

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

CRA-AD No.157 of 2015 (O&M)
Date of Decision:02.11.2023

Paramjit Kaur Bhatti

... Applicant/Appellant

Versus

Gursewak Singh and another

... Respondents

CORAM : HON'BLE MR. JUSTICE SUDHIR SINGH
HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Seerash Verma, Advocate for
Mr. B.S. Aulakh, Advocate
for the applicant-appellant.

Mr. Dhruv Dayal, Addl. A.G., Punjab.

HARPREET SINGH BRAR, J. (ORAL)

CRM No.42193 of 2015

Prayer in the application is for condonation of delay of 9 days in filing the accompanying appeal.

For the reasons stated in the application, the same is allowed and delay of 9 days in filing the accompanying appeal is condoned.

CRM No.15791 of 2016 in/and CRA-AD No.157 of 2015

1. The present application has been filed under Section 378 (4) of the Code of Criminal Procedure, 1973 seeking leave to appeal against the judgment dated 01.09.2015 passed by the learned Judge, Special Court, Sri Muktsar Sahib whereby the respondent No.1-accused was acquitted in FIR case No.53 dated 25.07.2014 under Section 376, 452 IPC at Police Station Sadar, Malout.

2. Brief facts of the prosecution case are that on 25.07.2014, ASI Charanjit Kaur along with ASI Harjinder Singh and other police officials in response to a complaint made on helpline No.181 by the complainant/prosecutrix were present

in her house to record her statement in which she stated that on 21.07.2014, she called Gursewak Singh, an auto rickshaw driver, son of Atma Singh, resident of Village Malout to get the cylinder refilled from Burj Sandhwan Gas Agency. After getting the cylinder refilled, Gursewak Singh delivered the same at the house of the complainant/prosecutrix and went away to his house, however, while leaving, he gave his mobile number to the complainant/prosecutrix to call him in case of any necessity. On 22.07.2014, the complainant/prosecutrix called Gursewak Singh to her house for getting the regulator fitted on the cylinder. He came to her house at about 9 AM and fitted the regulator on the cylinder. When the complainant/prosecutrix went to the kitchen to check the regulator, he started touching her inappropriately, which was objected to by her. However, he did not stop and sexually assaulted her. She narrated the entire incident to her husband, who told her that he will come on leave and look into the matter. Till date, she waited for her husband but now dialled number 181 and made the complaint.

3. On the basis of the complaint made by the complainant/prosecutrix, FIR for commission of offence under Sections 452, 376 IPC was registered and statements of witnesses were recorded under Section 161 Cr.P.C. The complainant/prosecutrix was medically examined at Civil Hospital, Malout. Gursewak Singh was arrested on 07.08.2014 and was medically examined. After completing investigation, final report under Section 173 Cr.P.C. was presented in the court. Thereafter, on completion of formalities under Section 207 Cr.P.C., the case was committed to the Court of Sessions by the learned Illaqa Magistrate vide order dated 26.11.2014. Charge for the offences punishable under Sections 452 and 376 IPC was framed against the accused to which he pleaded not guilty and claimed trial. After appreciating the documentary/oral evidence led by the prosecution, the trial Court acquitted the accused vide impugned judgment dated

01.09.2015 against which leave to appeal is prayed for by way of instant application.

4. Learned counsel for the applicant-appellant submits that the learned trial Court had wrongly and perversely acquitted by the respondent No.1-accused. The husband of the complainant/prosecutrix was not in the city on the day of alleged incident, which is evident from the certificate dated 30.10.2015 issued by the concerned department that he was present on duty on 21st and 22nd July, 2014. In fact, the complainant/prosecutrix made two calls from her phone to the accused on 21.07.2014 and five calls were made by her from the cell phone of her husband on 22.07.2014. The learned trial Court has completely ignored the medical evidence that spermatozoa was detected in the vaginal swab taken from the introits and post fornix. It is further contended that sole testimony of the prosecutrix is sufficient to base conviction and no further corroboration is required.

