

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

CRA-AD-303-2022

Reserved on: 15.03.2022

Date of decision: 23.03.2023

SEWAK RAM

...Appellant

Versus

STATE OF PUNJAB AND OTHERS

...Respondents

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE KULDEEP TIWARI**

Present: Mr. Rishu Garg, Advocate for the appellant.

Ms. Monika Jalota, Sr. DAG, Punjab

SURESHWAR THAKUR, J.

1. The instant appeal is directed by the aggrieved against the verdict of acquittal, as made on 17.08.2022, by the learned Judge Special Court, Bathinda, upon Sessions Case No.302/2018. The learned trial Judge concerned, through the impugned verdict made a finding of acquittal qua the accused in respect of the charges as became framed against them.

FACTUAL BACKGROUND

2. The case of the prosecution in nutshell, is that, an FIR was registered, on the statement suffered by Sewak Ram, inter alia, alleging that on 24.06.2018, he along with his father Amrik Singh, his wife Sukho Devi and his younger brother Sandeep Ram had gone to the fields for sowing paddy crop. His mother namely Banso Devi, grand mother Mehngi and sister Nisha Devi were at home. Later on, his grand mother and mother went to take fodder for the cattle in the fields and his sister Nisha was alone in the house. When they returned home at about 6.00 PM, Nisha was found missing. On 25.06.2018 at about 12.15 PM, he received a phone call from his sister informing that she was

standing at T-Point Rampura, whereupon he along with his father Amrik Ram and maternal uncle Dogar Singh went to bring her home. On reaching home, she narrated that on 24.06.2018 at about 2.00 PM when she was alone in the house, a motorcycle stopped in front of her house whereupon Dharma Singh and Jagsir Singh, who were known to her, told her that her father had met with an accident and she accompanied them on the motorcycle. They, however, took her to a house at Rampura where one boy Raju was also present. There all the three boys sexually assaulted her. She was produced before the medical officer. However, she refused to undergo the medical examination regarding which memo was also prepared by the investigating officer. She was also produced before the learned JMIC for recording her statement under Section 164 Cr.P.C. on 26.06.2018. Accused were arrested. Statements of witnesses were recorded. On completion of the investigations the Investigating Officer submitted, the police report under Section 173(2) Cr.PC before the learned Court concerned, for putting up accused Raj Kumar @ Raju to face trial for the commission of the above offences. Thereafter, a supplementary police report was also furnished for putting up accused Dharampal Singh @ Dharma and Jagsir Singh to face trial in the case.

TRIAL PROCEEDINGS

3. The prosecution examined as many as 15 witnesses and, subsequently, the public prosecutor closed the prosecution evidence. After the closure of the prosecution case, the learned trial Judge drew proceedings under Section 313 Cr.P.C., wherein, the accused pleaded innocence, and, claimed false implication. However, he did not choose to lead any defence evidence.

SUBMISSIONS OF THE LEARNED COUNSEL FOR THE APPELLANT

4. The learned counsel for the appellant has contended before this Court, that the appreciation of evidence as made by the learned trial Judge

concerned, is tainted with a vice of gross mis-appreciation, and, non-appreciation of evidence, therefore, he has argued that the impugned verdict of acquittal be quashed, and, set aside.

SUBMISSIONS OF THE LEARNED STATE COUNSEL

5. On the other hand, the learned State counsel has argued, that the impugned verdict of acquittal, as has been challenged before this Court, is well merited, as it is based upon a sound appreciation of the evidence as became adduced by the prosecution before the learned trial Judge concerned, thus, it does not require any interference being made by this Court.

REASONS FOR DISMISSING THE INSTANT APPEAL

(I) THE STATEMENT OF THE PROSECUTRIX IS UNRELIABLE AND DOES NOT INSPIRE CONFIDENCE

6. The prosecutrix on stepping into the witness box refused, to identify in Court both accused Jagsir Singh and Dharampal Singh,. The effect of the above refusal, on the part of the prosecutrix to identify, in Court, Jagsir Singh and Dharampal Singh alias Dharma, is that, the genesis of the prosecution case, as, embodied in the factum, of both on a false pretext hence making her alight the crime motorcycle, whereafter theirs taking her to a house at Rampura, where one accused Raj Kumar alias Raju was present, and further that all subjected the prosecutrix to a forcible sexual intercourse, rather does becomes completely incredible.

