

In the High Court of Punjab and Haryana at Chandigarh

CRM-A-2862-2019
Reserved on: 26.4.2023
Date of Decision: 2.5.2023

Mango

.....Applicant

Versus

State of Punjab and others

.....Respondents

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

Present: Mr. K.B.Raheja, Advocate
for the applicant.

Ms. Monka Jalota, Sr. DAG, Punjab.

SURESHWAR THAKUR, J.

1. Through the instant application, the aggrieved victim-complainant prays for special leave to appeal being granted, to challenge the verdict of acquittal, as made on 16.10.2019, upon, Sessions Case No. 53 of 2018, by the learned Sessions Judge, Ferozepur. The said verdict of acquittal was made qua the accused therein, but was made on a private complaint, instituted by the complainant before the learned trial Judge concerned.

Factual Background

2. The genesis of the prosecution story become embedded in the complaint, which mentions that the complainant was married to Joginder Singh about five years ago, and, out of the said wedlock, one male child was born. It is stated therein, that there arose a dispute between the complainant and her husband, and, as such she was residing with her father Jeet Singh at village Kilche for the last about one year. It is further stated that on 24.7.2013, at about 2.00 P.M., she was present in her home along with her

younger sister Akko Bai, aged about 15 years, who had an injury on her left thigh. In the meantime, accused Mehar Singh came to her house on a tractor, and, started scattering the paddy husk lying in the house, to which the complainant raised objection. Then and there, accused Balvir Singh and Bagga Singh also came. Bagga Singh raised lalkara to catch hold of the complainant upon which Mehar Singh and Balvir Singh dragged her to a room. Accused Balvir Singh caught hold of her from her arms, and, Mehar Singh torn her clothes, and, committed rape on her against her wishes and consent. Since Balvir Singh had tied her mouth, she could not call for help. However, her sister Akko Bai kept crying for help. Complainant's younger brother Sonu, aged 5 years came there, and, then all the accused left the place of occurrence. He called his parents from the fields. The complainant told the entire episode to her parents. It is further averred, that after two hours, accused Pritam Singh armed with Gandasa, Bohar Singh also armed with Gandasa, Sucha Singh armed with hockey stick, came to their house, who caused injuries to complainant's father and sister Akko Bai. The complainant, her father and sister were brought to Civil Hospital Ferozepur, where their medico legal examination was conducted. It is also alleged that on the statement of the complainant, an FIR No 167 dated 26.07.2013 was registered against the accused persons, but to no effect. It is further alleged that the accused had broken the left leg of complainant's father. Complainant and her mother visited the police station many a times, and requested them to take action against the accused, but to no effect.

Preliminary evidence and summoning of the accused

3. In the preliminary evidence, the complainant examined six witnesses, and, thereafter closed her preliminary evidence. After recording the preliminary evidence, vide order dated 3.1.2018, accused Mehar Singh

and Balvir Singh were ordered to be summoned for offences punishable under Sections 376, 452, 34 of the IPC, whereas, accused Bagga Singh, Pritam Singh, Bohar Singh and Sucha Singh were ordered to be summoned for offences punishable under Sections 452, 323, 34 of the IPC.

Committal Proceedings

4. Since the offence constituted under Section 376 IPC, was exclusively triable by the Court of Session, thus, the learned committal Court concerned, through a committal order made on 1.9.2018, proceeded to commit the accused to face trial before the Court of Session.

Trial Court Proceedings

5. The learned trial Judge concerned, after hearing the learned Public Prosecutor concerned, and, also after hearing the learned counsel for the complainant, as well as the learned defence counsel, came to a prima facie conclusion, that the accused were amenable for theirs being tried for offences punishable under Sections 450, 452, 376-D, 323, 34 of the IPC. Resultantly, the learned trial Judge concerned, drew a charge against the accused, for offences punishable under Sections 450, 452, 376-D, 323, 34 of the IPC. However, the accused did not plead guilty to the above drawn charge, and, rather claimed trial.

6. In proof of its case, the prosecution examined 07 witnesses, and, thereafter the learned Public Prosecutor concerned, closed the prosecution evidence. After the closure of prosecution evidence, the learned trial Judge concerned, drew proceedings, under Section 313 of the Cr.P.C., but therein, the accused pleaded innocence, and, claimed false implication. They also chose to adduce defence evidence, and, led one witness into the witness box.

verdict of acquittal was made, an FIR was also lodged in respect thereof, on 26.7.2013. The said FIR was lodged much belatedly since the crime event taking place, at the crime site on 24.7.2013. Moreover, since the said delay remained unexplicated, therefore the police officer concerned, did not choose to draw a report in terms of Section 173 Cr.P.C., against the accused, but rather chose to institute a cancellation report Ex. DC, before the learned Court concerned. It appears that subsequent to the filing of the cancellation report, before the learned Court concerned, the complainant, after five years elapsing since the institution of the FIR (supra), chose to rather file on 17.9.2018, thus the apposite complaint, before the learned trial Judge concerned.

