

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

**CRA No.D-1100-DB of 2014
Date of decision: 28.04.2015**

M (Prosecutrix)

..... Appellant

VERSUS

Sunil Kumar @ Sonu & another

..... Respondents

CORAM: HON'BLE MR. JUSTICE S.S. SARON
HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: Mr. Sunil Polist, Advocate
for the appellant.

RAMENDRA JAIN, JUDGE

The present appeal has been preferred by the prosecutrix against the judgment dated 12.05.2014 passed by Sh.Jaibir Singh, Additional Sessions Judge, Kaithal, acquitting the accused-respondent Sunil Kumar @ Sonu son of Dharampal in Sessions Case No.RBT 13 of 2014 arising out of FIR No.69 dated 27.05.2013, under Sections 376, 328 and 506 IPC, registered at Police Station Dhand, District Kaithal.

The brief facts, relevant for the decision of this appeal, are that on 27.05.2013, appellant-complainant M

(hereinafter called as the 'Prosecutrix') moved a written complaint Ex.PB duly signed by her to Lady Constable Suman Devi addressed to Inspector/SHO, Police Station Dhand, to the effect that she was resident of Village Pabnawa. After the death of her husband, she was working in a beauty parlour. About one year ago, she came in contact with accused-respondent Sonu at Bus Stand of Village Pabnawa and he took her along. She narrated her woeful story to him that she was a widow having a son. However, he asked her to have friendship with him, but she refused for it. He administered her some intoxicant in a cold drink and committed rape with her for the entire night.

After some days, accused-respondent Sonu again met her at Bus-stand, Kurukshetra and promised to marry her and keep her son with him, but if she disclosed this fact to any one, in that eventuality, he would kill her and her son. Thereafter, he kept on threatening and exploiting her sexually. On 18.03.2013, accused-respondent Sonu met her at Bus-stand Pabnawa and took her on a motorcycle in his fields at village Mirzapur and kept her confined in a tube-well room for the entire night and went on committing rape with her. She can get identified the said tube-well room.

In this way, accused-respondent Sonu had been committing rape with her, for the last one year. Hence, legal action was asked to be taken against him.

As per above-said allegations in the complaint Ex.PB, offences under Sections 376, 328 and 506 IPC were found to have been made out, therefore, an FIR Ex.PO was registered. Investigation was carried out by the Inspector/SHO Vishnu Prashad. During investigation, prosecutrix was got medico-legally examined from Government Hospital, Kaithal. Statements of the relevant witnesses were recorded. Place of occurrence was got identified by the prosecutrix. Its rough site plan Ex.PM was prepared. Site plan Ex.PN of the place from where the accused-respondent had taken the prosecutrix on motor-cycle from Bus-stand of Village Pabnawa was prepared. Accused-respondent was arrested on 27.05.2013 and was got medico-legally examined on 28.05.2013 from Government Hospital, Kaithal. Thereafter, he was produced in the Court and sent to judicial custody.

The statement of the prosecutrix under Section 164 Cr.P.C. Ex.PE was got recorded in the Court of Additional Chief Judicial Magistrate, Kaithal on 28.05.2013, whereby she completely exonerated the accused-respondent by deposing that she used to remain under tension after the death of her husband about 7 years ago. She had developed friendship with him. One and a half year ago, she had moved a complaint i.e. Ex.PB in anger against him. Whatever had happened in between her and the accused-respondent, had happened with her consent and she did not want any action against him.

Hence, on 31.05.2013, accused-respondent was discharged by the Court. Since, no incriminating evidence had come on record against him during investigation, so cancellation report was submitted against him on 18.06.2013, in the Court of Additional Chief Judicial Magistrate, Kaithal. However, the prosecutrix then appeared in person before him and made a statement Ex.PC on 13.08.2013 that she does not agree with the police action and wants to pursue the matter further. Whereupon, Inspector/SHO Ashok Kumar, present in person, before the Court submitted that the cancellation report was prepared and submitted in the Court on the statement of the prosecutrix dated 28.05.2013 under Section 164 Cr.P.C., whereby she did not want any action against the accused-respondent and further that whatever had happened in between them, had happened on account of her consent.

