

CRA-AD-281-2022

1

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRA-AD-281-2022

Date of decision: 16.02.2024

Daljeet Kaur

....Appellant.

Versus

State of Haryana and others

...Respondents.

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MRS. JUSTICE SUKHVINDER KAUR

.....

Present: Mr. M.S. Khillan, Advocate
for the appellant.

Mr. Ankur Mittal, Addl. A.G, Haryana with
Mr. P.P. Chahar, Sr. DAG, Haryana and
Mr. Saurabh Mago, DAG, Haryana.

Sukhvinder Kaur, J.

1. The appellant/complainant-Daljeet Kaur has preferred the instant appeal against judgment of acquittal dated 29.04.2022, passed by learned Additional Sessions Judge, Karnal, in Sessions Case No.SC-108 of 2021, vide which respondents-accused Anurag Saini, Devender Saini and Som Dutt Saini have been acquitted.

2. The factual scenario as per the prosecution is that FIR in the present case was registered on the statement of the prosecutrix, that in the year 2015, her marriage was solemnized with Parveen son of Bodh Raj,

CRA-AD-281-2022

2

resident of Karnal. After sometime, they both took divorce with their mutual consent. Then the complainant came in contact of accused Anurag Saini, who assured her that he would solemnize marriage with her and developed physical relations with her. When she came to know about her pregnancy, she told this fact to Anurag Saini, who assured her that he would talk to his parents about the marriage. But thereafter, his behaviour changed and he switched off his both mobile numbers and she could not talk to him. She lived for about 1-1/2 years with Anurag Saini as husband and wife and he kept on committing rape with her on the pretext of performing marriage with her. She was presently having pregnancy of six weeks from the loins of Anurag Saini. He had cheated her and had threatened her that he would kill her if she would report the matter to anyone.

3. Thereafter, investigation was set into motion. The prosecutrix was medico-legally examined and her counselling was also conducted from a lady Advocate. After inspecting the place of occurrence, rough site plan was prepared. Statements of witnesses were recorded. After taking into possession Caste certificate of complainant, offence under section 3(2)(V) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter called, 'the Act') was added. Thereafter, Rajiv Kumar, DSP carried out the investigation in the present case and offence under section 212 IPC was added against accused Som Dutt Saini and Devender Kumar Saini as they both harboured main accused. Call details of mobile phone of complainant and accused Anurag Saini were also obtained. Then challan was presented against accused Som Dutt and Devender Singh as accused Anurag Saini had gone abroad. So, after lodging of FIR, the

CRA-AD-281-2022

3

investigation was conducted by the police in his absence and ultimately, he was declared Proclaimed Offender on 18.3.2019. But when he came to know about pendency of these proceedings against him, then he filed application seeking pre-arrest bail under section 438 I.P.C. through his father. He came to India and joined the police proceedings as per the directions of the court. Thereafter, his supplementary challan was filed in the Court.

4. Thereafter, the case was committed to the Court of Sessions by the learned Magistrate.

5. On finding a prima facie case against all the accused, they were charge-sheeted under Sections 212, 376 and 506 of the Indian Penal Code and section 3(2)(v) of the Act, to which, they pleaded not guilty and claimed trial.

6. In order to prove its case, prosecution has examined PW1-Hitesh Kumar, Clerk, Tehsil Office, Karnal, who proved the copy of the caste certificate of the victim, copy of which was produced on record as Ex.P2.

7. PW2-Naveen Kumar Clerk, Office of Estate Officer, HSVP, Karnal, proved the report Ex.P3 given by the Estate Officer, HUDA and copy of re-allotment letter Ex.P4.

8. PW3 EASI Vir Shakti Singh, Draftsman proved the scaled site plan Ex.P5 prepared at Motel Karan Lake, Karnal, at the instance of the victim.

9. PW4 Satbir Singh, Counter Incharge, Karan Lake, Karnal deposed that he had handed over the rooms booking register Ex.P7 to the

CRA-AD-281-2022

4

police.

10. PW5 Ms. Richa, Legal Aid Counsel, District Court, Karnal has deposed that she had done counselling of Daljeet Kaur and proved counselling report Ex.P8.

