

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

SR. No.202

CRM-A-708-MA-2011
Date of Decision:16.05.2023

Harjinder Kaur @ Babli

...Applicant

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE N.S. SHEKHAWAT

Present: Ms. Pushpinder Kaur, Advocate,
for the applicant.

Mr. M.S. Bajwa, DAG, Punjab.

Mr. Balram Singh, Advocate
for respondent No.2 as amicus curiae.

N.S. SHEKHAWAT, J.

1. Present application under Section 378 (4) of the Code of Criminal Procedure ('Cr.P.C.' for short) seeking special leave to appeal, is directed against the judgment of acquittal dated 02.05.2011 passed by the learned Additional Sessions Judge, Jalandhar, whereby accused-respondent No.2 has been acquitted of the charge under Sections 363/366 IPC.

2. Bereft of unnecessary details, the brief facts of the present case are that the FIR in the instant case was registered on the basis of the statement made by Harjinder Kaur @ Babli. She came to the police station with her mother Paramjit Kaur and stated that at about 03.00 PM on 31.03.2010 she had gone in the back street of her Mohalla (locality) to take tuition from a lady teacher. She knocked at the door of house of the teacher,

window panes stopped near her and Baldev Singh @ Bahiya, respondent No.2 along with one more unknown boy came out of the same and they forcibly took her in the car. The complainant was taken to the house of brother-in-law of respondent No.2, situated in Punjabi Bagh, where she met his brother-in-law, who dropped her in the house of his maternal grandmother situated in Amar Garden House No.70-A on his motorcycle. She came to her grandmother Mohinder Kaur and called her mother Paramjit Kaur telephonically and narrated the entire incident to her. The elder brother of the complainant, namely, Jasbir Singh @ Bablu also reached there and she was brought back to her house in the night. Next day, at about 10.00 PM, she went with her mother to lodge the report, but the police party met them on the way and her statement was recorded.

3. After conducting necessary investigation, the final report under Section 173 Cr.P.C. was presented before the competent court and the case was exclusively triable by the Court of Sessions, consequently, the same was ordered to be committed to the Court of learned Sessions Judge, Jalandhar.

4. After considering the contents of the final report under Section 173 Cr.P.C., the learned trial Court ordered framing of charge under Sections 363/366 IPC against the applicant. The accused-respondent No.2 pleaded innocence and claimed trial.

5. To prove the charge against respondent No.2, five witnesses were examined by the prosecution. The complainant Harjinder Kaur @ Babli was examined as PW-1, who supported the case of the prosecution as stated by her in the FIR. However, in her cross-examination, she admitted that the birth certificates of herself and her brother, issued by Municipal

her, the date of birth certificate was handed over to them. However, she did not remember the date, when it was given to the police. She had seen the judicial file and there was no birth certificate issued by the Municipal Corporation on record. She started taking tuition from Manjit Kaur from 10.03.2010 and Manjit Kaur was teaching them English Speaking Course. The house of her teacher was at a distance of 4/5 houses and there were residential houses in the vicinity. She further could not tell the number of the car to the police nor she could disclose the make of the car whether it was Maruti or Santro. She raised alarm, but later on, her mouth was gagged. She, however, did not narrate the said facts to the police regarding raising alarm and gagging of her mouth. She further stated that accused was known to her earlier, but she did not know his name. She along with brother-in-law of accused Baldev Singh @ Bahiya reached the house of her grandmother at about 04.30 PM. She stated that brother-in-law of the accused gave her water and also made her understand. Her brother and mother came to the house of her grandmother in order to take her back. They returned to their house at about 06.30 PM from the house of her maternal grandmother. On the next day, she went to the police station to get her statement recorded at 09.30 AM. She admitted that there was an ongoing dispute between her elder brother Jasbir Singh and brother of the accused Tejinderpal Singh. Even last year, an altercation took place between her brother and some unknown persons. She further admitted that her father was alive, but he did not associate her anywhere in police station or other places. She did not get herself medically examined as there was no sign of dragging on her arms.