Thereafter, the prosecutrix submitted before the Court that she had made statement under Section 164 Cr.P.C. under pressure of the police. Whereupon, Inspector/SHO Ashok Kumar, vide his separate statement submitted that in view of the stand taken by the prosecutrix, further investigation should be got conducted through Women Cell or CIA Staff, Kaithal. Accordingly, the Additional Chief Judicial Magistrate, Kaithal vide his order dated 13.08.2013, ordered for further investigation by a responsible police officer of CIA staff, Kaithal. Hence, thereafter, further investigation was carried out by Sub

Inspector Prithvi Raj and fresh statement Ex.PD of the prosecutrix under Section 164 Cr.P.C. was got recorded before the Additional Chief Judicial Magistrate, Kaithal on 05.09.2013 by moving an application. The accused was again re-arrested on 07.09.2013 and after completion of investigation, final report under Section 173 Cr.P.C. was filed in the Court of Additional Chief Judicial Magistrate, Kaithal.

Copies of Challan as envisaged under Section 207 Cr.P.C. were supplied to the accused-respondent and after hearing learned counsel for the parties, learned trial Court vide its order dated 05.10.2013, committed the case to the Court of Sessions Judge, Kaithal.

After hearing learned counsel for both the sides, the learned trial Court framed charge against the accused-respondent under Sections 328, 376 and 506 IPC, vide order dated 12.11.2013.

The prosecution in support of its case examined in all 11 witnesses i.e. PW-1 Constable Mahi Pal, PW-2 Prosecutrix, PW-3 Dr. Hamita Medical Officer, General Hospital, Kaithal, PW-4 Dr. Sandeep Jain, Medical Officer, General Hospital, Kaithal, PW-5 Sukam Pal, Kanungo, PW-6 Sh. Rameshwar Dass, Halqa Patwari, Revenue Circle, Pabnawa, District Kaithal, PW-7 Inspector Vishnu Parshad, Investigating Officer, PW-8 Head Constable Tarsem Singh, PW-9 ASI Satpal, PW-10 SI Prithvi Raj and PW-11 Inspector Ashok Kumar, Investigating Officer and

relied upon affidavit of Constable Mahi Pal PW-1 Ex.PA, complaint Ex.PB, endorsement thereon Ex.PB/1, statement of the prosecutrix dated 13.08.2013 Ex.PC, her another statement under Section 164 Cr.P.C. dated 05.09.2013 Ex.PD, and that of dated 28.05.2013 Ex.PE, affidavit of Dr. Hamita Gupta Ex.PF, application dated 27.05.2013 moved by Investigating Officer Ex.PG, copy of MLR of prosecutrix Ex.PH, affidavit of Dr. Sandeep Jain Ex.PJ, opinion of doctor Ex.PK, copy of MLR of accused-respondent Ex.PL, site plan of his fields Ex.PM, scaled site plan of Bus Stand of village Pabnawa Ex.PN, FIR Ex.PO, recovery memo in respect of parcel of prosecutrix along with sample seal Ex.PQ, site plans again prepared of the places of occurrence Ex.PR & Ex.PS, disclosure statement of accused-respondent Ex.PT, demarcation memo of the spot Ex.PU, demarcation memo of the place of tube-well kotha at village Mirjapur Ex.PV, application dated 28.05.2013 for medical examination of accused-respondent Ex.PX, application dated 28.05.2013 for recording the statement of prosecutrix Ex.PY, application dated 30.05.2013 for discharge of accused Ex.PZ, affidavit of HC Tarsem Singh Ex.PAA, application for recording the statement of prosecutrix under Section 164 Cr.P.C. Ex.PBB, copy of the statement of prosecutrix under Section 164 Cr.P.C. dated 05.09.2013 Ex.PCC, application for obtaining copy of statement of prosecutrix under Section 164 Cr.P.C. Ex.PDD, arrest memo Ex.PEE, application for medical examination of

accused Ex.PFF, statement of Ashok Kumar, SHO Police Station, Dhand Ex.PGG, FSL report Ex.PHH, copy of application moved by the accused dated 10.06.2013 Mark A. Thereafter, the learned Public Prosecutor closed the prosecution evidence.

