

CRA-AD-142-2020(O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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Date of decision: 06.08.2024.

J xxxxxxxx

...Appellant.

Versus

State of Punjab and another

...Respondents.

CORAM: HON'BLE MRS. JUSTICE LISA GILL
HON'BLE MRS. JUSTICE SUKHVINDER KAUR

.....

Present: Mr. Nakul Sharma, Advocate
for the appellant.

Sukhvinder Kaur, J.

1. The appellant/ prosecutrix has preferred the instant appeal against judgment dated 30.11.2019, passed by learned Additional Sessions Judge, Ludhiana, vide which respondent-accused Pargat Singh has been acquitted.

2. The brief facts as per prosecution story are that on 27.06.2016 ASI Rao Varinder Singh received telephonic information that someone had entered the house of Jagtar Singh after scaling the wall. ASI Rao Varinder Singh alongwith HC Amar Singh and HC Charnajit Singh went to the house of Jagtar Singh at village Rajjewal. Accused Pargat Singh had been apprehended there. Prosecutrix got recorded her statement to the effect that she is a house hold lady and on 27.06.2016, nephews of her husband

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Harpreet Singh and Jasvir Singh had come to her house. After taking dinner, complainant and her husband Jagtar Singh alongwith Harpreet Singh and Jasvir Singh were making arrangements in their rooms for sleeping. Pargat Singh entered into the house of complainant at about 10.20 P.M. after scaling the boundary wall of the house. Door of the room of prosecutrix was open. Pargat Singh entered the said room and attempted to commit rape upon the prosecutrix. Prosecutrix protested, she sustained injuries, when she raised alarm, Jagtar Singh, Harpreet Singh and Jasvir Singh were attracted to the spot, they rescued the complainant from the accused and thereafter, accused was caught hold by Jagtar Singh and Harpreet Singh.

3. On the basis of aforesaid statement suffered by the prosecutrix, FIR No.113 dated 27.06.2016, under Sections 376, 511 and 457 IPC was registered at Police Station Sadar, Ludhiana. Site-plan of place of occurrence was prepared. Photographs of the spot were clicked. The plier used by accused for cutting the wires of CCTV camera was taken in police possession. Accused and prosecutrix were got medico-legally examined. On 12.07.2016, CD and photographs produced by Jagtar Singh were taken into police possession. Statements of witnesses under Section 161 Cr.P.C. were recorded. After completion of investigation, final report under Section 173 Cr.P.C. was presented in the Court.

4. After complying with provisions of Section 207 Cr.P.C., learned Judicial Magistrate Ist Class, Khanna, committed the case for trial before Court of Sessions.

5. After finding a prima facie case against the accused, he was charge-sheeted for the offences punishable under Sections 457 and 376 IPC

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read with Section 511 IPC, to which he pleaded not guilty and claimed trial.

6. As many as 08 witnesses were examined by the prosecution to prove its case. Statement of accused under Section 313 Cr.P.C. was recorded while putting incriminating evidence against him. He claimed innocence and false implication. The accused raised a plea that he had been in a relationship with the prosecutrix and she herself had called him number of times on the day of occurrence and instructed him to bring a plier to cut the wires of CCTV camera and then enter the house. Accused tendered into evidence Mark AI i.e. copy of screen shot of call details consisting of 23 pages.

7. After considering the evidence on record, learned trial Court found the same to be woefully insufficient to convict the accused who was accordingly acquitted of the offences for which he had been charge-sheeted, vide impugned judgment dated 30.11.2019.

8. Aggrieved of the said decision, present appeal has been filed by the appellant challenging acquittal of the accused/ respondent No.2.

9. Learned counsel for the appellant has contended that accused was caught red-handed at the spot when he attempted to commit rape upon the prosecutrix. Husband of prosecutrix and her nephew Harpreet Singh witnessed the aforesaid occurrence, but trial Court has ignored that prosecutrix was rescued by her husband, therefore, accused/ respondent No.2 could not succeed in his malafide intention to commit rape upon the prosecutrix. He urged that testimonies of prosecutrix, her husband and nephew, coupled with medico-legal report of prosecutrix, are sufficient to prove the case of the prosecution against the accused. As per the medico-

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legal report of the prosecutrix, injuries were found on her person, which also strengthens the case of the prosecution. Remaining documents including memos vide which photographs and CD pertaining to CCTV footage was taken into police possession have also been ignored by the trial Court. Learned counsel for the appellant submitted that evidence available on record is sufficient to prove the guilt of the accused and he has been wrongly acquitted by the trial Court. It is thus prayed that this appeal be allowed, impugned judgment dated 30.11.2019 be set aside and accused be convicted for the offences as charged and punished accordingly.

