

(2018) 08 P&H CK 0122

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous Appeal -289-MA of 2018 (O&M)

Lalo Bai

APPELLANT

Vs

Tilak Raj and others

RESPONDENT

Date of Decision : 10-08-2018

Acts Referred:

Indian Penal Code, 1860 — Section 120B, 354, 376D, 506

Citation : (2018) 08 P&H CK 0122

Hon'ble Judges : A.B. CHAUDHAR, J;KULDIP SINGH, J

Bench : Division Bench

Advocate : G.S. Bhandari

Final Decision : Dismissed

Judgement

Heard.

Application is allowed for the reasons stated therein. Delay of 260 days in filing the application seeking leave to appeal, is condoned.

Being aggrieved by the judgment dated 19.12.2016, in Sessions trial No.48 of 2016, by which the learned trial Court acquitted all the five accused-

respondents for the charge under Section 120-B, 354, 376-D and 506 of Indian Penal Code, 1860 (for short 'IPC'), the present application seeking

leave to appeal has been filed by the complainant-prosecutrix.

The applicant-complainant-prosecutrix had filed a private complaint case alleging the offences as above stated. Her case was that on 17.04.2012 at

about 8:00 P.M. when she was returning from Mandi Guru Har Sahai to her village Chak Chhanga Rai Hithar, accused-Tiak Raj stopped his

motorcycle near her and asked her to sit on the motorcycle. Tilak Raj being inhabitant of the same village, she sat on his motorcycle. Tilak Raj stopped

his motorcycle near water works of Village Chhanga Rai Hithar, where remaining accused were already present. Complainant alighted from the motorcycle. All the accused pulled her and took her to the nearby fields, where they committed rape upon her. She tried to raise noise, but she was threatened. They were holding kappas in their hands and threatened to eliminate her. At the time of commission of offence, Jeeto Bai and Tilak Raj were standing nearby and they were instigating accused persons to commit rape upon her. On hearing the noise of the complainant, Maur Singh and Fauja Singh reached the spot and witnessed the entire incident. The accused persons fled away from the spot. Maur Singh and Fauja Singh took her to her house. She disclosed the entire incident to her husband-Budh Parkash. On the next day, Budh Parkash took her to Civil Hospital, Ferozepur, where she was medico legally examined. The accused committed rape because the complainant had a dispute with Jeeto Bai due to party fraction in the village and they also had property dispute. Though, the matter was reported to the police, no action was taken against the accused persons, and therefore, private complaint case was filed in the trial Court. Committal order was made on 03.02.2016. The prosecution examined complainant-prosecutrix as PW1, Maura Singh as PW2, Budh Parkash as PW3 and Dr. Preet Maninder as PW4 and closed its case. The defence alleged the civil dispute amongst the parties and in support, DW1-Reader to Naib Tehsildar, Jalalabad, namely Manoj Kumar was examined by the defence to prove the documents, in respect of the dispute between the parties, from Exhibit D1 to D10. PW1-complainant-prosecutrix deposed as per her complaint stating that Tilak Raj and Jeeto Bai were watching and instigating while accused persons committing rape upon her. Two witnesses, namely PW2-Maura Singh and PW3- Fauja Singh also deposed that they saw that the prosecutrix was caught hold of by the accused persons and committed rape upon her. PW3-Budh Parkash, husband of the prosecutrix deposed that the prosecutrix had narrated the incident to him. PW4-Dr. Preet Manindar deposed that she had examined the complainant. After examination of the prosecution witnesses, learned trial Court heard the arguments and acquitted the respondents with benefit of doubt. Hence, this application seeking leave to appeal.

In support of the application, learned counsel for the applicant vehemently argued that the learned trial Court committed an error in rejecting the

evidence of the prosecution witness, namely the complainant as well as the two eye witnesses and the husband of the complainant. There was no reason for the trial Court to do so and the sworn testimony of the witnesses ought to have been believed by the trial Court. According to him, the learned trial Court committed serious error in holding that there was a civil dispute amongst the parties and long standing litigation. But then it ought to have seen by the trial Court that the same did not have any connection with the actual offence of rape committed by the accused persons. The prosecution having been supported by three witnesses, including the complainant-prosecutrix, the trial Court ought to have recorded the conviction. He, therefore, prayed for grant of relief and allowing of the application.

We have heard learned counsel for the applicant at length. We have perused the reasons recorded by the learned trial Court for recording the order of acquittal. At the outset, we find that the prosecutrix complained that the offence of rape was committed on 17.04.2012 at about 8:00 P.M. and she had also reported the same to her husband. It was also claimed that a report was lodged to the police station, but the police took no action. But then the prosecution never proved that by any documentary evidence or by calling the station diary of the police station that the prosecutrix had infact, lodged any complaint with the police station before making the allegation that the police had taken no action. It is therefore, difficult to believe that any such complaint about serious offence of rape was really made. That apart, criminal complaint in question itself was filed as late as after almost 3 years of the alleged offence. There is no explanation whatsoever as to why the private criminal case was filed by her after such a long period. It is difficult to accept the theory of the prosecutrix that she waited for almost 3 years for filing the complaint, if at all the police were not taking any action.