After closure of the prosecution evidence the statement of the accused-respondent under Section 313 Cr.P.C., was recorded putting entire incriminating evidence brought on record against him to which, he denied and pleaded his innocence. However, he did not lead any oral evidence in his defence, but produced applications moved by the prosecutrix as Ex.DA to Ex.DE.

After conclusion of trial and hearing the learned Public Prosecutor and the learned defence counsel, the learned trial Court acquitted the accused-respondent vide impugned judgment dated 12.05.2014 by giving him benefit of doubt with the observation that there were intimate relations in between prosecutrix and the accused and now when she found that he was a poor driver only and was not a rich man, she backed out from her relationship with him.

Aggrieved by the same, the prosecutrix has preferred the present appeal.

Learned counsel for the appellant prosecutrix has contended that the learned trial Court has failed to appreciate that after making a new statement Ex.PE under Section 164

Cr.P.C. before the Additional Chief Judicial Magistrate, Kaithal, completely exonerating the respondent-accused, she had made another statement Ex.PC, categorically deposing therein that she was not satisfied with the police proceedings and wants to pursue the matter. Thereafter, learned Additional Chief Judicial Magistrate, Kaithal, on that very date, had recorded the statement of Inspector/SHO Ashok Kumar, Ex.PGG and ordered for further investigation of the case through CIA Staff, Kaithal. Then, the case was reinvestigated by PW-10 SI Prithvi Raj and fresh statement of the prosecutrix under Section 164 Cr.P.C. was recorded before the Additional Chief Judicial Magistrate, Kaithal. On 05.09.2013, in her subsequent statement Ex.PD, prosecutrix reiterated her earlier stand that the accused by administering her some intoxicant in the cold drink, took her at some unknown place and kept her confined for the whole night and committed rape with her. After few days, he again met at Bus-stand Kurukshetra and assured to marry her and to keep her son with him. He further threatened her that in case, she would disclose this fact to any one, he would kill her and her son. He kept on threatening her. On 18.03.2013, he took her on a motorcycle in a field and committed rape with her during the entire night. The police did not register a case against the accused on her application dated 19.04.2013. However, on her third application, it registered the case on 27.05.2013. Thereafter, the family members of the accused-respondent

came to her and stated that mother of the accused-respondent was admitted in the hospital and if anything would happen to her, in that eventuality, they would kill her and her son. However, they assured that if she would give statement in his favour, then, they would keep her and her son with them. However, when accused-respondent came out of the jail, he refused to marry her and to keep her son.

Hence, according to the learned counsel, the learned trial Court has given undue weight to the initial statement of the prosecutrix under Section 164 Cr.P.C. Ex.PE, which she had withdrawn. Besides, the learned trial Court has also miserably failed to appreciate the fact that the prosecutrix was raped by the accused-respondent on false promise of marriage and to keep her and her son with him and in case she would disclose this fact to anyone, he would kill both of them. The impugned order is, therefore, based on surmises and conjectures, because statement Ex.PE made by the prosecutrix, had lost its significance, after making subsequent statement Ex.PD. Even while appearing as PW-2, the prosecutrix has supported the prosecution case in its entirety and thus, it was fully proved against the accused-respondent beyond any shadow of doubt. Hence, he has wrongly been acquitted. The finding of the learned trial Court that the prosecutrix has given inconsistent version, is palpably wrong and hence, the impugned judgment

of the acquittal may kindly be set aside and the accused be convicted.

After giving our thoughtful considerations to the submissions made by learned counsel for the prosecutrix, we are of the considered view that the appeal deserves to be dismissed outrightly and resultantly the impugned judgment is liable to be affirmed.

