

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 2082 OF 2009

Devinder Pal Singh

...Appellant

Versus

Union Territory, Chandigarh

...Respondent

O R D E R

1. This appeal has arisen out of the judgment and order dated 27.5.2008 of the High Court of Punjab and Haryana at Chandigarh, by way of which it has reversed the judgment of the Sessions Court dated 25.8.1999, passed in Sessions Case No. 18-A/1.8.1995 and convicted the appellant for the offence punishable under Section 376 of the Indian Penal code, 1860 (hereinafter referred to as the 'IPC'), and awarded a sentence of 7 years RI, alongwith a fine of Rs.5,000/-, and in default of payment of such fine, he shall undergo further RI for a period of one year.

2. The case of the prosecution is, that one Shakuntla-prosecutrix, a divorcee aged 25 years, had been taken by the appellant alongwith four others, on the intervening night of 4th/5th December, 1994, on a scooter to a flat where the appellant had been assigned duty by D.I.G. Mohd. Mustafa, and that here the appellant had committed rape upon her and that subsequently, she had also been raped by others. She had even gone to search for some help but her efforts were in vain. She had come back weeping and crying and one Prem Singh, and her neighbour had advised her to lodge an FIR. Thus, the prosecutrix had herself lodged the FIR on 6.12.1994 at 3.00 p.m., alleging that some unknown persons had taken her to a place which she could identify, and that she had been raped there by 5 persons, and further that she would be able to identify them.

3. The police had taken the prosecutrix to the place of occurrence, and here she had identified the appellant as one of the accused. He was then arrested, and an investigation ensued. Other persons were also searched. The statement of the prosecutrix was also recorded under Section 164 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the 'Cr.P.C. '), and subsequently she alleged that she had filed an affidavit before court. By way of both i.e., the statement made by her under Section 164 Cr.P.C., and the affidavit filed by her, she has submitted that none of the accused had raped her. Before the trial court, she identified the appellant, but could not identify the other accused, and to a certain extent, she was

declared hostile and was cross-examined by the public prosecutor himself. However, the trial court placing reliance upon the statement made under Section 164 Cr.P.C., and the affidavit filed by her, acquitted all the accused vide judgment and order dated 25.8.1999.

4. Aggrieved, the State preferred an appeal against the acquittal of all of the accused. The High Court dismissed the State's appeal qua the other accused, but allowed the State's appeal so far as the appellant is concerned, convicted him and awarded the sentence as has been referred to hereinabove.

Hence, this appeal.

5. Shri Gagan Gupta, learned counsel appearing for the appellant has submitted that the prosecutrix had herself stated in her statement under Section 164 Cr.P.C., and subsequently in the affidavit filed by her before the trial court, that none of the accused including the appellant had committed rape on her, and that therefore, the High Court had no occasion to reverse the said judgment and order so far as the appellant is concerned.

6. The fact remains that the prosecutrix has not been confronted with her statement under Section 164 Cr.P.C., or the affidavit filed by her before the trial court. In view thereof, it was permissible for the trial court to make any reference to such documents and rely upon them. To such extent, we hold that the High Court was justified in reversing the findings arrived at by the trial Court on the said count.

7. The prosecutrix who appeared as a witness in the trial court has deposed against the appellant. She has identified the appellant in court and it has been her consistent case that he was the first person who had forced her to travel on a scooter with him, and that it was he who had taken her to a room at gunpoint, and had thereafter bolted the room from inside, and committed rape upon her. Thus, she was in a position to identify him. Merely because the High Court has acquitted all the other accused, the same does not mean that the appellant must also be acquitted. In total, there were five accused, one died during trial, and the other three persons have been acquitted by both the courts.

8. Shri Gagan Gupta, learned counsel appearing for the appellant could not make any argument which is acceptable to us. In view of the above, we do not find any force in this appeal. The appeal lacks merit, and is accordingly dismissed.

.....J.
(Dr. B.S. CHAUHAN)

.....J.
(FAKKIR MOHAMED IBRAHIM KALIFULLA)

New Delhi,
May 1, 2013

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DEVINDER PAL SINGH

Appellant (s)

VERSUS

UNION TERRITORY, CHANDIGARH

Respondent(s)

(With office report)

Date: 01/05/2013 This Appeal was called on for hearing today.

CORAM :

HON'BLE DR. JUSTICE B.S. CHAUHAN

HON'BLE MR. JUSTICE FAKKIR MOHAMED IBRAHIM KALIFULLA

For Appellant(s) Mr. Gagan Gupta, Adv.

For Respondent(s) Ms. Kamini Jaiswal, Adv.

UPON hearing counsel the Court made the following
O R D E R

Heard learned counsel for the appellant.

The appeal is dismissed in terms of the signed order.

(O.P. Sharma)

(M.S. Negi)

Court Master

Court Master

(Signed order is placed on the file)