5. We have heard learned counsel for the applicant-appellant and after having gone through the records of the case, we find that the finding of acquittal recorded by the trial Court is reasonable and logical. The prosecution has miserably failed to establish its version. There is an unexplained delay of 3 days in making the complaint to the police. The prosecution story was that the complainant/prosecutrix called respondent No.1-accused to his house to fit the regulator on the cylinder by making a phone call but the call details of mobile number of the complainant/prosecutrix Ex.DW6/D and Ex.DW6/E indicate that no call was exchanged between the complainant/prosecutrix and the respondent No.1-accused between 21.07.2014 and 22.07.2014. Furthermore, the call details record produced by the Assistant Nodal Officer of Vodafone Ltd. indicates that on 22.07.2014 from 8 A.M. to 11.46 PM, as many as 65 calls were exchanged between the complainant/prosecutrix and her husband and as per the tower

location chart, both cell phones were in the area of Malout, hence, the version of the prosecution that husband of the complainant/prosecutrix was away on his Army duty at Guwahati is also incorrect. The sample deposited with the chemical examiner was returned five times for removal of objections raised by the office of chemical examiner, however, there is no entry in the rojnamcha regarding removal of said objections. As per the testimony of Constable Jagjit Singh, he had handed over receipt qua depositing the sample to MHC Jaswinder Singh on 29.07.2014, which was corroborated by MHC Jaswinder Singh in his testimony as well, however, as per Rapat No.30 dated 30.09.2014 Ex.D2, Constable Jagjit Singh returned after depositing the sample with chemical examiner on 30.09.2014. Further, Constable Jagjit Singh stated that he got removed the objections from Dr. Pooja Kamra whereas Dr. Pooja Kamra, who appeared as PW-5, had stated in her cross-examination that she could not say whether chemical examiner raised any objection on the parcel sent by her. Furthermore, MHC Jaswinder Singh had deposed that neither any objection was raised by the chemical examiner nor he removed any objection; whereas PW7 HC Ajmer Singh had deposed that he got removed the objection on 26.09.2014 from the concerned doctor. He categorically stated that the chemical examiner raised objection first time that there was some difference in the report of the doctor. There were stark contradictions in the testimonies of the official witnesses and therefore, finding of the learned trial Court qua report of the chemical examiner, regarding the doubt about the veracity of the said report, cannot be interfered with.

6. On the other hand, the defence was successful in setting up the case that the respondent No.1-accused was implicated in a false case, as the complainant/prosecutrix and her husband took an amount of ₹50,000/- from the respondent No.1-accused on the pretext of arranging a matrimonial match for

him, which they did not want to return. DW-2 Parminder Kaur corroborated the said version and DW-3 Ramandeep Singh had proved on record the pronote (Ex.DW4/A) and receipt pronote (Ex.DW4/B) executed by the mother of the respondent No.1-accused in favour of Chanan Singh from whom she borrowed ₹50,000/-. The said Chanan Singh appeared as DW-5 and proved that mother of the respondent No.1-accused borrowed a sum of ₹50,000/- from him. The amount was given to the complainant/prosecutrix. It was also stated that a dispute had also arisen between the complainant/prosecutrix and the respondent No.1-accused and a panchayat was convened in which he was present. Therefore, the prosecution has miserably failed to prove its case beyond a shadow of reasonable doubt.

7. The power of the Appellate Court to unsettle the order of acquittal on the basis of re-appreciation of the evidence is subject to the settled law that where two views are possible and out of the two, one points towards the innocence of the accused, the view which favours the accused should prevail over the other pointing towards his guilt. Furthermore, the trial Court has the additional advantage of closely observing the prosecution witnesses and their demeanour, while deciding about the reliability of the version of prosecution witnesses. The presumption of innocence further gets reinforced on the acquittal of the accused. (See ***H.D. Sundara and others Vs. State of Karnataka, Criminal Appeal No.247 of 2011 decided on 26.09.2023; Kali Ram v. State of H.P., 1973 (2) SCC 808 and Chandrappa and others v. State of Karnataka, (2007) 4 SCC 415***).

8. In view of the facts and circumstances of the case, this Court finds that the defence has been successful in making serious dent in the prosecution case and that the prosecution has miserably failed to establish its version beyond reasonable doubt. Learned counsel for the appellant has failed to point out any perversity or illegality in the findings recorded by the learned trial Court, which

warrants interference by this Court. As such, there is no merit in the present application and the leave to appeal is declined. Resultantly, the main appeal is also dismissed.

(SUDHIR SINGH)
JUDGE

(HARPREET SINGH BRAR)
JUDGE

November 02, 2023

Pankaj*

Whether speaking/reasoned Yes/No

Whether reportable Yes/No