The prosecutrix, while appearing as PW-2 in the witness box before the learned trial Court, was put all her applications Ex.DA to Ex.DE in her cross-examination, by the learned defence counsel whereupon, she admitted her signatures at point 'A', by categorically admitting that these were in her hand-writing. Meaning thereby, all the applications Ex.DA to Ex.DE were moved by her to the Inspector/SHO of Police Station Dhand. In her initial application Ex.DA dated 19.04.2013, she stated that she was resident of village Pabnawa. Accused-respondent Sonu son of Sh.Dharampal, took her to the house of his relative by administering her some intoxicant in the cold drink and by keeping her there, committed rape upon her. On her asking, he told her that he would marry her, despite the fact that she had earlier disclosed to him that she had one son and her husband has already expired. The accused-respondent told her that it hardly makes any difference and he would marry her. Thereafter, after few days, she asked him to marry her, but he told a lie that he was

already married. Later on, she came to know that accused-respondent was going to solemnize his marriage with a girl of Village Khanpur and resultantly, she asked him as to why he had given false assurance to her whereupon, he stated that it was his routine habit.

Thereafter, on 03.05.2013, she moved another application Ex.DB before the Inspector/SHO Police Station Dhand, and sought time to take action against the accused-respondent on her application Ex.DA upto 08.05.2013, so that she may consult and discuss the matter with her mother, brother and family members. Then, on 08.05.2013, another application Ex.DC was moved by her before the Inspector/SHO Police Station Dhand, seeking time from the police to take action against the accused-respondent on her application Ex.DA upto 16.05.2013, on which date, a compromise was endorsed by Om Parkash Ex Sarpanch of Village Pabnawa and some other persons namely Daya Singh, Dharmail Singh, Ganj Singh, Arjun Singh etc.

Thereafter, she moved another application Ex.DD to the Inspector/SHO Police Station Dhand with the averments that she was a household lady, besides, working in a beauty parlour in Kurukshetra. She had come in contact with accused-respondent Sonu son of Sh. Dharampal and he asked her to make friendship with him. Whereupon, she disclosed to him the truth that she was a widow lady having a son. However, he

administered her with some intoxicant in the cold drink and took her to the house of his relative and went on committing rape with her for the entire night. In the next morning when she asked him that why he had done so, he replied that he would marry her. However, she told him that she does not want to marry him, because she had understood his habits and misdeeds and she did not like the same. He was not a good man, therefore, she did not want to marry him. Since, she refused to marry him, therefore, he was threatening her to forcibly marry him, otherwise he would kill her and her son. Hence, she apprehended danger to her life at the hands of the accused-respondent.

From the above said last application Ex.DD and overall conduct of the prosecutrix, it is evident from the record that she herself refused to marry the accused and not that he exploited her sexually. She moved an application Ex.PB and got registered FIR Ex.PO. However, thereafter as discussed above, on 28.05.2013, she made her statement Ex.PE under Section 164 Cr.P.C. before the Additional Chief Judicial Magistrate, Kaithal, completely exonerating the accused, by deposing that she used to remain under tension after the death of her husband around seven years ago. She had developed intimate relationship with accused-respondent Sunil @ Sonu. One and a half year ago, she had moved a complaint (Ex.PB) in anger against him. Whatever had happened in between her

and the accused-respondent, had happened with her consent and hence, she did not want any action against him. Resultantly, accused-respondent was discharged by the Court.

The prosecutrix while appearing as PW-2 has further specifically admitted in her cross-examination that she did not mention in her statement before the CIA staff, Kaithal that she had suffered her statement Ex.PE before the Additional Chief Judicial Magistrate, Kaithal, under pressure of the police officials. She also did not mention in her above statement that on 28.05.2013, she was threatened by the accused-respondent and his family members in the premises of Police Station Dhand, while admitting that it was read over to her by the Magistrate.

