

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Criminal Appeal No. D-1750-DB of 2014

Date of Decision: 08.09.2015

Ranjit Kaur

...Appellant

Versus

State of Punjab & Another

...Respondents

**Coram: Hon'ble Mr. Justice Hemant Gupta
Hon'ble Mrs. Justice Raj Rahul Garg**

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not? Yes
3. Whether the judgment should be reported in the Digest?

Argued By: Mr. Gaurav Singla, Advocate for the appellant.

Raj Rahul Garg, J.

This appeal is directed against the judgment of acquittal dated 13.08.2014 rendered by learned Sessions Judge, Rupnagar, whereby accused Karan Singh alias Karan Kumar was acquitted for the offence punishable under Section 342/376/506 of the IPC. Ranjit Kaur, mother of the prosecutrix, lodged FIR of this case with the police on 21.06.2013 by going to the police station along with prosecutrix and husband Nirmal Singh. It was alleged that prosecutrix was 19 years old and studying in Punjabi University, Patiala. On the date of lodging of report with the police, Ranjit

Kaur noticed that her daughter was upset. As such, on inquiry, she revealed that about one and half month ago accused-Karan Singh son of Jagdev Singh told her to go to his residence for taking tuition to his children. At about 10.00 AM, she had gone to his house where accused met her. Prosecutrix wanted to meet the children. However, she was made to sit in a room and thereafter accused bolted the door from inside and started misbehaving with her. When she tried to raise alarm, he closed her mouth with his hand and committed rape on her forcibly. He also gave threat of dire consequences in case she discloses this fact to anyone. On account of that she was upset. Complainant disclosed this fact to her husband and then they lodged report with the police. The aforesaid statement, made to the police, was signed by the complainant Ranjit Kaur. It was attested by the prosecutrix and her father Nirmal Singh. On the basis of this statement, investigations were conducted. Victim was taken to the hospital for her medical examination. Site plan of the spot was prepared on the identification of the prosecutrix. On 22.06.2013, statement of prosecutrix under Section 164 Cr.P.C. was recorded. On 25.06.2013, accused was arrested and swabs were sent to laboratory for chemical examination. Accused was also medically examined. Statements of witnesses were recorded. After completion of necessary investigations, challan was put in the court.

Accused was charge-sheeted for offence punishable under Section 376/342/506 IPC, to which accused did not plead guilty but claimed trial. After taking entire prosecution evidence, statement of accused, under Section 313 Cr.P.C., was recorded where he denied each allegation of the

prosecution and pleaded his innocence. The accused pleaded by way of defence that he is innocent and has not committed any offence. He has been falsely implicated in this case in connivance with the police. He took specific stand that in fact the prosecutrix forced him to marry her and was daily calling him on telephone. The family of prosecutrix was nursing a grudge against the accused on account of aforesaid relationship of prosecutrix with the accused. They even earlier tried to implicate him in false cases. Charanjit Singh, brother of the prosecutrix, also implicated him in false case which is pending at Fatehgarh Sahib. The family members of the prosecutrix put pressure upon prosecutrix and under pressure she lodged this false case against him. In fact, he has not committed rape on the prosecutrix. In defence evidence, accused tendered into evidence copy of the order dated 30.05.2013 Ex. D-1, attested copy of bail order dated 21.06.2013 Ex. D-2 and copy of FIR Ex. D-3.

After hearing both the counsel for the parties, the learned Sessions Judge, Rupnagar recorded the impugned judgment of acquittal against which the complainant Ranjit Kaur has come up in this appeal.

We have heard counsel for both the parties besides appraising the entire material and evidence coming on record.

It was contended by learned counsel for the appellant that in fact it is the case of blackmailing wherein prosecutrix was tortured and pressurized to such an extent that there was no alternative left with her and because of that, present offence was committed. Present case is one in which prosecutrix was confined in the house of the accused and thereafter he

forcibly committed rape on her by calling her in his house on the pretext of taking tuition of his children. It is highly unnatural that a lady will form a relation with a man who is having four children. In fact, it was all under pressure and under threat not to disclose about this fact to anybody. With the statement of Ranjit Kaur PW-1 and that of prosecutrix PW2 and with the statement of Dr. Ramanpreet Kaur PW-8, it stands proved on the file that accused forcibly committed rape on the prosecutrix by calling her to his house on the pretext of taking tuition of his children. PW-1 and PW-2 deposed that when prosecutrix had gone to the house of the accused for the purpose, she was made to sit in a room whereas prosecutrix wanted to meet children. Accused then bolted the door from inside and committed rape on her forcibly. When she tried to raise alarm, accused put his hand on her mouth and also gave threat to her life and to the life of her brother in case she discloses this fact to her parents. It was further contended that the accused is a dare-devil kind of person and has been blackmailing the prosecutrix. The learned Trial Court has misread the evidence. As such, since prosecutrix was not a consenting party and as accused forcibly committed rape on her, therefore, the impugned judgment is liable to be set aside and accused is required to be suitably punished.

