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

**CRM-A-1418-MA-2018
Date of decision:26.11.2024**

XXXX ... Appellant
Vs.

State of Punjab & another ... Respondents

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

Present: Mr. Harmeet Singh, Advocate for the applicant.

Mr. R.S. Pandher, Sr. DAG, Punjab.

Mr. Jagjit Singh, Advocate for respondent No.2.

...

SUKHVINDER KAUR, J.

1. Applicant/appellant, XXXX has preferred the instant application under Section 378(3) Cr.P.C. seeking leave to appeal against judgment dated 21.02.2017 passed by learned Additional Sessions Judge, Kapurthala, vide which respondent No.2/Harpreet Singh @ Happy has been acquitted.

2. Brief facts of the case are that a complaint was filed by complainant/victim before learned trial Court alleging that about 7-8 months before filing of the complaint, complainant was coming to District Court Complex, Kapurthala. There accused Harpreet Singh @ Happy who had come in a blue coloured Safari vehicle stopped her and talked to her.

While talking to her, he assured to send her to England for Rs.5 lakhs and

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also exchanged his mobile number with her. After sometime, on receiving phone call of accused Harpeet Singh @ Happy, complainant gave Rs.2 lakhs to him near DC Chowk, Kapurthala. He took her passport. It was further averred that after some days, accused Harpreet Singh @ Happy threatened the complainant that he would send her abroad only if she would develop illicit relations with him. On her refusal, he threatened her that SHO Subhanpur, Swaran Singh Bal was his relative and he would get her and her family involved in a false theft case. He did not return her passport. Under such threat, accused committed wrong act with complainant in his Tata Safari car. On 10.07.2005 at 7:00 P.M., when complainant along with her three sons, Ajay Pal Singh, Jugraj and Sirtaj Singh were present at home, accused Harpreet Singh @ Happy, SHO Subhanpur Swaran Singh Bal along with two constables and ASI Karamjit Singh forcibly entered house of the complainant and compelled her to append her signatures on blank papers. On her refusal, Sirtaj Singh was taken to PS Subhanpur where they took signatures of complainant on blank papers. She and her son were kept in illegal confinement and released only on 11.07.2005 at 8:00 P.M. They also threatened the complainant that if she demanded Rs.2 lakhs and passport, she would be implicated in some false case. Complainant gave application to Illaqa Magistrate, Kapurthala and SSP, Kapurthala on 12.07.2015 but accused implicated complainant and her son on 17.07.2015 in some false case. Upon the said facts, present complaint was filed by the complainant.



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3. After recording of preliminary evidence, accused Harpreet Singh @ Happy was ordered to be summoned under Section 376 IPC vide order dated 12.02.2013 by the learned Illaqa Magistrate and vide order dated 03.09.2013 after procuring presence of the accused, case was committed to the Court of Sessions for trial.

4. Finding a prima facie case, charge for offence punishable under Section 376 IPC was framed against accused by learned trial Court to which he pleaded not guilty and claimed trial.

5. In order to prove her case, complainant examined herself as PW1 and PW2 Sirtaj Singh, her son.

6. After closing of complainant/prosecution evidence, statement of accused Harpreet Singh @ Happy under Section 313 Cr.P.C. was recorded in which all the incriminating evidence appearing against him was put to him. He claimed innocence and false implication. In his defence evidence, accused tendered certified copy of charge sheet, statements of witnesses examined in other case along with copy of judgments - Ex.D1 to D10.

7. After considering the evidence on record, learned trial Court held that said evidence was not sufficient to convict the accused and that complainant failed to establish her case against the accused beyond shadow of reasonable doubt. Accused was thus acquitted of the charge framed against him by giving him benefit of doubt vide judgment dated

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21.02.2017.

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

9. Learned counsel for appellant while referring to testimony of PW1 complainant/victim and PW2 Sirtaj Singh vehemently contended that offence against the accused stands duly proved. Learned trial Court has failed to appreciate the evidence of these witnesses in the right perspective. Learned trial Court has not appreciated that why complainant/appellant would involve her own son in an offence where her own integrity was in question. This lends corroboration to the fact that present case was a genuine case and accused had infact committed the offence as alleged. He further contended that it is immaterial that there is no medical evidence is on record regarding commission of sexual assault by the accused upon the complainant, as complainant is mother of three sons and a married lady, who obviously was habitual to sexual intercourse with her husband. He has argued that learned trial Court has not appreciated the facts of the case in entirety and has reached at the wrong conclusion. He submitted that sufficient evidence is present on record to prove guilt of the accused and has prayed that accused may be convicted and punished accordingly as per law.

