

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-S-2090-SB-2015 (O&M)
DECIDED ON:15.05.2023

DAVINDER KUMAR

.....APPELLANT

VERSUS

STATE OF HARYANA & ORS.

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL.

Present: Mr. Arun Sheemar, Advocate for
Mr. G.S. Sullar, Advocate
for the appellant.

SANDEEP MOUDGIL, J (ORAL)

1. The instant appeal has been preferred against the judgment dated 28.01.2015, whereby, all the accused-respondents were acquitted of the charges framed against them.

2. The brief facts giving rise to the present appeal are that one of the accused Raj Bala made a telephonic call to the complainant Devender at about 10 AM and asked him to come to her house. Complainant reached at the house of accused Raj Bala at about 3.45/4.00 PM and in the meantime, there was no communication between them. When he reached there, he was abused by Puneet, son of accused Raj Bala and her mother as they remarked that a dacoit from UP (Uttar Pradesh) had come. They also confined him in a room. They also attacked upon him. Any how, he managed to flee from there. He was having his mobile phone with him at that time. He remained confined there only for 10-12 minutes. After fleeing from the house of Raj Bala, he went to the hospital and got himself medico legally examined. He also got typed the complaint and proceeded towards police station. When he reached in front of the shop of Purshotam Photostat, he

Singh and one Chander Shekhar were present in the next shop. At the same time, a Tata Sumo boarding the accused came there and accused Raj Bala and Puneet pointed towards the complainant Devender and they asked the other co-accused to catch hold of him so as to avoid his escape. They forcibly dragged him inside the Tata Sumo and started giving beatings, thereafter, they took him to the house of Raj Bala at Saini colony, Karnal and he was bolted inside a room and was compelled to discontinue his relationship with Raj Bala. Accused also got his signatures on some blank papers. Thereafter, accused took the complainant to his house from where they had removed the marriage papers, CDs, photographs/albums and other articles. During this period, the mouth of the complainant was tied with cloth. Thereafter, accused again dragged the complainant into the vehicle and took the same towards G. T road with the intention to commit his murder and thereafter to run over the Tata Sumo upon his dead body to give it a colour of accidental death. However, at the old Sessions chowk, there was naka of police and accused. were apprehended and complainant Devender was recovered by the police.

3. Copies of challan under Section 207 Cr.P.C. were supplied to all the accused.

4. Finding a *prima-facie* case against the accused, they were charge-sheeted under Sections 148, 323, 342, 364 read with Section 149 IPC and Sections 452 and 506 IPC, to which they pleaded not guilty and claimed trial.

5. In order to prove its case, prosecution has examined Dr. Jagtar Singh as PW-1, Devender Kumar, complainant as PW-2, Malkhan Singh as PW-3, Chander Shekhar as PW-4, ASI Sultan Singh as PW-5, Dr. Piyush Kumar as PW-6, SI Ratti Ram (Retd.) as PW-7, HC Amarjit Singh as PW-8, DSP Joginder Singh as PW-9 and Anand Pal as PW-10, thereafter, the prosecution evidence was closed by learned Public Prosecutor.

Thereafter, statements of the accused under Section 313 Cr.P.C. were

recorded wherein they denied the allegations of the prosecution and pleaded innocence. However, they have not led any evidence in defence.

7. Learned counsel for the appellant has contended that the trial Court has wrongly held that the age of Phoolwati on the day of incident was about 72/73 years, whereas the accused Puneet was of tender age. It is asserted that the trial has wrongly held that the complainant/appellant neither raised any alarm nor called any person for his rescue when he was abducted from the shop of Purshotam Photostate. The complainant/appellant did not raise any alarm when the accused persons had closed his mouth. There is no straight jacket formula in a given situation that person in a given situation will react in a particular way. Thus, the learned trial Court has wrongly held that the incident has not happened in the way as disclosed by the prosecution and the genesis of the incident has been suppressed.

8. Learned State counsel has contended that all the accused were members of the unlawful assembly and had inflicted injuries to the complainant. They had also abducted him with an intention to kill him. It is proved that all the accused persons had tress-passed into the house of the complainant and had also wrongly confined him. They also threatened the complainant with dire consequences in case he disclosed the incident to any person.

9. Having heard learned counsel for the respective parties.

10. This Court has minutely gone through the record of the present case and have found that a complaint was filed by Devender, who is a police official on the allegations that he was abducted and gave beatings by the accused persons. It is highly improbable that the complainant who is a well trained police official could be controlled by the accused Raj Bala with the assistance of her tender age son and old aged mother. From the perusal of the complainant, it is crystal clear that the incident has not happened in the way as disclosed in prosecution as the complainant

his own house where the persons from his neighbourhood were expected to be available. Moreover, the presence of PW-3 Malkhan Singh at Police Naka, when he was recovered from accused is also doubtful, as PW-7 SI Ratti Ram, who led a naka, in his statement stated that the dispute was regarding marriage and no body was present at Sessions Chowk, Karnal from the family of complainant. Moreover, the non-examination of owner of Purshotam photostat has deprived the accused from their valuable right of confronting him with his previous statement to elicit the truth and this circumstance also amount to withholding of the material witness, which is fatal to the case of the prosecution.

11. It is a settled law as held in *C. Antony v. K.G. Raghavan Nair, 2002(4) RCR(Criminal) 750* that even if a second view on appreciation of evidence is possible, the Court will not interfere in the acquittal of the accused. In the cases of acquittal, there is double presumption in his favour; first the presumption of innocence, and secondly the accused having secured an acquittal, the Court will not interfere until it is shown conclusively that the inference of guilt is irresistible.

12. As an upshot of the discussion made hereinabove, this Court is of the considered view that the story of the prosecution is highly improbable and a concocted one. Accordingly, the present appeal is dismissed being devoid of any merit and the impugned judgment is upheld.

(SANDEEP MOUDGIL)
JUDGE

15.05.2023

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