10. Heard learned counsel for the appellant and have carefully perused the file. Copy of record available with learned counsel for the appellant as furnished in Court has been perused, copy of the same has been retained.

11. In order to prove its case, prosecutrix has herself stepped into witness-box as PW1 and deposed that on 27.06.2016 nephews Harpreet Singh and Jasvir Singh and her husband Jagtar Singh were sleeping in the room at the backside of the house, whereas she went for sleeping in a separate room. At about 10.20 P.M., accused entered into her room and tried to commit rape upon her. On hearing hue and cry raised by her, when she retaliated and sustained injuries, her husband and nephews came at the spot, rescued her and apprehended the accused. She proved her statement Ex.PA suffered by her before the police.

PW2-Jagtar Singh, husband of the prosecutrix, while appearing as PW2 stated that, on 27.06.2016 he alongwith his nephews had gone to sleep in a room at backside of their house while prosecutrix went to sleep in

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a separate room at 10.20 P.M. Accused entered the house while scaling the wall. He tried to commit rape upon her. On hearing noise raised by his wife, he along with his nephew came to the room of prosecutrix. They apprehended accused and handed over him to the police. He also stated that he handed over to police the clothes worn by the prosecutrix at the time of occurrence, vide memo Ex.PW2/B and vide memo Ex.PW2/C, he handed over the photographs Ex.P1 to Ex.P3 and CCTV camera footage to the police. Vide memo Ex.PW2/A, he handed over the plier to the police.

PW3-Dr. Ravinder Kaur, Medical Officer, Civil Hospital, Khanna conducted medico-legal examination of prosecutrix on 27.06.2016, who was brought by her relative Tarlok Singh. She was admitted with alleged history of assault. On examination, following injuries were found on her person:-

1. Purplish bruise 8 x 8 cm on right shoulder joint
2. Purplish bruise 5 x 5 cm on left shoulder
3. Complained of pain in right hand. Swelling present.
Advice ortho opinion
4. Purplish bruise 10 x 10 cm on right I lliac region. Ortho
opinion
5. Purplish bruise 15 x 15 cm on lateral side of right thigh
6. Purplish bruise 15 x 15 cm just above right knee. Ortho
opinion
7. Purplish bruise 5 x 5 cm just below left knee.

The said witness proved on record original copy of MLR

Ex.PW3/A of prosecutrix and pictorial diagram showing the seat of injuries

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Ex.PW3/B.

PW4-Jagveer Singh stated that on 26.06.2016, he had gone to village of his maternal grandparents to meet his maternal uncle (Mama) Jagtar Singh and aunt (Mami)/ prosecutrix wife of Jagtar Singh. At about 10.15/ 10.30 P.M., after taking dinner, he alongwith his maternal uncle and his cousin Harpreet Singh (son of his Massi) went to a room, situated at backside of the house for sleeping. His aunt after completing her work went to sleep in the front room of the house. On hearing alarm raised by the prosecutrix, they came out of their room and saw that Pargat Singh was doing forcible act with the prosecutrix in the said room. The prosecutrix told them that Pargat Singh had entered her room after scaling the wall of their house and was doing forcible act with her. They apprehended the accused and his uncle Jagtar Singh informed the police. After 30-45 minutes, the police reached at the spot.

PW-5 ASI Om Parkash, deposed that on 27.06.2016 when he was posted as Incharge Malkhana, Police Station Sadar Khanna, ASI Rao Varinder Singh deposited with him the case property of the present case i.e. one torn shirt, one plier of blue colour.

PW-6 Dr. Ankit Aggarwal, Medical Officer, Civil Hospital, Khanna conducted medical examination of accused Pargat Singh on 02.08.2016 and opined that there was nothing to suggest that accused was unable to perform sexual intercourse. He proved MLR of accused on record as Ex.PW6/A.