10. In order to prove her case, prosecutrix herself stepped in the

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witness box as PW1 and deposed as per averments made in the complaint Ex.PA filed by her before the Illaqa Magistrate. She testified that in the month of July, 2005, she had come to old District Court Complex, Kapurthala, where accused Harpreet Singh @ Happy came in a blue Tata Safari car and asked her about her name and other personal details and further told her that he had come to know that she wanted to go abroad. They exchanged mobile phone numbers and after some days, accused Harpreet Singh @ Happy called her to DC Chowk, Kapurthala with an amount of Rs.1 lakh and passport for introducing her with the travel agent through whom she was to be sent abroad. She went to DC Chowk, Kapurthala. Harpreet Singh @ Happy met her there and asked her to pay Rs.2 lakhs, which she paid to him and also gave her passport to him. After some days, he made a phone call to her and told her that if she wanted to go abroad she would have to make physical relations with him to which she refused. He threatened her that SHO Sarwan Singh Bal was his relative and through him he would approach the police. After one week, Harpreet Singh @ Happy came to her house with SHO Sarwan Singh, ASI Karamjit Singh and they forced her to sign on blank papers and also told her not to demand Rs.2 lakhs and passport from him. On her refusal, she along with her son Sirtaj Singh were taken by the police of PS Subhanpur, Kapurthala. On 10.07.2005, she was forced by ASI Karamjit Singh and SHO Sarwan Singh to sit in the Tata Safari car which was parked in the premises of police station. Harpreet Singh @ Happy was

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already sitting in the said car and he sexually assaulted her 5-6 times. In the early hours of next morning, she came out from the car when Harpreet Singh @ Happy was asleep and she went into the police station to verify about her son Sirtaj Singh and despite pressure from SHO Sarwan Singh and ASI Karamjit Singh, she did not sign the blank papers. She along with her son were kept at the police station and then in the evening, she and her son signed the blank papers to get rid of the situation. On 12.07.2005, she sent letters/complaints to different officers through post. She and her son were falsely implicated in a criminal case at PS Subhanpur on 17.07.2015. Then she filed complaint Ex.PA before the Illaqa Magistrate.

To similar effect is the statement of PW2 Sirtaj Singh. He stated that in summer of 2005, accused Harpreet Singh @ Happy came to his house and his mother told Harpreet Singh @ Happy that he had cheated her on false pretext of sending her abroad. Accused Harpreet Singh @ Happy, Inspector Swaran Singh and ASI Karamjit Singh also came to their house and insisted upon his mother to sign blank papers and then they were taken to police station and threatened. Then a false case was registered against his mother and Yugraj Singh.

11. After having heard learned counsel for the appellant at length and having perused the impugned judgment as well as other relevant record, we are of the considered opinion that prosecution has not been able to prove its case against the accused beyond shadow of reasonable



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doubt. The instant case mainly hinges on testimony of prosecutrix. It is well settled that in rape cases conviction can be based on the sole testimony of the prosecutrix without any corroboration, if it is found to be reliable, trustworthy, and of sterling quality.

12. Reference in this regard can be made to decision of Hon'ble Supreme Court in **Rai Sandeep alias Deepu Vs. State of NCT of Delhi** **(2012) 8 SCC 21** wherein it has been held as under:

“15. In our considered opinion, the ‘sterling witness’ should be of a very high quality and caliber whose version should, therefore, be unassailable. The Court considering the version of such witness should be in a position to accept it for its face value without any hesitation. To test the quality of such a witness, the status of the witness would be immaterial and what would be relevant is the truthfulness of the statement made by such a witness. What would be more relevant would be the consistency of the statement right from the starting point till the end, namely, at the time when the witness makes the initial statement and ultimately before the Court. It should be natural and consistent with the case of the prosecution qua the accused. There should not be any prevarication in the version of such a witness. The witness should be in a position to withstand the cross-examination of any length and howsoever strenuous it may be and under no circumstance should give room for any doubt as to the factum of the occurrence, the persons involved, as well as, the sequence of it. Such a version should have co-relation with each and everyone of other supporting material such as the recoveries made, the weapons used, the manner of offence committed,