7. Even though, she had made the above exculpatory echoing qua co-accused Dharampal Singh and Jagsir Singh, but yet she attributed an incriminatory role to co-accused Raj Kumar. However, when as above stated, the genesis of the prosecution, becomes firmly rested upon co-accused Jagsir Singh and Dharampal Singh, on a false pretext, making her alight the motorcycle and thereafter theirs taking her to the crime site. Naturally when the above factum is belied by the prosecutrix, inasmuch as, hers refusing to identify

in Court both co-accused Jagsir Singh and Dharampal Singh. Thus, the further effect of the above inference, is that, the singular attribution of criminality to co-accused Raj Kumar, is but also incredible. The reason for disbelieving the above penal attribution made qua co-accused Raj Kumar, is further squarely rested on the principle, that when she attributes a co-equal penal role to each of the accused, but yet exonerates some of the co-accused, but inculcates one of the accused. Resultantly, the inculcation as made qua only one of the co-accused, who did not accompany the prosecutrix, on the crime motorcycle, which was however occupied by her along with accused Jagsir Singh and Dharampal Singh, thus does naturally become a false inculcation. The imperative reason, for drawing the above conclusions, spurs from the factum, that when the prosecutrix allegedly arrived, at the crime site, on the crime motorcycle, but when the above fact, for the reasons (supra), becomes denied by her, as a sequel when grave doubt seeps into the prime inculpatory factum, thus the benefit thereof, is to be also assigned to co-accused Raj Kumar.

(II) REFUSAL OF THE PROSECUTRIX TO UNDERGO MEDICO-LEGAL EXAMINATION

8. The effect of the prosecutrix refusing to undergo medico-legal examination garners an inference, against the prosecutrix, especially when on such medico-legal examination being made upon the prosecutrix by the doctor concerned, rather the prime scientific evidence would have emerged. However her avoidance to undergo the apposite test but, unfolds that she has made a false inculcation against the accused. Thus the above refusal also capitalizes an inference, that the inculcation made solitarily against co-accused Raj Kumar, is but a very frail, and, weak inculcation.

(III) PW-2 COMPLAINANT TURNED HOSTILE

9. PW-2 is the deposition of the brother of the prosecutrix. However, in his cross-examination, he turned hostile only qua Jagsir Singh and Dharampal

Singh. However, yet he also remained silent qua the incriminatory role of co-accused Raj Kumar. Therefore also, his testification which is but made on the basis of an account qua the penal occurrence becoming unfolded to him by the prosecutrix rather does not have much probative value.

PW-2 COMPLAINANT HAS TURNED HOSTILE AND THEREFORE THE ALLEGATIONS IN THE FIR DO NOT BECOME SUBSTANTIATED

10. PW-2 one Sewak Ram who had lodged the FIR qua the penal event has not supported the contents carried in the FIR. Therefore, when he has completely resiled from his previously made statement in writing, thus obviously the allegations set forth against the accused in the FIR, do loose, their creditworthiness.

11. Consequently, the verdict of acquittal, as, drawn qua all the accused does not suffer from any gross infirmity or perversity of any gross misappreciation or gross non appreciation of any evidence germane to the charge.

FINAL ORDER

12. For the reasons assigned hereinabove, the instant appeal is dismissed, and the impugned verdict of acquittal is maintained and affirmed.

13. Bail bonds, if any, are ordered to be forthwith cancelled and discharged. Case property, if any, be dealt with in accordance with law, but only after the expiry of the period of limitation for the filing of an appeal.

14. Records be sent down forthwith.

(SURESHWAR THAKUR)
JUDGE

23.03.2023

Ithlesh

(KULDEEP TIWARI)
JUDGE

Whether speaking/reasoned:-
Whether reportable:

Yes/No
Yes/No