PW7-ASI Rao Varinder Singh, who is the Investigating Officer of the present case, deposed that on 27.06.2016, when he was patrolling in

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the area of village Rajjewal, he received information from police station that some persons had trespassed into the house of Jagtar Singh. Then he along with police party went to the house of Jagtar Singh, where prosecutrix got recorded her statement Ex.PA with him, which was also endorsed by Jagtar Singh. After making endorsement upon the same, it was sent for registration of FIR and thereafter FIR Ex.PW3/A was registered by SI Manjit Singh. He also deposed about various investigation proceedings conducted by him in this case.

PW8-Varinder Singh @ Prince, Photographer stated that he did not visit any spot in connection with this case and did not click any photographs. This witness was declared hostile on request of learned State counsel alleging that he was suppressing the truth.

12. After having heard learned counsel for the appellant and perusing the impugned judgment as well as other relevant record, we are of the considered opinion that the prosecution in the instant matter was unable to prove its case against the accused beyond reasonable doubt.

13. As per the prosecution version, accused entered the room of the prosecutrix by scaling the wall of her house where she was sleeping and tried to commit rape upon her. Husband of the prosecutrix, Jagtar Singh and his nephews Harpreet Singh and Jasvir Singh were sleeping in a room at the backside of the house, while the prosecutrix went to sleep in a separate room. When she tried to retaliate, she sustained injuries. The alarm raised by her attracted her husband and nephews, who rescued her and apprehended the accused.

14. On the other hand, the specific line of defence adopted by

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accused is that he was in a relationship with prosecutrix who herself had called him. She had a telephonic conversation with him on 27.06.2016. She also apprised the accused as to from which place he could easily enter her house after disconnecting the wires of CCTV camera. The copy of screen shot of said call details consisting of 23 pages was tendered by accused as Mark A1.

15. The CCTV footage which has been relied upon by the prosecution, was not played during testimony of the prosecutrix, so as to get the accused identified from the prosecutrix in the said CCTV footage. During her cross-examination, it has been admitted by prosecutrix that accused was known to her since the last 15 years, parents of prosecutrix are residing at Delhi and accused used to visit her matrimonial house. She denied in her cross-examination that accused had provided her a mobile bearing number 73408-55292, from which, as per the defence version, calls were repeatedly made to the accused, screen shot of which was relied upon as Mark A1. Screen shot pertaining to mobile No.94649-14300 has also been produced though the prosecutrix denied making any call to accused from the aforesaid number, yet she has admitted that aforesaid mobile is of her husband, which was operative on the date of the alleged occurrence. Screen shot regarding receipt of calls on 27.06.2016 from the aforesaid number has been relied upon by the accused and time of the said call has been shown as 2:07 A.M. Learned trial Court has rightly observed that even if the Nodal Officer from the Department has not been examined to authenticate the genuineness of aforesaid screen shot regarding calls having been made or received from the aforesaid number to the mobile number of

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accused, but it assumes significance when it is taken into consideration along with call recording purported to be of prosecutrix and accused.

16. As per defence version, accused called the prosecutrix from Delhi. She told him to meet at a particular point at Ambala and demanded a mobile set besides some suits from the accused. Audio CD recordings Mark D1, D2 and D3 were duly played before the learned trial Court during cross-examination of PW1, containing the details of aforesaid conversation though denied by the prosecutrix. Conversation purported to have taken place between prosecutrix and accused regarding demand of Rs.20,000/- to Rs.25,000/- by prosecutrix from accused for her medical treatment, meeting of PW1 and accused at Dholewal Chowk, was specifically put to her as Mark D4 and D5. Another audio call recording Mark D6 claimed to be between prosecutrix and accused was also produced, allegedly containing conversation regarding information given by the prosecutrix to accused regarding boundary wall of the house of the prosecutrix, installation of CCTV camera, location of the wires of CCTV camera, not to open the gate by the accused as it makes sound, tying of polythene by the prosecutrix alongwith wire of CCTV camera to indicate the accused as to which wire was to be cut by him before entering into her house, keeping of dustbin bucket by the prosecutrix near the wall of the house to facilitate scaling of the said wall by the accused, reconnecting of CCTV wires after visit of the accused, so as to avoid any doubt in the mind of husband of the prosecutrix or any other family member. It has been observed in the judgment that as per CCTV footage, the accused was scaling the wall of the house with support of some article kept near the wall, upon which he kept his feet in

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order to enter the house and from the CCTV footage, it could be clearly visualized that no effort was made by the accused to scale the wall, rather his scaling the wall was facilitated with some object upon which he had put his feet.

