated 03.08.2016 passed by learned
Additional Sessions Judge, Fazilka, whereby the accused/respondent No.2
herein has been acquitted in case FIR No.48 dated 24.05.2014 under
Sections 354-A, 323 and 506 IPC registered at Police Station Sadar, Abohar.

2. Brief facts of the case are that the above said FIR was
registered by the appellant/complainant/victim on the allegation that the
accused had committed rape upon her on 24.05.2014. During investigation,

offence under Section 354-A IPC was deleted and offence under Section 354 IPC was added. After completion of investigation, challan against the accused was presented under Sections 354, 323 and 506 IPC and during trial, offence under Section 376 IPC was also added.

3. Learned counsel for the appellant/victim submits that the appellant before this Court is a married woman having a young son and therefore, she will not level false allegations against the accused as doing so implies bringing disgrace upon her also. Learned counsel submits that the accused is a politically powerful person being an ex-Member of the Panchayat, whereas the appellant is a poor ordinary citizen.

4. It is further submitted that the impugned judgment is based on conjecture and surmises. The learned Court below has in fact, doubted the presence of the eyewitness also which is ludicrous as the appellant had categorically stated that when she was being raped she had raised hue and cry and on hearing the cries of the appellant, her younger sister PW-3 came on the spot. It is submitted that it is therefore, clear that the learned Court below has failed to appreciate important evidence produced by the prosecution.

5. It is also submitted that the appellant clearly mentioned in the FIR that the accused was in a drunkard condition at the time of the incident. The accused started doing obscene acts with the appellant. When the appellant stopped him from doing so, the accused gave her two fist blows. Then the appellant raised alarm and her younger sister came on the

spot and on seeing her, the accused ran away but this fact was not taken into consideration by the learned Court below.

6. Learned counsel further vehemently submits that as per the report of Chemical Examination conducted upon the appellant, human semen has been detected. It is contended that clearly therefore, the Learned Court below has overlooked vital evidence that was placed on record by the appellant; and accordingly prays that the impugned judgment dated 03.08.2016 passed by learned Additional Sessions Judge, Fazilka may be set aside vide which the accused has been wrongly acquitted.

7. I have heard learned counsel for the appellant.

8. Perusal of record of the case shows that as per the appellant, the date of alleged incident was 23.05.2014. FIR in respect of the said incident was registered on the next day i.e. 24.05.2014. Admittedly, in the FIR, no allegation of rape was made by the appellant against the accused. It is only in her supplementary statement (Exhibit P2/C) that the appellant for the first time alleged that the accused had raped her.

9. Perusal of first statement dated 24.05.2014 (Exhibit P2/A) recorded by the appellant on the basis of which FIR was registered, reveals that it has been stated therein by the appellant that on the date of occurrence i.e. 23.05.2014, she was told by the accused that the police were coming to arrest her on allegations of theft as her husband had already been arrested. At that time, the accused was drunk. Thereafter, the accused took her to Dera of Baba Khetar Pal, where he started doing obscene acts with the appellant. When the appellant resisted, he gave two

fist blows on her neck and stomach. Upon hearing her cries, her younger sister Sukhdeep Kaur w/o Tarsem Singh/PW3 came there and saved the appellant from the accused. Upon seeing the younger sister of the appellant, the accused ran away from the spot.

10. Even the younger sister of the appellant in her statement (Exhibit D1) recorded on 24.05.2014 itself, has given the same narration of events. Accordingly, on basis of the above statement, case/FIR (Exhibit P3) under Sections 323, 354-A and 506 IPC was registered.

11. Thereafter, in her supplementary statement (Exhibit P2/C) the appellant has improved upon earlier version, and this time allegations of rape have been included. In her supplementary statement, the appellant has further stated that when she had accompanied the accused out of fear, her son aged about 6 years had also accompanied her at that time.

12. However, contradictorily, in her testimony as PW-2, the appellant has failed to mention that her son was accompanying her at the time when the accused forcibly committed rape upon her.

13. Even the sister of the appellant in her testimony as PW3, has corroborated the improved version of the appellant inasmuch as she has stated as PW3 that the accused had raped the appellant. However, the said testimony is an improvement upon her original statement (Exhibit D1), wherein there was no mention of rape.

14. Clearly, therefore, there are glaring discrepancies in the original statement, supplementary statement (Exhibit P2/C), and the

testimony of the prosecutrix/appellant as PW2, as well as that of PW3, which learned counsel for the appellant is unable to explain.

15. Furthermore, learned counsel for the appellant has laid great emphasis on the fact that human semen was detected. In this regard, as well as other relevant findings of the learned Trial Court are as follows: -

“19. The most important witness in the present case is the eyewitness Sukhdeep Kaur, but her statement cannot be believed to be true as the same is contrary to her initial statement made to the police on 24.05.2014 and there is nothing on file to suggest as to why this witness has improved her statement. Swab sent as a sample was examined after about 6 days and as per medical evidence brought on record in the statement of PW-6, spermatozoa cannot be expected to alive after six days, as such, Swab report Ex.P13 proved on file, cannot be admitted to be true and no reliance can be placed on the same. Moreover, in the present case, the prosecutrix is a married woman and she was living with her husband. The statement of the prosecutrix regarding rape cannot be expected as there was no injuries on her back or on her private parts. The medical evidence brought on record shows that there was absolutely no resistance on the part of prosecutrix and the statement of the prosecutrix is not enough to prove the allegations under Section 376 IPC. The prosecutrix has changed her statement twice and it is difficult to accept her testimony. The statement of the prosecutrix cannot be taken as a gospel truth.

20. As per the case of the prosecution, the prosecutrix was taken away by the accused on his motorcycle, near the temple of Baba Khetar Pal but there is nothing on file to suggest as to how the sister of the prosecutrix happened to visit the temple of Baba Khetar Pal during night time, as such, even the presence of Sukhdeep Kaur at the place of occurrence seems to be doubtful.

21. The prosecutrix is a married lady. She could certainly resist to prevent the accused from sexually assaulting her. During that process, the prosecutrix is supposed to sustain injuries on

her body parties. The FIR in question was registered on the same day when the prosecutrix suffered her statement but the allegations of rape were not made then. The Sarpanch of the village had accompanied the prosecutrix for lodging a report as against the accused. She had full moral support from her family and elders of the village. All these factors, commutatively indicate that the incident did not occur in the manner which the prosecutrix has pretended to have taken place.

22. In defence evidence, the accused has produced documents Ex.DA and Ex. DB, which goes to show that similar allegations were levelled by the prosecutrix, earlier in the year 2000 and FIR in this regard was lodged at District Ganganagar. These two documents further goes to reveal the character of the prosecutrix. In view of the discussion as discussed above in detail, the allegations levelled against the accused do not stand proved on record, as such, the accused is ordered to be acquitted for the charges levelled against him. Bail bonds and surety bonds of accused stand discharged. File be consigned to the Record Room, Fazilka.”

16. Learned counsel for the appellant is unable to dispute, or even controvert the above said findings of the learned Court below in any manner whatsoever.

17. Accordingly, I find no ground is made out to interfere in the impugned judgment-order.

18. **Dismissed.**

19. Pending application(s) if any also stand(s) disposed of.

04.09.2023
Sunena

(Nidhi Gupta)
Judge

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No