

2024:PHHC:123546-DB



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRA-AD-323-2023 (O & M)
Date of decision:18.09.2024

Nxxx, (Victim) D/o Sxxx

..... Appellant(s)

V/s

State of Haryana and ors.

...Respondent(s)

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

Present: Mr. Sandeep Thakan, Advocate
for the appellant.

Ms. Shubhra Singh, Addl.A.G., Haryana.

JASJIT SINGH BEDI, J.

The present appeal has been filed against the judgment of acquittal dated 28.04.2023 passed by the Additional Sessions Judge, Gurugram.

2. The FIR in the present case came to be registered on 12.07.2018. The judgment of acquittal was passed on 28.04.2023. This

appeal has come up for final hearing now i.e. after a period of 06 years having elapsed from the date of the registration of the FIR.

3. The brief facts of the case of the prosecution are that on 12.07.2018, the complainant/prosecutrix presented a complaint before the police station with the allegations that she had joined the CISF on 15.10.2016 and there was training of almost one year. During the training period, she had got acquainted with the accused Lokesh Kumar, posted as a driver in the CISF, and he took her phone number. He used to send her text messages and called her. He also used her ATM card two or three times and had withdrawn Rs.70,000/- to Rs.80,000/- from her ATM card. On 25.10.2017, she had come on leave and she received a call from the accused Lokesh Kumar, to meet him at Bus Stand, Gurugram. She reached there and he took her to Hotel Central Plaza located in front of the Bus Stand, Gurugram. He gave her an intoxicating drink and after drinking the same, she lost consciousness. The accused committed rape upon her and threatened her that if she disclosed the incident to anybody, her entire family would be eliminated. He also prepared her objectionable photographs/videos and threatened to make them viral on the Internet, if she refused to obey him. Accused Lokesh Kumar induced her falsely by stating that he was unmarried. However, at the time of the rape, he told her that he was a married person having two children. Thereafter, on 13.11.2017, the accused Lokesh again called her to the same hotel, namely, Central Plaza by blackmailing her and raped her and again prepared photographs/videos of the alleged rape. He also threatened her mother and brother on mobile

number 7027000242 with dire consequences and told them that if they ever thought about the marriage of the prosecutrix, her objectionable videos/photographs would be uploaded on the Internet. Legal action was sought against the accused.

On the basis of the above complaint Ex.P18, the Investigating Officer PW11 L/ASI Rekha conducted police proceedings Ex.P29 and handed over the case file to PW4 ASI Karambir for registration of the FIR, who registered a formal FIR Ex.P12 under Sections 328/354C/376/506, IPC and made his endorsement Ex. P13 on the FIR and also sent special reports to the Illaqa Magistrate and other authorities.

4. After registration of the FIR, ASI Karambir handed over the case file along with a copy of the FIR to L/ASI Rekha, who along with the prosecutrix and Constable Nepal visited the place of occurrence and prepared the rough site plan Ex. P30 of the place of occurrence upon the demarcation of the prosecutrix. Thereafter, the prosecutrix was taken to General Hospital, Gurugram and was medico-legally examined by moving an application Ex.P15 and then, she was produced before the Magistrate and got recorded her statement under Section 164 Cr.P.C. by moving an application Ex.P21. On the same day, the prosecutrix handed over to the Investigating Officer a copy of text messages and Whatsapp messages Ex.P19, which were taken into police possession vide memo Ex.P19/A and the prosecutrix also handed over certificate Ex.P20 under Section 65-B of the Indian Evidence Act, to the Investigating Officer. Thereafter, the case file was entrusted to PW10 Inspector Sushila Devi for further investigation and

during investigation, on 22.07.2018, on her asking, PW3 Sumit Singh, Manager, Hotel Central Plaza, handed over the photocopy of a driving license Ex.P8 of the accused Lokesh and Aadhar Card Ex.P9 of the prosecutrix along with the photocopy of the relevant page of visitor register Ex.P7 regarding their visit and stay on 13/14.11.2017 to the Investigating Officer. He also handed over forwarding letter Ex.P10 of their hotel to the Investigating Officer. All the documents were taken into police possession vide memo Ex.P11. On 01.08.2018, Inspector Sushila Devi arrested the accused Lokesh after taking permission from the concerned Officer from CISE, RTC Arrakkulham Suraksha Campus. District Vellore, Tamil Nadu. At the time of arrest, the accused produced one golden coloured mobile phone MI having two SIMs, which was converted into sealed parcel and taken into police possession vide memo Ex.P2. Then the accused was brought to Gurugram. On 02.08.2018, the accused got demarcated the place of occurrence i.e. a room in Shri Ram Hotel near Bus Stand, Gurugram vide memo Ex.P4. On the same day, the accused was taken to General Hospital, Gurugram and was medico-legally examined by moving an application Ex.P17. After his medical examination, the doctor handed over sealed parcels and copy of the MLR, which were taken into police possession vide memo Ex.P5. On the same day, the Investigating Officer gave a notice Ex.P27 under Section 91, Cr.P.C. to the Branch Manager, SBI, Badra Branch, Charkhi Dadri to provide bank account statement Ex.P28 of account no. 36047571167 with regard to a transaction on 17.02.2018 as well as for the months of July and August, which were taken into possession by the

