

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Criminal Appeal No. D-1609-DB of 2014
Date of Decision : August 20, 2015

Nitu Rani

.....Appellant

VERSUS

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE T.P.S.MANN
HON'BLE MR. JUSTICE GURMIT RAM

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

Mr. Praveen Bhadu, Assistant Advocate General, Haryana
for respondent No.1-State.

Mr. G.S. Sandhu, Advocate
for respondents No.2 and 3.

T.P.S. MANN, J.

The prosecutrix has filed the present appeal for challenging the judgment dated 16.8.2014 passed by the Additional Sessions Judge, Kaithal whereby respondents No.2 and 3, hereinafter referred to as 'the accused', stand acquitted of the charges under Sections 457, 376-D and 506 read with Section 34 of the Indian Penal Code.

The brief facts of the prosecution case are that on the intervening night of 9/10.8.2013, the prosecutrix, who has three sisters and one brother and she was the eldest, was sleeping in a room of her house. At about 1.00 a.m., accused Rampal entered her room while accused Vicky kept standing outside. Rampal subjected the prosecutrix

to rape and threatened to kill her as well as her family if she disclosed anything to any other person. Out of fear she did not disclose about the occurrence to anybody. Again, on the intervening night of 9/10.9.2013 at about 2.00 a.m., when the prosecutrix was sleeping with her mother, both Rampal and Vicky entered her house and tried to rape her. She and her mother raised an alarm. The accused manhandled them. In the meantime, her father came to the spot and caught Rampal, whereas Vicky managed to escape from the spot. The brother of the prosecutrix was away for studies and after his arrival, she narrated the entire episode to him. The prosecutrix then approached the police and prayed for taking legal action against the accused.

Having heard learned counsel for the parties and on going through the impugned judgment as well as the lower Court record, this Court finds that the prosecutrix, who was the eldest child of her parents and aged about 25 years, was said to have been subjected to rape by accused Rampal on the intervening night of 9/10.8.2013 but the matter was not reported to the police even for a month thereafter. The prosecutrix tried to explain the delay by stating that accused Rampal had threatened to kill her and her family members in case she disclosed about the incident to anyone. However, neither on the intervening night of 9/10.8.2013 nor on the intervening night of 9/10.9.2013, any of the accused was shown to be carrying any weapon. Moreover, in case she was threatened with dire consequences on the first occasion, there is nothing on the record to suggest that such a threat had come to an end and for that reason the prosecutrix reported

the matter to the police.

Dr. Preeti Singla, who was examined by the prosecution as PW12, testified that she had medico-legally examined the prosecutrix on 11.9.2013 at 6.30 p.m. She had noticed a bluish bruise on the left side of the forehead and another bluish abrasion with defused swelling over the nose of the prosecutrix. The probable duration of the two injuries was 24 to 78 hours. The type of injuries found on the prosecutrix do not suggest that these were caused while accused Rampal and Vicky made an attempt to commit rape upon her.

In the initial stand taken by the prosecutrix while getting the FIR lodged, she had stated that only accused Rampal had come inside her room while accused Vicky kept standing outside when the first incident took place on the night intervening 9/10.8.2013, whereas in regard to the second incident which took place on the night intervening 9/10.9.2013, both the accused, namely, Rampal and Vicky, had entered her house. However, on 12.9.2013 when the prosecutrix got recorded her statement Ex.PB before the Magistrate she introduced one more person as an accused. At the trial of the case which started against accused Rampal only as accused Vicky was found innocent and in her deposition before the trial Court, on the basis of which accused Vicky was also summoned under Section 319 Cr.P.C. and, subsequently on 20.5.2014, the prosecutrix had deposed that on 10.8.2013 she was subjected to rape by both the accused who had threatened to kill her in case she disclosed about the occurrence to anyone. Nothing was

stated about the third person who was introduced by the prosecutrix as an accused during her examination under Section 164 Cr.P.C.

The apprehension of accused Rampal at the time of the second incident was highly improbable. In case he had been overpowered, he ought to have been produced by the father of the prosecutrix either before the Panchayat or before the police. At the time of his medico-legal examination which was conducted by PW14 Dr. Ajay Aggarwal, no injury was found on the person of accused Rampal. Having been kept in captivity for some time by the father of the prosecutrix, accused Rampal ought to have some tell-tale signs which are missing in the present case.

In view of the above, no case is made out for any interference in the impugned judgment of acquittal.

The appeal is without any merit and, therefore, dismissed.

(T.P.S. MANN)
JUDGE

(GURMIT RAM)
JUDGE

August 20, 2015
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