

CRA-AD-45-2022 (O & M) 2024:PHHC:114954-DB



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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRA-AD-45-2022 (O & M)
Date of decision: 03.09.2024

Kuldeep Kaur
..... Appellant(s)
V/s
State of Punjab and anr. ...Respondent(s)

CORAM: HON’BLE MR. JUSTICE SUDHIR SINGH
HON’BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Pardeep Virk, Advocate,
for Mr. P.S. Sekhon, Advocate,
for the appellant.

Mr. Mohit Kapoor, Sr. DAG, Punjab,
for respondent No.1.

Mr. Naveen Sharma, Advocate,
for respondent No.2.

JASJIT SINGH BEDI, J.

The present appeal has been filed against the judgment of
acquittal dated 20.12.2021 passed by the Additional Sessions Judge,
Bathinda.



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2. The case of the prosecution is that on 26.10.2020, Sub Inspector (SI) Harpinder Kaur along with a police party had just stepped outside the gate of Police Station Civil Lines in connection with patrolling and checking of suspected persons, when she met the prosecutrix along with her husband Rajwinder Singh who got recorded her statement to her, interalia, alleging that she was a house wife and her husband Rajwinder Singh was earlier working as an Assistant Sub Inspector of Police (ASI) and had been dismissed. However, she along with her husband had been acting as an informer of the police giving tip offs about drug traffickers. It is further alleged that they gave information to the higher Police officials of Punjab Police about some unknown persons indulging in trafficking narcotics drugs whereupon they were told by the higher officials to contact DSP Gursharan Singh posted in the Special Task Force, Narcotics, Bathinda and gave her mobile number as 73474-95495. She met DSP Gursharan Singh for giving information due to which she got acquainted with him. It is further alleged that DSP Gursharan Singh called her on her mobile No.98154-25925 and used to talk to her on one pretext or the other. It is further alleged that DSP Gursharan Singh used to ask her to come to different hotels and on her refusal, he threatened her with the registration of a criminal case under the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, 'NDPS Act'). It is further alleged that DSP Gursharan Singh got annoyed and thereafter got registered an FIR No.118 dated 22.07.2020 under Section 22, 25 of the NDPS Act, PS Nehianwala, Bathinda against her, her husband



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Rajwinder Singh and her son Harpreet Singh due to which she gave in to his demand and on 13.09.2020, DSP Gursharan Singh asked her to come at Ashiana Hotel and she reached there about 3.30/4.00 PM where DSP Gursharan Singh raped her in room No.5 of the hotel. It is further alleged that thereafter also he used to physically exploit her in Ashiana Hotel and on that day also i.e. on 26.10.2020, he called her from his mobile No.98154-25925 directing her to come in Room No.13 of Ashiana Hotel, Bathinda and she complied with the demand of DSP Gursharan Singh who raped her in the hotel whereupon she raised a hue and cry and saved herself and thereafter she narrated the occurrence to her husband and went to the police station to report the matter. On the basis of aforesaid statement, the FIR in question was registered against the accused. SI Harpinder Kaur arrested him on 27.10.2020 and also got recovered one mobile phone with two SIM numbers i.e. 73474-95495 and 90417-87700 and another mobile phone bearing SIM numbers 87661-00001 and 94175-11670, which were taken into possession. Further investigation was handed over to Sub Inspector (SI) Amandeep Kaur who got conducted the medical examination of the prosecutrix on 27.10.2020. Vaginal swab samples of the prosecutrix as well as blood samples of the accused were obtained by the medical officer which were later on dispatched to the FSL for detection of human semen and conducting DNA profiling. Accused was produced in the court on 27.10.2020 and police remand was obtained. The prosecutrix also suffered statement before the JMIC, Bathinda under Section 164 of Cr.P.C. on 29.10.2020. On the



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completion of the investigation the Investigating Officer submitted the police report under Section 173(2) Cr.PC before the competent court.

3. Pursuant to the presentation of the challan, the case was committed to the Court of Sessions and charges came to be framed under Sections 376 and 506 IPC against the accused on 17.02.2021.

4. The prosecution examined as many as 16 witnesses during the course of the Trial.

5. The applicant-prosecutrix was examined as PW-1 and denied the entire prosecution case set-up by her regarding the commission of rape upon her.

Her husband-Rajwinder Singh was examined as PW-8 and did not support the prosecution case and was declared hostile.

Dr. Alka Garg, Senior Medical Officer, Raman Mandi was examined as PW-2. She stated that she conducted the medico legal examination of the prosecutrix and found no injury on her person. There was no evidence of rape having been committed upon her and the human semen present on the swabs did not belong to the accused.