the scientific evidence and the expert opinion. The said version should consistently match with the version of every other witness. It can even be stated that it should be akin to the test applied in the case of circumstantial evidence where there should not be any missing link in the chain of circumstances to hold the accused guilty of the offence alleged against him. Only if the version of such a witness qualifies the above test as well as all other similar such tests to be applied, it can be held that such a witness can be called as a 'sterling witness' whose version can be accepted by the Court without any corroboration and based on which the guilty can be punished. To be more precise, the version of the said witness on the core spectrum of the crime should remain intact while all other attendant materials, namely, oral, documentary and material objects should match the said version in material particulars in order to enable the Court trying the offence to rely on the core version to sieve the other supporting materials for holding the offender guilty of the charge alleged."

13. Gainful reference can also be made to the decision in **Raju Vs. State of Madhya Pradesh (2008) 15 SCC 133** wherein Hon'ble the Supreme Court observed that testimony of a victim of rape has to be treated as if she is an injured witness but same cannot be presumed to be a gospel truth in all circumstances. It was observed as under:

"9. The aforesaid judgments lay down the basic principle that ordinarily the evidence of a prosecutrix should not be suspected and should be believed, the more so as her statement has to be evaluated at par with that of an injured witness and if the evidence is reliable, no corroboration is



necessary. Undoubtedly, the aforesaid observations must carry the greatest weight and we respectfully agree with them, but at the same time they cannot be universally and mechanically applied to the facts of every case of sexual assault which comes before the Court. It cannot be lost sight of that rape causes the greatest distress and humiliation to the victim but at the same time a false allegation of rape can cause equal distress, humiliation and damage to the accused as well. The accused must also be protected against the possibility of false implication, particularly where a large number of accused are involved. It must, further, be borne in mind that the broad principle is that an injured witness was present at the time when the incident happened and that ordinarily such a witness would not tell a lie as to the actual assailants, but there is no presumption or any basis for assuming that the statement of such a witness is always correct or without any embellishment or exaggeration.”

14. In the light of the settled position of law, when deposition of prosecutrix and other evidence on record is appreciated in the present case, it indeed creates serious doubt regarding the prosecution version.

15. As per the prosecutrix about 7-8 months prior to filing of the complaint by her when she had come to old Court Complex, Kapurthala accused stopped her and talked to her while sitting in his blue colour Tata Safari car and assured to send her abroad (England) for Rs.5 lakhs. It seems highly improbable that prosecutrix who was not earlier known to the accused, immediately conceded to the offer made by the accused and thereafter believing him, gave him huge amount of Rs.2 lakhs without any

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receipt and execution of any other document, regarding the said payment made by her. She stated that she collected the amount of Rs.2 lakhs from her relatives but she has not examined any of her such relatives from whom she had taken the said amount. Learned trial Court has rightly observed that the purported link/connect made by complainant with accused at the first instance does not lend a ring of truth to the complainant's version.

16. Perusal of her testimony while appearing as PW1 reveals that there are material improvements and alterations as compared to the version in the complaint. While appearing as PW1, she stated that in the month of July, 2005, she came to old District Court Complex, Kapurthala, where accused came in his Tata Safari car and after stopping her asked her name and details and told her that he came to know from STD/PCO that complainant wanted to go abroad to which she replied in affirmative. She exchanged her mobile number with him. This averment does not find mention in her complaint that accused came to know from STD/PCO that complainant wanted to go abroad. Learned trial Court has thus rightly observed that one improbability in the case of complainant is leading to another improbability.