Investigating Officer. On 15.10.2018, scaled site plan Ex.P6 was got prepared from ASI Dharampal, Draftsman. On 16.11.2018, the Investigating Officer deposited the mobile phone with DITAC Lab, Gurugram for extracting the Data. Statements of the witnesses were recorded under Section 161 Cr.P.C. and deposited the case property in the malkhana. After completion of investigation, final report under Section 173 Cr.P.C. was prepared by the Inspector/SHO Deepak Kumar on 29.02.2020 and was filed. During the checking of the challan, Sections 328/354C/376 IPC were deleted and Section 376(2)(n) IPC was added.

5. Based on the complaint, FIR Ex.P-12 came to be registered under Sections 328, 354C, 376 and 506 IPC.

6. The accused was charged for the commission of offences punishable under Sections 376(2)(n)/506 IPC to which the accused pleaded not guilty and claimed trial.

7. The prosecution, in support of its case, examined Constable Nepal Singh as PW1, ASI Dharampal, Draftsman as PW2, Sumit Singh as PW3, ASI Karambir as PW4, Dr. Sunita Yadav as PWS, Dr. Rajdeep as PW6, the Prosecutrix "P" as PW7, Ms. Priyanka Jain as PW8, Constable Rajesh as PW9, Inspector Sushila Devi, the second Investigating Officer as PW10 and L/ASI the Rekha, the first Investigating Officer as PW11 and thereafter, the Public Prosecutor placed on record the DITAC report and closed the prosecution evidence.

8. The statement of the accused was recorded under Section 313 Cr.P.C., wherein he denied all the allegations, pleaded innocence and

claimed false implication. He pleaded that he and the prosecutrix were in a consensual physical relationship and that no occurrence as alleged had taken place. The complainant was very well aware about his marital status and he never made relations with her on the false pretext of marriage.

9. PW-1 Constable Nepal Singh deposed that on 08.01.2018, he remained associated with the Investigating Officer L/SI Sushila, who in his presence, arrested the accused Lokesh upon secret information from CISF, RTC (Arnakolam) Tamil Nadu at about 01.15 pm vide memo Ex.P1. At the time of arrest, the accused produced one golden coloured mobile phone having two SIMs, which was converted into sealed parcel and taken into police possession vide memo Ex.P2. The accused was brought to Gurugram. In pursuance of his disclosure statement, the accused got demarcated the place of occurrence i.e. a room in Shri Ram Hotel near Bus Stand, Gurugram vide memo Ex.P4. On the same day, the accused was taken to General Hospital, Gurugram and was medico-legally examined at General Hospital, Gurugram. After his medical examination, the doctor handed over sealed parcels and copy of MLR, which were taken into police possession vide memo Ex.P5.

10. PW2 ASI Dharampal, Draftsman deposed that on 15.10.2018, he visited the spot i.e. room in Centre Plaza Hotel Gurugram on the demarcation of L/SI Sushila and prepared scaled site plan Ex.P6 of the place of occurrence.

11. PW3 Sumit Singh deposed that on 22.07.2018, he was working as a Manager in Hotel Central Plaza, Najafgarh Road, Gurugram. On that

day, on the asking of Investigating Officer L/SI Sushila, he handed over to her photocopy of a driving license Ex.P8 of the accused Lokesh and Aadhar Card Ex. P9 of the prosecutrix along with the photocopy of the relevant page of the visitor register Ex. P7 regarding their stay on 13/14.11.2017. He handed over the forwarding letter Ex.P10 of their hotel to the Investigating Officer. All these documents were taken into police possession vide memo Ex.P-11.

12. PW4 ASI Karambir deposed about the registration of the formal FIR Ex.P12, making an endorsement Ex.P13 on the same and sending a special report to the learned Ilaqa Magistrate and higher authorities.