PW-2 Paramjit Kaur, mother of the complainant, also deposed on similar

lines. Jasbir Singh, elder brother of the complainant, was examined as

PW-3. He was also not present, however, he supported the case of the prosecution. He admitted that the accused was known to him being the resident of same mohalla (locality). His sister was not medically examined. There were marks on the arms of his sister and her bangles were also broken. These facts were stated by him as well as by his sister to the police. He admitted that these facts were not mentioned in his statement given to the police. Indra Sharma, In charge, SD Primary School, was examined as PW-4, who brought the summoned record from the school and as per the same, the date of birth of Harjinder Kaur, complainant, was 01.09.1992. She proved on record the entry No.14210 in the register of admission and withdrawal as Ex.PB. However, in cross-examination, she admitted that Harjinder Kaur, complainant, was admitted on 03.11.2001. There was no entry regarding her leaving the school in the register Ex.PB. There was no entry of issuance of school leaving certificate of Harjinder Kaur, complainant in Ex.PB. No record of birth certificate was given by the parents of Harjinder Kaur, complainant. The prosecution further examined PW-5 ASI Amrik Singh, who was the Investigating Officer in the present case. He stated that prior to 09.30 PM on 01.04.2010, nobody came to him for lodging any complaint or registration of the FIR against the accused. He had no knowledge about the alleged incident. He further admitted that the street in front of the house of Manjit Kaur, teacher, is not very wide and the car could not turn easily in the said street. He did not recover any car. The complainant did not disclose any injury or any sign of injury on her body or on her face or on arms.

6. The statement of accused-respondent No.2 was recorded under

Section 313 Cr.P.C. and he stated that he had not committed any offence as

alleged in the FIR. In fact elder brother of the prosecutrix and his brother Inder Pal Singh were friends and last year, there was an altercation between the brother of the prosecutrix and some unknown persons. The brother of respondent No.2 did not support the brother of the prosecutrix and he was caused injuries by unknown persons. Due to that incident, he was falsely implicated in the present case. In his defence, the accused examined his brother-in-law Anoop Singh as DW-1, who clearly stated that he did not know the complainant and never met the said girl. On 31.03.2010, he was on duty at Amritsar and did not meet Harjinder Kaur, complainant, on that day. The police never met him nor ever recorded his statement and the case registered against respondent No.2 was false.

7. I have heard learned counsel for the parties and with their able assistance, I have carefully gone through the trial court record.

8. Learned counsel for the appellant has vehemently argued that the learned trial court did not appreciate the prosecution evidence correctly. From the evidence on record, it amply stood established that the occurrence had taken place at about 03.00 PM on 31.03.2010 and the prosecutrix, who was a young girl, was gagged and was taken away by accused-respondent No.2. Even she could not get a chance to raise the alarm and as a consequence, no independent witness could be brought on the file. However, accused-respondent No.2 could be convicted only on the basis of the statement made by PW-1 Harjinder Kaur @ Babli. Even the statement of the complainant was duly corroborated by the testimonies of PW-2 Paramjit Kaur and PW-3 Jasbir Singh. Thus, the judgment passed by the learned trial Court is apparently illegal and unsustainable and the same deserves to be set

9. The above-said submissions made by the learned counsel for the appellant have been opposed by learned counsel appearing on behalf of respondent No.2. Learned counsel for respondent No.2 submitted that the learned trial Court had discussed the evidence in detail and after due appreciation of the same, the impugned judgment was passed, which is liable to be upheld by this Court.

10. I have considered the rival submissions made by the learned counsel for the parties and considered the same in the light of the evidence and the settled law.

11. In fact, the scope of interference in an appeal against acquittal is very limited. Unless it is found that the view taken by the learned trial Court is impossible or perverse, it is impermissible to interfere with the findings of acquittal. Equally, if on due appreciation of evidence, two views are possible, then the order of acquittal cannot be set aside merely because the appellate court finds the way of conviction to be more probable. The interference would be warranted by the appellate court only if the view taken is not possible at all. Even otherwise, with the passing of the judgment of acquittal, the presumption of innocence in favour of the accused is doubled and the appellate court must always be slow in interfering in the judgment of acquittal rendered by the learned trial Court.