8. The initial delay in lodging of the FIR(supra) with the police in respect of an incident which occurred on 24.7.2013, is but, with an unexplained delay of more than two days. Therefore, but obviously the investigating officer concerned, chose to institute a cancellation report before the learned Court concerned. The said cancellation report, thus became anviled, upon, the above unexplained delay, thus led to the forming an opinion, that the incident was false, or was stained with the vice of premeditation, and, concoction. The investigating officer also took to mention in the cancellation report, that since the prosecutrix refused to supply her DNA sample rather for matching thereof, being made with the DNA sample of accused Mehar Singh, whereas supply thereof, was but imperative for making a clinching opinion about the incriminatory participation in the crime event, by the accused. Thus, obviously given the prosecutrix refraining from doing so, but was concluded to be exemplificatory of the FIR (supra) containing a false version, in respect of the crime event.

9. It is not contested by the learned counsel for the applicant, that the complaint(supra) is in respect of the very same event, as became enclosed in the FIR, which became lodged in the year 2013. As above stated, the complaint was lodged five years since the lodging of the FIR (supra), which resulted in the cancellation report, being filed by the investigating officer concerned, before the learned Magistrate concerned. Therefore, but obviously even the said happening of delay of five years, since the lodging of the FIR, and, the institution of the instant complaint, before the learned trial Judge concerned, is also of a grave importance, as it but exemplifies, and, also leads to a further conclusion, that it is thus tainted with the vice(s) of premeditation and concoction. Therefore, credence was not assignable to the contents carried therein, nor credence was assignable to the statement(s) of the complainant, and/or to her witnesses, as aptly done by the learned trial Judge concerned.

10. A reading of the first line of the cross-examination of PW-3, makes emergence(s), that she has deposed therein, that she has two sisters and two brothers, and, has also deposed that at the relevant time, her brothers, and, sisters were in the house, where the crime occurrence took place. The said deposition is in contradiction to the averment(s) made in the complaint, by the prosecutrix, that at the time of the occurrence, the victim along with her sister Akko Bai, were present in the house, whereas, her brother Sonu, aged five years came there subsequently. The above made testification by PW-3, is, thus in complete contradiction with her averment, as, made in the complaint, and, but makes her deposition to be incredible. Assuming that her testification, on oath, is to be assigned credence, thereupon, if her siblings were present at the crime site, then they were required to be making an able intervention, but it is enigmatic that despite

their presence at the crime site, they did not intervene against the accused subjecting the prosecutrix to sexual assault. Even they did not raise any hue and cry to attract the persons residing in the neighbourhood, besides when PW-5, who medico-legally examined, the victim, also did not highlight in her MLR, that any injuries external or internal, thus existing on the body of the prosecutrix. Thus, the allegations of sexual assault, as made by the complainant become completely belied. Furthermore, though PW-3 deposed, that during the course of sexual assault, which the accused allegedly made upon the victim, did beget the clothes of the victim becoming torn, but yet strangely the said clothes were never taken into possession during investigations, being made into the FIR. It appears that the said clothes were not taken into possession, by the investigating officer concerned, as the same were never handed over to him, by the prosecutrix or by her relatives. Resultantly, the said deposition becomes false or a tainted one.

11. Be that as it may, at the fag end, the learned counsel for the applicant has made a submission that since the chemical examiner in his apposite report, to which Ex. P-11 becomes assigned, has made a speaking that spermatozoa was detected in the contents of exhibit-I. Therefore, he argues that thereby the guilt of the accused becomes cogently established. However, the above argument becomes frail. The reason being that even if Ex. P11 recites the factum, of spermatozoa being detected in the contents of exhibit-I, but since the investigating officer concerned, did not collect, the sperms of the accused, nor sent them along with the vaginal swabs of the prosecutrix, to the chemical examiner concerned, thereby the latter was precluded to make relevant inter se matchings thereof(s), besides became precluded to pronounce that the spermatozoa, as was contained in the

contents of exhibit-I, was related to the biological sperm of the accused. Hence, no credence can be assigned to Ex. P-11.

Final order

12. Consequently, for the reasons assigned hereinabove, this Court finds no reason to interfere with the impugned verdict of acquittal, as made by the learned trial Court concerned. Thus, leave to appeal against the verdict of acquittal, as made on 16.10.2019, upon Sessions Case No. 53 of 2018, by the learned Sessions Judge, Ferozepur, is declined. Consequently, the application, seeking leave to appeal, is hereby dismissed. The impugned verdict of acquittal, as made by the learned trial Court, is maintained, and, affirmed. The case property, if any, be dealt with, in accordance with law, but after the expiry of the period of limitation for the filing of an appeal.

13. Records be sent down forthwith.

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

May 2nd, 2023
Gurpreet

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