11. PW6 ASI Krishan Kumar, Reader to DSP, Karnal has deposed that accused Som Dutt Saini and Devender Saini were arrested by DSP, Karnal and they made disclosure statements Ex.P9 and Ex.P10 in his presence.

12. PW7 Ms. Mini Mehta, LAC, District Courts, Karnal has deposed that she had done counselling of Daljeet Kaur and proved her counselling report as Ex.P11.

13. PW8 Som Nath, Ahlmad has proved zimni order Ex.P12 regarding declaraing the accused Anurag Saini as Proclaimed Person.

14. PW9 Dr. Sarita Bishnoi, Radiologist deposed that she had conducted the ultrasound examination of victim on 2.7.2018 and proved the ultrasound report Ex.P13 and ultrasound film Ex.P14.

15. PW10 Dr. Arushi Chaudhary, who conducted medico-legal examination of victim on 29.6.2018 has deposed that there was alleged history of assault on 24.05.2018 by Anurag Saini. She had advised urine pregnancy test and ultrasound pulvis including uterus and bilateral adenaxa to her. She conducted MLR in this regard and produced on record, carbon copy of the same as Ex.P30.

16. PW11 Lady Constable Sonia has deposed that on 18.1.2020, victim handed over to the investigating officer the photocopies containing some pages regarding the medical report and Whats App chat containing 13

CRA-AD-281-2022

5

pages which were taken into police possession vide recovery memo Ex.P15. She also proved on record medical report Mark-A and Whats App chat Mark-B.

17. PW12 prosecutrix/ victim has deposed that she was married with Parveen son of Bodh Raj in the year 2015. After some time, they had taken the mutual divorce. Thereafter, she was alone and depressed and after some time, she met Anurag Saini accused. In a very short span of time, they developed good relationship and started meeting each other regularly and talking telephonically. Anurag Saini promised to marry her and then he started making physical relations with her against her wishes, as she had denied for the same before marriage. She believed him and thought that he was man of his words. Then suddenly she came to know that she was pregnant and got scared and talked to Anurag Saini, who replied her that he would talk to his parents. But afterwards his behaviour got changed and he turned off his contact numbers. They were living as husband-wife and on the pretext of marrying her, he continued to make physical relations with her against her wishes. Last incident had happened at Karan Lake on 24.5.2018 at about 7:00 to 7:30 PM, when he made physical relations with her forcibly. When she asked him to marry her, then, he threatened to kill her if she would disclose the incident to anyone or would move any complaint against him. She had six weeks pregnancy. Accused Devender, father of accused Anurag Saini and accused Som Dutt grand-father of accused Anurag Saini also supported him. Both of them were well aware about her condition and pregnancy and they assisted Anurag Saini to flee away to Dubai. She moved an application Ex.P16 before SHO, P.S. Women Karnal,

CRA-AD-281-2022

6

on 28.6.2018, upon which, the present FIR was registered. On 29.6.2018, her statement Ex.P8 was recorded by legal aid counsel and on the same day, her medico-legal examination was got conducted. On 30.6.2018, her statement was recorded by learned Judicial Magistrate Ist Class, Karnal, the carbon copy of which is Ex.P17, which bears her signatures. On 11.3.2019, she handed over 19 pages of Whats App chat and the pen drive containing the recording, to DSP which were taken into possession vide recovery memo Mark-C. On 18.1.2020, she handed over to the investigating officer photocopies containing some pages regarding the medical report and Whats App chat which were taken into possession by investigating officer vide recovery memo Ex.P15.

18. PW13 Inspector Kavita prepared the report under section 173 Cr.P.C. after completion of investigation of the present case against accused Som Dutt and Devender Saini on 9.4.2019. She also deposed about the preparation of final report under section 173 Cr.P.C. after completion of investigation of the present case against accused Anurag Saini.

19. PW14 Shri Harish Sabbarwal, Judicial Magistrate Ist Class, has deposed regarding recording of statement of the victim under section 164 Cr.P.C. Ex.P19. He also deposed that after recording statement of victim, he issued a certificate Ex.P20 and passed zimni orders Ex.P21 and Ex.P22.

20. PW15 Dr. Sahil Chaudhary, Radiologist deposed about conducting obstetrical ultrasound of patient and proved his report Ex.P25 and ultrasound film Ex.P26.