12. In the present case, the alleged occurrence had taken place at about 03.00 PM on 31.03.2010. As per the admission of complainant, the house of her teacher was just 4/5 houses away from her house, where she was staying with her brothers and the mother as well. It was an inhabited area and surprisingly, she was a grown up girl and no one was attracted on

was not reported to the police by her family members; rather they chose to report the matter at about 10.00 PM on 01.04.2010 and even till the conclusion of the trial, the prosecution could not offer any plausible explanation for the said delay in reporting the matter.

13. Apart from that, even the prosecution could not lead any convincing evidence on record to prove the age or date of birth of the victim as 01.09.1992. As per the complainant, she was issued a birth certificate by the Municipal Corporation, Jalandhar, which was in her possession and she had handed over the same to the police, at the time of joining the investigation. However, the said certificate was not made part of the investigation nor the same was made part of the judicial record. Even PW-1, the complainant, admitted that she had seen the judicial file and there was no date of birth certificate issued by the Municipal Corporation. Further, the prosecution examined PW-4 Indra Sharma, In charge, SD Primary School, Jalandhar, who also admitted that there was no entry of issuance of school leaving certificate of complainant in the register, Ex.PB. The prosecution had heavily placed reliance on Ex.PB. The said witness also admitted that no record of birth certificate, issued by the Municipal Corporation, Jalandhar, was placed on record by the parents of the complainant. Even normally, they used to demand such certificate, but parents of Harjinder Kaur had stated that it was not prepared. Consequently, it is apparent that the prosecution utterly failed in proving the age/date of birth of the alleged prosecutrix conclusively and the learned trial court has recorded valid reasons in this regard.

14. Furthermore, even the story propounded by the prosecution was

highly improbable. Even as per PW-1, the complainant, she was neither

physically assaulted nor the accused tried to outrage her modesty. She even denied for her medical examination. Even the prosecution could not lead any evidence that respondent No.2 had kidnapped the victim for the purpose of marrying her or any other evil intention. Further, the prosecution could not prove the motive for the commission of crime by respondent No.2. Still further, PW-3 Jasbir Singh, brother of Harjinder Kaur (complainant), tried to improve the case by stating that his sister had marks on the arms and her bangles were also broken, but his sister was not medically examined. Whereas as a matter of fact, PW-1 Harjinder Kaur herself had refused for her medical examination and the statements of said two witnesses could not co-exist and exposed the falsehood of the prosecution case. Apart from that, PW-5 ASI Amrik Singh also admitted that the street in front of the house of Manjit Kaur, teacher, was not very wide and it was not possible for the car to turn easily in that street. He also admitted that the car, which was used in the commission of crime, was not recovered. He also admitted that the complainant did not disclose him any injury or any sign on her body or on her arms and face. Even the complainant did not give him any birth certificate issued by the Municipal Corporation, Jalandhar and even she did not disclose that she was in possession of any birth certificate issued by the Municipal Corporation, Jalandhar. Thus, the evidence led by the prosecution was correctly disbelieved by the learned trial Court.

15. I have gone through the detailed findings recorded by the learned trial Court. No valid arguments could be raised by learned counsel for the appellant, which could be sufficient to overturn the findings recorded by the learned trial Court. The impugned judgment does not suffer from any

material irregularity or perversity, which would warrant interference by this Court.

16. In view of above discussion, leave to appeal is declined. Consequently, the present application, seeking special leave to appeal against the judgment of acquittal dated 02.05.2011 passed by the learned Additional Sessions Judge, Jalandhar, is dismissed being devoid of merits.

17. Pending application, if any, is also disposed off, accordingly.

18. The trial Court record be sent back forthwith.

19. In the end, I record my appreciation for Mr. Balram Singh, Advocate, learned Amicus Curiae, who had rendered his able assistance to this Court.

16.05.2023
mks

(N.S. SHEKHAWAT)
JUDGE

Whether Speaking/Reasoned: YES / NO

Whether Reportable: YES / NO