Sikander Goyal, owner of the Ashiana Hotel, District Bathinda, was examined as PW-12 and did not identify the accused as having visited his hotel.

6. As many as 05 defence witnesses were examined.

7. On conclusion of the Trial, the accused came to be acquitted of the charges framed against him. However, directions were issued to initiate



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the disciplinary action against the police officials, registration of a criminal case against the police officials and the prosecutrix, prosecution of the witnesses for false evidence and awarding of compensation to the acquitted accused.

8. The present appeal has been filed against the judgment of acquittal dated 20.12.2021 passed by the Additional Sessions Judge, Bathinda.

9. The learned counsel for the appellant contends that the Additional Sessions Judge, Bathinda misread the evidence on the record and wrongly acquitted the respondent No.2-accused/Gursharan Singh without appreciating the facts and circumstances of the case. It was the categorical case of the appellant that respondent No.2 had committed the offence in question by threatening her to lodge false cases against her and her family members. She had not deposed against the accused before the Trial Court and had turned hostile just to save herself and her family members from the wrath of the accused. Therefore, the judgment of acquittal was liable to be set aside and the case was fit to be remanded back for a fair trial after recording the evidence of the appellant in a proper manner.

10. The learned counsel for respondent No.2 (acquitted accused), on the other hand, contends that no fault could be found with the impugned judgment of acquittal. The Trial Court during the course of the trial had categorically found that the accused had been falsely implicated at the instance of the prosecutrix and certain police officials against whom



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directions had been issued. Other than the deposition of PW-1-Kuldeep Kaur and PW-8-Rajwinder Singh, there was specific deposition of Dr. Alka Garg-PW-2 who had conducted the medico legal examination of the prosecutrix and had found no evidence of rape. Similarly, Sikander Goyal, owner of Ashiana Hotel, District Bathinda, had been examined as PW-12 and had stated that he had seen the accused for the first time in the Court. Thus, in addition to the prosecutrix turned hostile, there were other witnesses whose deposition did not support the prosecution version and therefore, the present appeal was liable to be dismissed.

11. The learned counsel for the respondent No.1-State, on the other hand, has supported the case of the appellant stating that the case was fit to be remanded back to the Trial Court since the prosecutrix/appellant was forced to turn hostile on account of pressure being exerted by the acquitted accused.

12. We have heard the learned counsel for the parties and gone through the record.

13. The appellant/prosecutrix Kuldeep Kaur was examined as PW-1 and has completely denied the prosecution version set-up by her regarding the commission of rape upon her. Her husband-Rajwinder Singh was examined as PW-8 and has also not supported the prosecution case and was declared hostile. Other than the said statements, there is the categorical deposition of PW-2/Dr. Alka Garg, Senior Medical Officer, Raman Mandi, who conducted the medico legal examination of the prosecutrix and stated



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that there was absolutely nothing to suggest that the rape had been committed upon her. Similarly, the statement of Sikander Goyal, the owner of the Ashiana Hotel, District Bathinda was recorded, who did not identify the accused as having visited his hotel ever.

14. Quite apparently, there is absolutely no evidence to suggest that the acquitted accused had committed the offence in question. It was in these circumstances that the Trial Court while acquitting the accused had issued directions against the prosecution witnesses including the prosecutrix.

15. As to how an appeal against a judgment of acquittal is to be dealt with, the Hon'ble Supreme Court in ***Kallu @ Masih & Ors. Vs. State of Madhya Pradesh 2006(1) RCR (Criminal) 427*** has held as under:-

“ 8. While deciding an appeal against acquittal, the power of the Appellate Court is no less than the power exercised while hearing appeals against conviction. In both types of appeals, the power exists to review the entire evidence. However, one significant difference is that an order of acquittal will not be interfered with, by an appellate court, where the judgment of the trial court is based on evidence and the view taken is reasonable and plausible. It will not reverse the decision of the trial court merely because a different view is possible. The appellate court will also bear in mind that there is a presumption of innocence in favour of the accused and the accused is entitled to get the benefit of any doubt. Further if it decides to interfere, it should assign reasons for differing with the decision of the trial court.”

16. In view of the aforementioned discussion and keeping in view



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to interfere with the well reasoned judgment of acquittal dated 20.12.2021 passed by the Additional Sessions Judge, Bathinda. Therefore, the present appeal stands dismissed.

(JASJIT SINGH BEDI)
JUDGE

(SUDHIR SINGH)
JUDGE

September 03, 2024
sukhpreet

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No