21. PW16 ASI Meenu Rani has deposed about taking the CDR of mobile No.9729088802 and certificate of Deepak Kumar, Nodal Officer

CRA-AD-281-2022

7

under section 65-B of Indian Evidence Act vide memo Ex.P27. She also proved the disclosure statements of accused Anurag Saini Ex.P28, demarcation memo Ex.P29 and recovery memo Ex.P15.

22. PW17 Jagdeep Singh, DSP (retired) has proved disclosure statement of accused Anurag Saini Ex.P28, demarcation memo Ex.P29 and application Ex.P31, moved for medico-legal examination of accused Anurag Sain before Medical Officer.

23. PW18 SI Parkash Kaur, investigating officer has deposed that on 28.6.2018, she recorded formal FIR Ex.P32 and made endorsement Ex.P33 on complaint Ex.P16 of complainant. She has also deposed about the other investigation proceedings conducted by her pertaining to this case.

24. PW19 Gaurav Assistant, Nodal Officer, Vodafone, Idea has proved call details of mobile No.9729088802 Ex.P36, cell ID chart Ex.P37, CAF Ex.P38, certificate under section 65 of the Indian Evidence Act Ex.P39.

25. PW20 Rohit Kumar, Nodal Officer, Bharti Airtel Ltd.has proved call details of mobile No.9896146862 dated 24.5.2018 Ex.P40, CAT Ex.P41, certificate under section 65-B of the Indian Evidence Act Ex.P42, copy of ID Ex.P43, covering letter Ex.P44 and recovery memo Ex.P45.

26. PW21 Rajiv Kumar, DSP has deposed about the investigation proceedings conducted by him during the investigation of the present case.

27. After closing of the prosecution evidence, statements of all the accused persons under Section 313 Cr.P.C. were recorded in which they pleaded their innocence and false implication in this case.

28. In the defence evidence, accused persons have examined DW1-

CRA-AD-281-2022

8

Sohan, Criminal Ahlmad, who brought the original record regarding FIR No.131 dated 5.11.2019 under sections 294, 506, 509 IPC, Police Station Ram Nagar, Karnal which was lodged against some unknown persons and thereafter, report under section 173 Cr.P.C. was submitted.

29. DW-2 Dr.Priyanka Dahiya, Associate Professor, has deposed that on 23.7.2018, she had medico-legally examined victim vide report Ex.D9 and found that she had history of 13 weeks menorrhea as per her LMP. She advised her basic antenatal investigation as a routine and advised her to take pregnancy multi vitamins and her routine ultrasound to check the fetus well being. Victim got admitted on 24.7.2018 at 11.00 a.m. with history of fall and following which she started bleeding per vaginum. She proved her admission card Ex.D10, history and examination Ex.D11. As per the treatment record, the patient had been admitted due to miscarriage.

30. DW3 Sanjay Kumar, Criminal Ahlmad proved FIR No.69 dated 7.6.2019 under sections 294, 506 and 509 of IPC, Police Station Women, Karnal and proved the copy of said FIR and report under section 173 Cr.P.C. Ex.D12 and Ex.D13 respectively.

31. DW4 Dr.Kiran Mann, Radiologist has deposed that on 24.7.2018, she conducted ultrasound of victim and proved ultrasound report Ex.D14. As per ultrasound report, patient retained product of conception and she had no pregnancy at that time, she was aborted and some pieces of fetus were present.

32. After conclusion of trial, the trial Court acquitted accused Anurag Saini, Devender Saini and Som Dutt Saini.

33. Aggrieved by the said decision, Daljeet Kaur, appellant/

complainant has preferred the present appeal against acquittal of accused Anurag Saini, Devender Saini and Som Dutt Saini.