It is then seen that she is a married woman and the offence is said to have taken place almost near to the public place. She admitted in her cross-examination that the surrounding area near the field works where the offence was taken place, number of rooms are constructed and people are living there. There were the houses of Makhan Singh, Surjit Singh and Gurdeep Singh just opposite to the water works and there are 7- 8 houses on the side of water works. She also admitted that even official remains on duty at water works. Similarly, is the case with PW2 and PW3, the alleged eye-

witnesses that no hue and cry was made by the eye- witnesses or by PW1- Prosecutrix. If at all, threat was imparted to PW1- prosecutrix, these two

eye witnesses PW2 and PW3 did not claim that they were also given any threat. Therefore, it is difficult to accept their evidence that they also did not

raise any noise when they saw the commission of offence of rape upon the prosecutrix. The alleged eye witnesses also stated that neither the clothes

were torn nor injuries were found on the prosecutrix. Prosecutrix also corroborated the same version about the clothes and stated that he had never

handed-over torn clothes to the police or doctor. It is in this background, the trial Court given following reasons in Paragraphs 19 and 20 of the

impugned judgment, which we quote hereunder:-

19. From the evidence on record, it is established that the occurrence had taken place almost at a public place. The complainant-prosecutrix in her

cross examination has stated that water works i.e. the place adjoining the fields where the occurrence took place is also known as Dhani Jani Singh

Wali. There are also rooms constructed in the water works premises. Grain market and focal point adjoin the water works which fall on the left side if

one comes from Guru Har Sahai. There are houses of Makhan Singh, Surjit Singh,

Gurdeep Singh just opposite to the water works. There are also 7/8 houses on the side of water works. She has further admitted that even official also

remains on duty at water works. It is also in the cross examination of Maura Singh PW2, the eye witness of the occurrence, that there are houses of

Makhan Singh, Surjit Singh and Gurdeep Singh just opposite to the water works. It is strange enough that the accused had chosen this public place for

committing such a crime. It is further improbable that no one from the persons residing near the place of occurrence would attract at the spot,

particularly when it has come in the cross examination of the prosecutrix that she raised hue and cry.

20. There are also important discrepancies/ inconsistencies in the statements of the prosecutrix PW1 and Maura Singh PW2, the eye witness of the

occurrence, which go to the root of the prosecution case. The prosecutrix in her cross examination has stated that the accused torn her clothes and

that he received scratches on her person. Whereas, Maura Singh PW2 has stated that her clothes were not torn and that no injury was present on the

person of the prosecutrix. During the course of her cross examination, the

prosecutrix has stated that she had neither handed over her torn clothes to the police, nor to the doctor. It cannot be believed that a lady upon whom rape has been committed and during the commission of that crime, her clothes were torn, would not hand over the same to the police to strengthen her version. The prosecutrix in her cross examination has stated that she did not know Maur Singh and Fauja Singh prior to the alleged occurrence, whereas Maur Singh PW2 has stated that the prosecutrix is his sister in law (Bharjai) from the brotherhood. These discrepancies cannot be said to be minor in nature and certainly, wreck the case of the prosecution.â??

In so far as the medical evidence is concerned, the prosecution story is not at all different from the earlier doubtful and suspicious circumstances.

PW4-Dr. Preet Maninder stated that there were no external mark of any injury on the person of the prosecutrix. It is strange that when several persons committed rape on the person of the prosecutrix that too in the fields, no external mark or injury was at all appeared. It is also strange that rape committed in the open fields which, obviously, had rough surface, still there was no injury on the person of the prosecutrix. The chemical examination report also did not support the prosecution case. It is in this background, the trial Court discussed, in Paragraph 21 of the impugned judge, which we quote hereunder:-

â??21. Now, coming to the medical evidence. Dr. Preet Maninder PW4 has medico legally examined the prosecutrix. According to the doctor, no sign of injury was present on the private parts of the prosecutrix. During the course of her cross examination, the doctor has admitted that there were no external mark of any injury on the person of the prosecutrix. However, as mentioned above, the prosecutrix has stated that she had received injuries on her person. First of all, it shows that the prosecutrix has tried to exaggerate the things and improve her version. Secondly, it seems to be improbable that a lady would not receive any injury or scratch on her body, particularly when, three accused have forcibly committed rape upon her, that too in the fields i.e. the rough surface. During the course of her cross examination, the doctor has admitted that till today, she has not given her final report regarding the alleged rape because she has not received report of Chemical Examiner. It is significant to note that report of Chemical Examiner has not been received in his case though as per the doctor, two vaginal

swabs were taken and sent to Chemical Examiner for the presence of spermatozoa. This factor also creates a doubt with regard to the commission of offence of rape in the instant case.â??

The case of the prosecution is that Jeeto Bai was instigating the accused persons to commit rape upon the prosecutrix. This appears to be somewhat

highly improbable and the story that was projected by the prosecution before the Court, almost after 3 years with no corroborative evidence at all. The

trial Court having noted the demeanor of the witnesses including that of the prosecutrix, decided to give benefit of doubt to all the accused persons.

We do not find any perversity in the impugned judgment extending the benefit of doubt to the accused persons and therefore, we are inclined to agree

with the reasons for recording acquittal by the learned trial Court. in the result, the present application seeking leave to appeal against acquittal stands

dismissed.