13. PW5 Dr. Sunita Yadav, Medical Officer, General Hospital, Sector-10. Gurugram tendered into evidence her duly sworn affidavit Ex.PW5/A regarding medico-legal examination of the prosecutrix on the police request Ex.P15. She proved carbon copy of MLR of the prosecutrix as Ex.P14 and opined that the possibility of sexual intercourse could not be ruled out.

14. PW6 Dr. Rajdeep, Medical Officer, PHC Ghasera, Nuh proved MLR Ex.P16 of the accused, which was prepared by him on police request Ex.P17 after clinically examining the accused.

15. PW7 the Prosecutrix "P" deposed that she was selected in the CISF in the year 2016 and she joined in October 2016 and went on training at RTC Arnakolam, Tamil Nadu on 15.10.2016. Accused Lokesh was working as driver in the CISF at Training Center. She suffered a foot injury during her training period on 30.01.2017 and the accused Lokesh took her to Global

Hospital in Chennai on 31.01.2017. He took her mobile number at that time and when she returned back from the hospital in the evening on the same day, he started making calls and sending SMSs on her mobile phone. He told her that he was from Haryana. They started talking to each other and became good friends. He also used her ATM card to withdraw money, whenever he required money and in total, he had withdrawn Rs.70,000/- to 80,000/- from her account through ATM because of their friendly relationship. She deposed that his mobile nos. were 8072422131 and 9166660871 and she had two mobile nos. 9467852734 and 9398268449. On 25.10.2017, when she was at her home during her leave, the accused called her to meet him at the Bus Stand, Gurugram and he took her to a room in Central Plaza Hotel, situated in front of Bus Stand, Gurugram. He offered her a cold drink. She drank the same and became semi-unconscious. He forcibly committed rape upon her against her wishes in that condition. When she regained consciousness, he threatened her to keep quiet about the incident or he would kill her. He told her that during her semi-unconscious state, he had prepared her objectionable videos and had clicked photographs in a naked condition. He told her that till she continued to fulfill his desires, he would not do anything, but if she failed to comply with his wishes, he would upload her objectionable videos/photographs on the social media to defame her. She further deposed that earlier, when she was at her training center prior to that day, the accused Lokesh had been telling her that he was unmarried and that he wanted to marry her. However, on the day of the above mentioned incident, he told her that he was married having two children and that his

father was in the Rajasthan police. He repeated threats that whenever he desired, he would get her whole family killed. She further deposed that on 13.11.2017, the accused again called her at the Bus Stand, Gurugram by blackmailing her with her objectionable videos and photographs. He again took her to a room at the same hotel and forcibly committed rape upon her against her wishes. He again prepared her objectionable videos and clicked her objectionable photographs. He repeatedly kept on threatening her by sending SMS messages and making calls. She further deposed that when after training, she joined at her place of posting at Hyderabad, during the period we.f 14.02.2018 till 17.02.2018, the accused had forcibly sexual intercourse with her by calling her at Chennai on the pretext that he would delete her objectionable videos as well as photographs, but he did not fulfill his promise. She further deposed that in April 2018, the accused again made her come to Delhi by alluring her with the promise that he would delete her objectionable videos as well as photographs and again the accused had forcible sexual intercourse with her against her wishes, but he did not fulfill his promise. She deposed that on 23.06.2018, the accused Lokesh sent SMSs on both her mobile nos. 9467852734 and 9398268449 to the effect that he would make viral her objectionable videos/photographs and he also threatened her mother and brother on phone no. 7027000242 that if they thought of getting her married to another man, he would make viral her objectionable videos/photographs on social media. She further deposed that on 12.07.2018, she went to Police Station Sector-14. Gurugram and gave a complaint Ex. P18 against the accused and also handed over to the

Investigating Officer printouts of Whatsapp messages and text messages Ex. P19, who took the same into possession vide memo Ex P19/A and in this regard, she also submitted her certificate Ex P20 under Section 65-B of the Indian Evidence Act. On the same day, she was taken to General Hospital, Gurugram, where she was medico-legally examined. Thereafter, on 12.07.2018 she was produced before the Judicial Magistrate, Gurugram, where her statement Ex. P22 under Section 164, Cr.P.C. was recorded. She identified the accused present in the Court.

16. PW8 Ms. Priyanka Jain, the then Judicial Magistrate Ist Class, Gurugram, deposed that on 12.07.2018, on receipt of an application Ex.P21 from the Investigating Officer for recording statement of the prosecutrix under Section 164, Cr.P.C. in the present FIR, she put general questions to the prosecutrix and found that she was prepared to give her statement voluntarily before her and that she was not under any duress or pressure of any kind and she got her identified by the Investigating Officer and recorded her statement in her own handwriting, which bore her signatures. She proved the attested carbon copy of the said statement as Ex. P22. She supplied certified copy of the statement to the Investigating Officer on an application Ex. P23.