34. Learned counsel for the appellant has vehemently contended that the trial Court has failed to consider the medico-legal evidence, disclosure statement, recoveries and seizures made, expert's opinion and the consistent version of the witnesses, which duly proved the commission of the offence by respondents No. 2 to 4. Since from the very beginning the stand of the appellant had been that under the pretext of marriage respondent No.2 had been raping her against her wishes. But trial Court has given undue weightage to the minor discrepancies which occurred due to anxiety, shyness, embarrassment and nervousness of the appellant. He has further contended that the statement of the appellant gets strengthened from the call details and the tower location which had been produced on record. The date of the age of foetus 6 weeks 4 days, as per medical examination conducted by PW9, also confirms the allegation of the appellant. He has further argued that if PW4 Satbir Singh, counter incharge, Karan Lake had stated that no room was booked in the name of the accused and complainant, then it can be overlooked considering that in the hotel industry many a times such like discrepancies are deliberately committed by the staff, so as to make malafide gains. He submitted that law is well settled that sole statement of the prosecutrix could be sufficient to convict the accused persons. The DNA test was not got conducted by the complainant as it had not been prescribed by PW10 Dr. Arushi Chaudhary. The other FIRs which were got lodged by her were not on cooked up grounds and she was not habitual of filing false complaints. He has further submitted that on the

CRA-AD-281-2022

10

strength of the evidence adduced by the prosecution, the prosecution has successfully proved its case against the accused persons beyond the shadow of the reasonable doubt and they may be convicted accordingly, as per law.

35. We have heard learned counsel for the parties at length and have perused the records thoroughly.

36. As per the prosecution version, the complaint/ victim was previously married with Parveen son of Bodh Raj. But after she took divorce from him by mutual consent, then, she acquainted herself with accused Anurag Saini, who promised to marry her in near future. Believing him she kept on meeting him and they both developed physical relations. Then, she came to know about her pregnancy and when she asked Anurag Saini to perform marriage with her, he told her that he would talk to his parents. But later on, his behaviour was changed with her. She lived with accused Anurag Saini as his wife for about 1 ½ years and during this period, he kept on raping her under the pretext of marriage. It was also alleged in the complaint filed by her that there was six week fetus of Anurag Saini in her womb. In complaint, she also mentioned the specific date of rape by accused Anurag Saini as 24.5.2018 at about 7.00 p.m. at Motel, Karan Lake, Karnal. The present case was registered on same day.

37. When this application dated 28.6.2018 (Ex.P16) was filed by the complainant against accused Anurag Saini, then he was out of country, and the entire proceedings were conducted by police at his back and ultimately he was declared Proclaimed Person on 5.1.2019. Accused Som Dutt Saini and Devender Saini allegedly harboured accused Anurag Saini.

Accused Anurag Saini returned to India on 6.1.2020 and was formally

CRA-AD-281-2022

11

arrested in this case on 1.2.2020 and was granted pre-arrest bail.

38. So, as per version of the complainant, accused obtained her consent to have sexual intercourse by fraud under the pretext of false promise of marriage. As per the prosecutrix, she lived with accused Anurag Saini for about 1 ½ years and she gave her consent to have sexual intercourse with him on the false promise of marriage. As per the prosecutrix she lastly entered into sexual intercourse with accused Anurag Saini on 24.05.2018 when accused raped the prosecutrix at Motel, Karan Lake, Karnal.

40. The present FIR was registered on the basis of the statement of the prosecutrix Ex.P16, besides that statements Ex.P8 and Ex.P11 of prosecutrix were recorded on 29.6.2018 and 1.12.2018 respectively before the legal aid counsel at the time of her counselling and her statement under section 164 Cr.P.C. Ex.P17 was recorded before the learned Magistrates on 30.06.2018. The perusal of her statement, while appearing as PW12 in the Court reveals, that she made allegations of being sexually assaulted by accused Anurag Saini in a different manner then from the abovesaid statements. In her statement Ex.P16, she has stated that she and Anurag Saini lived as husband and wife for about 1 ½ years and during this period, under the pretext of false promise of marriage, he kept on raping her, but later on he refused to marry her. She had also stated that on 24.5.2018 at about 7.00 p.m., she was raped by accused Anurag Saini in the room of Motel at Karan Lake, Karnal. She has categorically stated while appearing as PW12 that when accused made physical relations with her against her wishes, she did not allow him to do so before marriage. Trial Court has

CRA-AD-281-2022

12

rightly observed that meaning thereby, during the last 1 ½ years, accused had no sexual relations with complainant, as it is not the case of prosecution that despite her denial to have sexual relations, accused Anurag Saini without paying any heed to it continued making physical relations with her. There is also no evidence on record that both of them were living in the same house, rather, from her statement it appears that she was living with her father.