17. While appearing as PW1, she testified that accused Harpreet Singh @ Happy came to her house with SHO Swaran Singh Bal and ASI Karamjit Singh and forced her to sign blank papers and on her refusal, she along with her son were taken to police station and thereafter she was

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forced by ASI Karamjit Singh and Swaran Singh SHO to sit in Tata Safari car of the accused, in which accused was already sitting and despite her refusal, he repeatedly assaulted her sexually. In the morning, she came out from the car while the accused was asleep and she went inside the police station to verify about her son and despite pressure from SHO Swaran Singh and ASI Karamjit Singh, she did not sign the blank papers. In the evening, to get rid of the situation and to save her family from accused, she and her son Sirtaj Singh signed the blank papers. It has not been explained that during the aforesaid period, when she and her son Sirtaj Singh were illegally kept in the police station by the police, why her other family members including her other sons and husband did not make any effort to trace the complainant and her son. While filing the complaint before the Illaqa Magistrate, complainant arrayed Swaran Singh Bal Inspector and ASI Karamjit Singh as accused, these persons were not summoned by the Illaqa Magistrate. Even during proceedings of the trial before the learned trial Court, complainant did not make any effort to summon the aforesaid persons as accused under relevant provisions of law.

18. Learned trial Court has rightly observed that had the story of complainant been true then she would not have left any stone unturned to pursue her grievance against the aforesaid persons. Inaction on this front does cast a shadow of doubt regarding genuineness of the story projected by the complainant.

19. Though it has been deposed by the complainant/appellant in

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her examination-in-chief that she had sent complaints/applications to SSP, Kapurthala, Punjab Human Rights Commission and other high officers but none of these complaints have been proved on record by the complainant in accordance with law. Concerned official from none of the said offices has been examined by her in order to lend support to her deposition.

20. In his defence, accused has tendered charge sheet Ex.D1, statement of accused Harpreet Singh @ Happy Ex.D2, statement of ASI Karamjit Singh Ex.D3, statement of Sucha Singh Ex.D4, statement of Swaran Singh Ex.D5, statement of Lakhvinder Singh Ex.D6, statement of Balbir Singh Ex.D7, HC Balwinder Singh Ex.D8, statement of PW1 complainant Jasvir Kaur Ex.D9 recorded in other case, along with judgment dated 18.12.2008 in Sessions case No.26 of 17.08.2007 titled as 'State Vs. Gurinderjit Singh' and order dated 11.04.2009 Ex.D10 in complaint titled as 'Jasvir Kaur Vs. Sudesh Rani and another' in complaint case No.C-41/22.12.2008 in order to prove that complainant is habitual of submitting false complaints and has filed the present complaint to pressurise accused as a counter-blast to case registered against her. Complainant admitted during her cross-examination that she had filed complaint against Gurinderjit Singh and one Kashmir Singh under Sections 376/506 IPC and had also filed complaint against Sudesh Rani and Monu Pandari. Learned trial Court has rightly held said evidence buttresses the stand of defence that complainant is habitual of making

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false complaints and that present complaint filed by the complainant lacks authenticity. It is to be reiterated that though in her cross-examination, she stated that she could produce the receipt regarding making payment to the accused yet she failed to place on record any such receipt, which falsifies her version that she had given Rs.2 lakhs to accused for sending her abroad.

21. Statement of PW2 Sirtaj Singh on similar lines as his mother is also not of any help in bringing home guilt of the accused.

22. Doubtlessly it is not necessary to have specific medical evidence on record for conviction of the accused, however in the instant case where testimony of prosecutrix cannot be relied upon solely to record conviction, absence of medical evidence creates a substantial and material dent on the prosecution version. There is indeed no corroboration available on record to cement the case as propounded by complainant.

23. There is also long unexplained delay in filing of the present complaint. As per version of the complainant, she and her son were kept in wrongful confinement by the police on 10.07.2005/11.07.2005. The instant complaint has been filed by the complainant only on 06.03.2006. When no application/complaint alleged to have been filed by the complainant with the higher authorities have been proved on record then this long delay in filing of the present complaint has remained unexplained.



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24. In the backdrop of the facts and circumstances of the present case and discussion as above, sole testimony of prosecutrix is not sufficient to convict the accused as it is not found to be of sterling quality.

25. Furthermore, 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 19.12.2019 which calls for interference.

26. No other argument was addressed.

27. In view of the above, no ground is made out for grant of leave to appeal against acquittal of respondent No.2. Application seeking leave to appeal is declined.

28. Pending applications, if any, stand disposed of accordingly.

(SUKHVINDER KAUR)
JUDGE

(LISA GILL)
JUDGE

26.11.2024

harjeet

Whether speaking/reasoned?
Whether reportable?

Yes/No
Yes/No