17. PW9 Constable Rajesh deposed that on 16.11.2018, he received a letter of request from the office of DCP, West Gurugram for extraction of Data from a mobile phone MI along with one SIM of Airtel and one SIM of Reliance Jio Company, upon which, he obtained necessary approval from the concerned authority. On the same day, L/SI Sushila Devi produced a

mobile phone with two SIMs in sealed parcels duly sealed with seal of SD and he extracted the requisite data from the mobile phone and the SIM cards and transferred the same in a signed Pendrive of 32 GB of Sandisck Company. After doing the needful, he again sealed the mobile phone and SIM cards Ex.MO/2 to Ex. MO/4 with his seal of GD and handed over the parcels to L/ASI Kavita to be handed over to DCP West, Gurugram, along with forwarding letter issued by the DSP, DITAC. He proved his report as Ex.P24 as well as signed pendrive Ex.MO/I. He had also testified his certificate Ex.P25 under section 65-B of the Indian Evidence Act, in respect of the genuineness of the contents of his report Ex.P24 and forwarding letter as Ex.P26.

18. PW10 Inspector Sushila Devi and PW11 L/ASI Rekha, the Investigating Officers, deposed about all the steps taken by them during their investigation from the stage of registration of FIR till the submission of challan.

19. Based on the evidence led, the accused-respondent No.2 came to be acquitted vide judgment dated 28.04.2023 passed by the Additional Sessions Judge, Gurugram.

20. It is the aforesaid judgment which is under challenge before this Court.

21. The learned counsel for the appellant contends that the Trial Court vide its judgment dated 28.04.2023 erroneously acquitted the accused-respondent No.2 (hereinafter to be referred as respondent No.2) by ignoring sufficient evidence produced by the prosecution. The medical evidence was

totally in consonance with the version of the prosecutrix. As the offence was established beyond reasonable doubt, the impugned judgment dated 28.04.2023 was liable to be set aside and the accused ought to be convicted for having committed the offences in question.

22. The learned counsel for the State-respondent No.1 while supporting the case of the appellant/complainant contends that the impugned judgment was not based on proper appreciation of the evidence on record and, therefore, the judgment of acquittal was liable to be set aside.

23. We have heard the learned counsel for the parties and examined the record.

24. The prosecutrix/PW-7 levelled allegations against the accused that on 25.10.2017, the accused took her to a room in a hotel and offered her a cold drink. She became semi conscious and the accused forcibly committed rape upon her against her wishes. Then the accused threatened to kill her and prepared her objectionable videos/photographs and thereafter, on 13.11.2017, the accused again called her by blackmailing her on the basis of her objectionable photographs/videos and committed forcible rape upon her against her wishes in a hotel. Then, from 14.02.2018 to 17.02.2018 and in April 2018, the accused had again committed forcible sexual intercourse upon the prosecutrix on the pretext of deleting her objectionable photographs/videos. Further, on 23.06.2018, the accused sent messages on the mobile number of the prosecutrix that he would make viral her objectionable photographs/videos. The accused also threatened her mother and her brother to make viral her objectionable a photographs/videos.

Thereupon, the prosecutrix, on 12.07.2018 gave a complaint Ex.P18 against the accused. Apparently, the accused committed forcible rape upon her on 25.10.2017, 13.11.2017, from 14.02.2018 to 17.02.2018 and in April 2018 and during that period, the accused blackmailed her, threatened her and on 23.06.2018, the accused threatened her to make viral her objectionable photographs/videos and the accused also threatened her mother and her brother on phone. In her complaint Ex.P18, the prosecutrix mentioned about the alleged incident of forcible rape on 25.10.2017 and on 13.11.2017. There is nothing in the complaint Ex.P18 about the alleged incident from 14.02.2018 to 17.02.2018 and in April 2018. In her complaint Ex.P18, the prosecutrix mentioned about threats and blackmail by the accused and about threatening messages sent by the accused on 23.06.2018 and threats extended to her mother and her brother. Similarly, in the statement Ex.P22 under Section 164, Cr.P.C., the prosecutrix only mentioned about the alleged incident of forcible rape on 25.10.2017 and on 13.11.2017, and about the alleged threats and blackmail from the side of the accused and further, sending threatening messages to her, her mother and her brother. There is not even a single word in her statement Ex.P22 about the alleged incident from 14.02.2018 to 17.02.2018 and the alleged incident of forcible rape in April 2018. Furthermore, no specific date with regard to threatening messages sent by the accused has been mentioned by the prosecutrix in her statement Ex. P22.