41. But in her statement Ex.P8 recorded on 29.6.2018 before counsellor, while raising allegations of rape against accused she has stated that they used to meet 2-3 times in a month, which does not find mention in her application Ex.P16 and thus she introduced a new story. She has not stated there that she did not allow him to have sex with her before marriage. In statement Ex.P11 dated 1.12.2018, she has stated that accused made physical relations with her 5-6 times at Karan Lake, Karnal and thus again unfolded a new version. So the prosecutrix was not consistent in her stand and she changed her version in every statement.

42. PW4-Satbir Singh, Counter Incharge, Karan Lake, Karnal, produced the room booking register of Karan Lake. As per the record produced by him, no room had been booked in the name of the accused or the complainant on 24.05.2018.

43. AS per the prosecutrix, on 28.06.2018 she made a complaint to the police but police did not take any action and during this period she was subjected to miscarriage. But, the fact is that after making of the aforesaid complaint, she was medico legally examined and her counselling was also done and her statement under Section 164 Cr.P.C. was also got recorded. So

CRA-AD-281-2022

13

it cannot be said that after receipt of the application Ex.P16, of the complainant, the police failed to take any action.

44. In Ex.P17 her statement recorded under Section 164 Cr.P.C. before the Magistrate, the prosecutrix is silent regarding the fact that when the complainant lived with accused as husband and wife, they used to have sex with each other. Rather she has categorically stated that accused tried many times to have intercourse with her but she did not allow him because she did not want to make physical relations with him prior to marriage. The above said fact was duly admitted by her in cross examination, which has adversely effected the case of the prosecution and this facts is belied that the accused had sexually exploited her on the pretext of marrying her. As the statement Ex.P17 under Section 164 Cr.P.C. was recorded before the Magistrate and she made this statement freely and without any pressure or inducement, as such, the same is reliable. So, allegations regarding accused having sexual intercourse with her during those 1 ½ years under the false pretext of marriage becomes doubtful.

45. The perusal of her Whats App chat Ex.D6 with accused Anurag Saini reveals that the complainant was having relations with one Daksh and ultimately, she desired to live with him. But there is nothing in this Whats App chat that the complainant had physical relations with accused Anurag Saini.

46. Besides, her bare statement, there is nothing on record that Anurag Saini was having physical relations with her for about 1 ½ years, as no other evidence to that effect has led by the prosecution. So when at one stage of her testimony she had denied having physical relations with Anurag

CRA-AD-281-2022

14

Saini, during this period of 1 ½ years, but at the other stage she has stated so and when her this allegation is totally missing in her statement Ex.P17 recorded under Section 164 Cr.P.C. then the trial Court has rightly observed that these allegations of having physical relations by Anurag Saini under the false pretext of marriage have been levelled half heartedly. It has also not been disclosed in her complaint Ex.P16, that at which places, and on what specific occasions Anurag Saini had sexual intercourse with her under the false pretext of marriage. It has already been observed that the one specific instance at Karan Lake, Karnal as alleged by her is also not proved, when as per record of the Counter Incharge, no room had been booked on 24.05.2018 in the name of the complainant or accused Anurag Saini. Karan Lake, Motel, is run by Haryana Tourism of Haryana Government. So, the record that was produced in the Court by PW4 Satbir Singh, Counter Incharge, Karan Lake, Karnal had been prepared in the normal course of his business and has authentic value.