The above application Ex.DD dated 20.05.2013 of the prosecutrix proves that on her refusal to marry him, the accused-respondent had given threats to her that either she should marry him, otherwise he would kill her and her son, which strengthens the defence version that it was the prosecutrix, who allured the accused and tried to trap him to marry her, thinking that she would be able to pull her future life with him in a proper manner, but when she came to know that he was merely a driver, she started ignoring him. From this very application, it is also evident that it was not the accused-respondent who had backed out from the promise of marriage, rather, it was the prosecutrix, who had backed out. Application

Ex.DA was moved by her on 19.04.2013, whereas application Ex.PB was moved on 27.05.2013, upon which FIR Ex.PO was registered which shows that in between this period, the prosecutrix was in dilemma and could not make up her mind, whether to marry the accused or not? The prosecutrix again appeared before Additional Chief Judicial Magistrate, Kaithal and made a statement in favour of the accused, categorically deposing that she was in love with him and whatever had happened in between them, had happened with her consent.

In view of the above factual position on the record, the story put forth by her that she made her statement Ex.PE under pressure of the police as well as of the accused, is not tenable in the eyes of law. The police acted upon her application Ex.PE very promptly, because after moving the aforesaid application at 3.00 PM, she was got medico-legally examined immediately and got demarcated the places of occurrence. In the same night, even the accused was arrested. In that eventuality, it cannot be presumed that the police had ever extended any threat to the prosecutrix to make her statement in favour of the accused-respondent. More so, the prosecutrix had changed her version time and again, because at one point of time, she stated that it was the accused who had extended threat to her, whereas, another point of time, she stated that his family members had extended threats to her. The things did not rest here, because she again changed her

version by stating that the Police Officers namely Inspector/SHO Vishu Parshad and SI Prithvi Raj had extended threats to her. The above conduct of the prosecutrix proves her frustration and further that by now, she had made up her mind not to marry the accused.

Men speak lie but circumstances not. A perusal of MLR Ex.PH also falsifies her entire version that she was ever exploited sexually by the accused-respondent against her wishes and without her consent, because she has voluntarily disclosed to Dr. Hamita, Medical Officer, General Hospital, Kaithal PW-3, who conducted her medico-legally examination, that she was having relations with one guy since, last 1½ years.

Inspector Vishnu Parshad, Investigating Officer PW-7 has deposed in his cross-examination that it had come in his investigation that the accused-respondent and the prosecutrix used to roam on motorcycle, but she never disclosed the place where she was subjected to alleged sexual intercourse for the first time. Nothing has come in his investigation about the kind of intoxicant and even its source which was allegedly administered to the prosecutrix.

In view of discussion above, the learned trial Court has rightly observed that there is a probability in the version of the defence that the prosecutrix had wanted to extract some

money from the accused, because when she had refused to accede to the request of the accused to marry him, around one and a half year ago, then why did she accept a cold drink from him, because there was no occasion for her to accept the same, rather she would have resisted to his above offer. The above conduct of the prosecutrix shows that she did not decline the offer of friendship of the accused, rather had given her consent to it. In the Court of Magistrate also, the prosecutrix did not identify the relatives of the accused-respondent in whose house, she was taken by him. Even, the Investigating Officer did not collect the empty bottle of container in which the prosecutrix was administered intoxicant. Even otherwise, it is impossible for a person to take someone on a motorcycle without making him sandwiched in between with the help of a third person. Hence, the story putforth by the prosecutrix that after administering intoxicant, the accused had taken away her on a motorcycle is completely false. In view of the above factual position, the testimony of the prosecutrix is totally inconsistent and unreliable as has rightly been observed so, by the learned trial Court.

No other point was urged before us.

In view of the above discussion, the appeal filed by the prosecutrix fails and deserves to be dismissed. Resultantly, it is dismissed.

Copy of the impugned judgment along with relevant record be sent back to the learned trial Court and the appeal file be also sent to record.

(RAMENDRA JAIN)
JUDGE

(S.S. SARON)
JUDGE

28.04.2015
yogesh