25. The prosecutrix was working as an ASI in the CISF and the accused was working as driver in the CISF at the time when they met each

other for the first time. She gave a complaint to the CISF and thereupon, a departmental enquiry was initiated against the accused, wherein the prosecutrix gave her statement Ex D1 and admitted her photographs Ex.D2. There is nothing in the complaint Ex P18 or in her statement Ex.P22 under Section 164 Cr.P.C. or in her testimony as PW7, to show that the accused gave any promise of marriage to her and the prosecutrix gave her consent to the accused for establishing physical relationship on the basis of any such promise of marriage. The allegations simply pertain to forcible rape against the wishes and consent of the prosecutrix, on all occasions.

26. Coming to the cross-examination of the prosecutrix as PW7, she admitted staying with the accused overnight in the hotel on 22.10.2017, 23.10.2017 and 24.10.2017. She did not deny going for shopping with the accused to a Mall. There is no explanation from the side of the prosecutrix as to why she stayed with the accused for three nights prior to the date of alleged incident ie 25.10.2017. Interestingly, there is no evidence nor any document to reflect the stay of the prosecutrix with the accused in any hotel on 25.10.2017 and the relevant hotel entry register or hotel bookings of 25.10.2017 were not produced before the court in evidence.

27. There are allegations of forcible rape by the accused on 13.11.2017 after blackmailing the prosecutrix. The prosecution has produced the concerned hotel entry register Ex.P7 along with photocopies of Identity Cards Ex P8 and Ex.P9 of the accused and the prosecutrix. Pertinently, in her statement Ex.DI given before the Enquiry Officer in the departmental enquiry, wherein she was specifically asked about the incidents on

25.10.2017 and 13.11.2017 in question nos. 18, 19, 20 & 29, while answering these questions, she admitted that she established physical relations with the accused with her consent and permission on these dates. She further admitted that the accused put vermilion on her forehead and she was conscious at that time. Though, statement Ex.DI was given in departmental proceedings but the same assumes importance, especially, when she gave complaint to her CISF Unit on 31.07.2018 i.e. after the registration of the present FIR. It is also worthwhile to note that the Enquiry Officer as well as the Presenting Officer in the aforesaid enquiry were female officers. The aforesaid version in Ex.D1 is completely contradictory to the version put forth by the prosecutrix in her statement as PW7, wherein she alleged forcible rape. These contradictory statements create a doubt in the prosecution case.

28. The prosecutrix further alleged forcible rape from 14.02.2018 to 17.02.2018 and in April 2018, but these dates were not mentioned in the complaint Ex.P18 or in her statement Ex.P22 under Section 164 Cr.P.C. Furthermore, there is no hotel record to corroborate the aforesaid allegations of the prosecutrix. Even in the MLR Ex.P14, the prosecutrix only mentioned about sexual assault on 13.11.2017. The complaint Ex.P18 was given by the prosecutrix on 12.07.2018 i.e. after about 9-10 months of the alleged incident of forcible rape and there is no explanation as to why she kept quiet for such a long time. The prosecutrix was an ASI in the CISF and is a well educated, mature and independent working woman. There was no justifiable reason for her to meekly surrender before the accused as

suggested by her. She admitted photographs Ex.D2 which clearly points towards a consensual relationship between the accused and the prosecutrix.

29. Her statement Ex.D1 clearly reflects admission on her part of her previous relationship with the accused. Therefore, the entire testimony of the prosecutrix as PW7 with regard to allegations of forcible rape cannot be believed in view of the improvements made by her in her version as PW7 when the same is compared with the complaint Ex.P18, her statement Ex. P22 and her statement Ex.D1.

30. The text messages and Whatsapp chats between the prosecutrix and the accused allude to a close and intimate relationship between the two and there is nothing to suggest blackmail or extortion. Further, there is no evidence that the accused sent threatening messages to the prosecutrix or her family members.

31. 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.”

32. In view of the aforementioned discussion and keeping in view the law laid down in ***Kallu @ Masih & Ors. Case (supra)***, we find no reason to interfere with the well reasoned judgment dated 28.04.2023 passed by the Additional Sessions Judge, Gurugram. Therefore, the present appeal stands dismissed.

(JASJIT SINGH BEDI)
JUDGE

(SUDHIR SINGH)
JUDGE

September 18, 2024
sukhpreet

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No