47. From the perusal of record, it is also revealed that complainant had filed various complaints and had lodged numerous FIRs against many persons. It speaking volume about her conduct, when she has failed to tell about the fate of her complaints. Complaint Ex.D1 was made by her against Parveen and his parents, raising allegations of unnatural sex against Parveen and later on, she settled the dispute after getting Rs.1,00,000/- from him. She admitted that she had no knowledge about the fate of the said complaint and also admitted that she had received Rs.1,00,000/- from her ex-husband Parveen on the basis of compromise and in this case, she has also received Rs.1,25,000/- under the victim compensation scheme being member of

CRA-AD-281-2022

15

Scheduled Caste community. FIR No.131 dated 5.11.2019 with Police Station Ram Nagar, Karnal under sections 294, 506 and 509 IPC was got lodged against Anurag Saini, his father Devender Saini and grand-father Som Dutt Saini and also got registered another FIR No.69 dated 7.6.2019 under sections 294, 506 and 509 IPC, Police Station Woman, Karnal against Anurag Saini. But during the investigation, accused Anurag Saini, his father and grand-father were found innocent and thus, challan was not presented against them in both the aforesaid FIRs. She also filed application against Ramesh, resident of Kunjpura but stated that she did not have any knowledge that whether any action was taken on her complaint by the police. She also moved a complaint before the police against Bhanu Partap with whom she had Whats App chat. So, it has been rightly observed that the complainant seems to be habitual of lodging of false FIRs against the innocent persons.

48. She filed an application in the Court of learned Magistrate on 7.8.2018 seeking to get the DNA test of the accused, for comparison with the fetus in her womb from accused Anurag Saini. But that application was withdrawn by her after two days i.e. on 9.8.2018. After withdrawing the said application, she filed a petition Ex.D4 before the High Court, for seeking issuance of direction against the accused as police had not taken any action. When this Court directed complainant to produce documents of her pregnancy and other medical record, she did not produce the same and later on withdrew the said petition on 14.02.2019.

49. DW2 Dr. Priyanka Dahiya proved has stated on 24.07.2018 at 11.00 A.M., complainant was got admitted with history of fall and as per

CRA-AD-281-2022

16

treatment record, complainant had miscarriage for which she was admitted in KCGMCH, Karnal. Meaning thereby, the complainant had miscarriage on same day i.e. 23.4.2018 after knowing about the pregnancy. PW21 DSP Rajiv Kumar had also stated that the pregnancy of victim was terminated on 23.4.2018, but she neither disclosed the date of miscarriage of her pregnancy to him nor she had produced any medical record regarding termination of her pregnancy during investigation. DW4 Dr. Kiran Mann has also stated that as per the ultrasound report, complainant retained product of conception and on 24.7.2018 she had no pregnancy, as pregnancy was aborted, but some pieces of fetus were present. It also shows that the pregnancy of the complainant was aborted on 23.7.2018 i.e. on the same day when she came to know about it. PW10 Aarushi Chaudhary, who conducted the MLR of the complainant and found three months four days amenorrhea, has also categorically stated that she did not take any sample for DNA test, as the victim clearly denied for giving sample for her internal examination. It also shows that the application Ex.D4 which was filed by the complainant before the High Court for not taking action by the police for DNA test on 30.7.2018 was with calculated motive. So, when the complainant did not produce any document of her pregnancy and medical record before the police as well as before the High Court then it makes the case of the prosecution highly doubtful that the complainant became pregnant from accused Anurag Saini.

50. As per the prosecutrix, she was lastly raped on 24.05.2018 by accused Anurag Saini at Motel Karan Lake, Karnal, but there is a delay of about 34 days in lodging of the FIR which has not been satisfactorily

CRA-AD-281-2022

17

explained by the prosecution.

51. The allegations of harbouring accused Anurag Saini by co-accused Som Dutt Saini and Devender Saini were not made in complaint Ex.P16. Even, while appearing as PW2 into witness box, she admitted that she did not raise any such allegation against both the accused persons. Even PW16 ASI Meenu Rani, PW17 Jagdeep Singh, DSP (retired), PW18 SI Parkash Kaur and PW21 Rajiv Kumar,DSP are silent regarding the said aspect that in order to screen accused Anurag Saini from the legal punishment accused Devender Saini and Som Dutt Saini harboured him and gave him shelter or concealed him in any manner.

52. So, in the light of the above facts and circumstances of the present case, the trial Court has rightly reached at the conclusion that the prosecution has failed to bring home the guilt to the accused persons beyond the shadow of reasonable doubt.

53. So, the present appeal being bereft of any merits stands dismissed.

54. All pending applications, if any, also stand disposed of accordingly.

(SURESHWAR THAKUR)
JUDGE

(SUKHVINDER KAUR)
JUDGE

16.02.2024
Komal

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