17. During proceedings before learned trial Court, an application was moved by defence for obtaining voice samples of prosecutrix, so as to have compared with the female voice in the aforesaid conversation recorded in CD Mark D1 to D6, which was allowed by the trial Court, vide order dated 02.06.2017. However, prosecutrix expressed her unwillingness to give her voice samples. Requisite inference necessarily can be drawn from such refusal. PW2 husband of prosecutrix has denied the conversation between prosecutrix and accused and her coming to Ludhiana with accused Pargat Singh while accompanying him from Ambala in a car for want of knowledge. He contradicted PW1 that she was not having any mobile phone when he stated that prosecutrix was having mobile phone from which she used to call him/ PW2.

18. Perusal of record reveals that order dated 18.08.2017 was passed by learned trial Court with the observation that appropriate inference regarding refusal on the part of the prosecutrix to give voice sample would be drawn at appropriate stage of trial. No cogent or convincing reason has come forth regarding refusal of the prosecutrix for not giving the said voice sample for comparison. It can further not be brushed aside that it is not a single instance of alleged conversation between prosecutrix with the accused, rather various call recordings in the form of CDs Mark A1 to A6 alongwith the transcription have been produced on record to this effect.

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19. It has also not been explained by the prosecutrix as to how the accused had entered her room. Even if it is presumed that he had entered the house of the prosecutrix after scaling the wall of the house, it still remained unexplained that how he easily identified the room, where prosecutrix was sleeping and entered therein. In this context, statement of PW4 is quite contradictory to the prosecution version when he stated that prosecutrix was working outside the kitchen at the time of occurrence, whereas the version of the prosecutrix is that she was in her room at the time of the alleged occurrence.

20. One Tarlok Singh was alleged to be present at the time of the alleged occurrence. Though prosecutrix and PW4 are silent qua the presence of the said person, however, PW2 has admitted that Tarlok Singh came at about 6.00/ 6.30 P.M. and at the time of occurrence, he was present in the house. He was confronted with his statement Ex.DB, where no such fact had been recorded. Name of Tarlok Singh finds mention in MLR, Ex.PW3/A, as the relative accompanying the prosecutrix. If as per the deposition of prosecutrix and PW4, aforesaid Tarlok Singh was not present at the place of occurrence then it has not been explained as to how he accompanied the prosecutrix at mid night to Civil Hospital for her medical examination. Thus non examination of Tarlok Singh, a material independent witness deals a serious blow to the prosecution version.

21. There are material discrepancies in the testimonies of prosecution witnesses. It is to be noted that PW8, who allegedly took photographs Ex.P1 to Ex.P3 has not supported the prosecution case. PW8 denied preparation of any site plan in his presence or handing over of any

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photographs by him to police authorities. PW5 ASI Om Parkash, In-charge Malkhana with whom the case property i.e. one torn shirt and blue plier was deposited deposed that the case property was not sealed. The same was never produced in Court or identified by the relevant witnesses. Evidence on record is indeed sketchy.

22. Keeping in view the factual matrix, it is evident that medical evidence indicating bruises and complaint of pain, with no injury on private part, does not necessarily point to commission of the offence as alleged.

23. So keeping in view the facts and circumstances of the present case and after analyzing the evidence on record it can safely be concluded that prosecution has failed to prove its case against the accused beyond reasonable doubt. Evidence on record is indeed insufficient to convict the accused of the offence as charged. He has been rightly acquitted by learned trial Court.

24. It is a settled position that an order of acquittal is not to be interfered with lightly because presumption of innocence of the accused is further strengthened by acquittal. Interference is called for only under compelling circumstances, where impugned findings are perverse, unreasonable and convincing material on record is ignored unjustifiably by the trial Court. Reference in this regard can be made to judgment of Hon'ble the Supreme Court in 'Mahamadkhan Nathekhan vs. State of Gujarat' **2014 (14) SCC 589**. Learned counsel for the appellant was unable to point out any illegality, infirmity or perversity in the impugned decision dated 30.11.2019 which calls for interference.

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25. No other argument was raised.
26. In view of the above, the appeal being bereft of any merit is dismissed with impugned judgment dated 30.11.2019 passed by learned trial Court being upheld.
27. Pending applications, if any, stand disposed of accordingly.

(SUKHVINDER KAUR)
JUDGE

(LISA GILL)
JUDGE

06.08.2024.

Komal

Whether speaking/reasoned? : Yes/ No

Whether reportable? : Yes/ No