It is a case in which, of course, PW-1, mother of the prosecutrix, as well the prosecutrix as PW-2 deposed about forcible commission of rape on the person of prosecutrix by the accused, yet, the facts and circumstances of the case go to show that prosecutrix was a consenting party. This complaint has not been lodged by the prosecutrix. It was lodged by her

mother Ranjit Kaur. Of course, signatures of prosecutrix have also been obtained on this complaint besides her father. In the complaint, no date finds mention as to on which date prosecutrix had gone to the house of accused for taking tuition to his children. If that was the only occasion on which accused had committed rape on the prosecutrix, the prosecutrix certainly would not have forgotten that date. There is simple mention that about one and half month ago accused had called her to his house for taking tuition to his children. Unless the prosecutrix was a consenting party, she would not have concealed this fact for a long duration of one and a half month from her parents. It is not understandable that for such a long time, the threat given by the accused would persist on the mind of prosecutrix so as not to disclose the factum of forcible rape. Prosecutrix is major i.e. of the age of about 19 years. After seeing the CD played in the court, prosecutrix admitted, during the course of cross-examination, that in the CD she was preparing food in the kitchen of the accused situated at Satsang Bhawan, Kurali. She further admitted that in the CD she is shown while *Mehandi* was applied on her hands. At that time accused Karan Singh was present with her, as well his wife is also accompanying her. In that CD, she was visible wearing wedding '*Chooda*'. She further admitted that the aforesaid CD was prepared in 2013. She further admitted that in the aforesaid CD, she was shown wearing rings. She further admitted that while she had gone to Sukhna Lake, Chandigarh, a movie was made. The aforesaid CD is Ex. X-6. Further, she identified herself in photographs Ex. X-1 to Ex. X-5. PW-1 Ranjit Kaur also admitted this fact. She further admitted that she visited Hotel Blue Moon, Naya Gaon

along with accused on 15.05.2012 and returned on 17.05.2012. She further admitted that photograph Ex. X-7 is that of hers. She also stated in her cross-examination that she used to send the messages to accused and he also used to send her messages. With this statement of prosecutrix on the file, it cannot be said that the learned Trial Court has, in any way, misread the evidence while recording the impugned judgment of acquittal.

The defence taken by the accused that the family members of the prosecutrix were nursing a grudge against his relationship with the prosecutrix and tried to implicate him and lodge false cases against him and further that Charanjit, brother of the prosecutrix, falsely implicated him in false case which is pending at Fatehgarh Sahib; becomes probable when complainant Ranjit Kaur as PW-1 admitted the filing of cases against accused by her husband and her son. As to whether the cases were false or true has to be decided by the court but the fact remains is this that prior to the present case, parties were grossly inimical to each other. Ranjit Kaur as PW-1 admitted that her husband had filed a complaint against accused on 15.12.2012 before SSP, Mohali in which she was mentioned as witness. That complaint was also filed concerning her daughter. In the complaint, it was mentioned that accused was harassing her daughter. Her daughter had also appeared before SSP, Mohali. Under those circumstances, non-reporting of occurrence of the present case, even at that time, makes the genuineness of the prosecution case highly doubtful.

PW-1 Ranjit Kaur further admitted that Ajaib Singh is her

father-in-law. He was also with them in filing complaint against the accused. Ajaib Singh had also filed a complaint against the accused as he used to play music at very high volume causing nuisance. She further admitted that the police has registered a case against accused. She further went on admitting that Charanjit Singh, her son, also got registered one hurt case against the accused. She further admitted that at the time of registration of FIR of this case, accused was already in custody for the aforementioned case. As such, the defence of the accused that since they were apprehensive of the fact that the accused might be released on bail, therefore, only they had lodged the present case against him, also causes a dent in the prosecution case. Besides above, PW-1 Ranjit Kaur admitted that her father-in-law and her husband were having dispute with accused regarding vacation of house. After the arrest of the accused, said house was vacated. She also admitted that her husband, she herself and accused were having dispute since long but every time the matter was being compromised. In the said compromise, they wanted that the accused should vacate the house voluntarily. She deposed that as the accused was creating nuisance, the entire mohalla wanted him to vacate the house. She further admitted that her husband again filed one complaint on 24.05.2013. On the basis of which, the proceedings under Section 107/151 Cr.P.C. were initiated against him. She further admitted that the quarrel had taken place in her parental house at Sirhind regarding which case is pending against accused under Section 326 IPC at Fatehgarh Sahib. With this evidence on the file, it is established that the complainant party was having long drawn dispute and litigation with the accused. Under these

circumstances, non-reporting of the matter in question for a period of one and half month particularly when the CD and photographs of the prosecutrix are there in the house of the accused showing her preparing food, applying *Mehandi* and wearing wedding *Chooda*; assume importance and creates doubt in the genuineness of the prosecution case.

Above all, the statement of Dr. Ramanpreet Kaur PW-8 is also important in this case. After medical examination of prosecutrix, she reported as follows:

“On examination, person was conscious, cooperative, well oriented to time place and person. Vitals were normal. No injury mark was seen on the body. None were volunteered by patient. On local examination, patient was found to be mensurating. No injury mark was seen on genitalia. Per Vaginal examination no injury mark was seen. Two fingers admitted. Per rectal examination No injury mark seen. Two swabs were taken fro spermatozoa testing. 1. Peri vaginal swab. 2. Intra vaginal swab. These samples were sent to chemical examiner in a box sealed by me which were handed over to C. Harmandeep Kaur. I have brought the original MLR register. Carbon copy of MLR is Ex. P-L which is in my hand and bears my signatures. I have seen report of chemical examiner Ex. P-M vide which spermatozoa were detected in contents of intra vaginal swab. As per my opinion, sexual intercourse occurred with in 5 to 7 days of examination. Possibility of sexual assault can not be ruled out. This medical examination was conducted on police request on which I was directed to conduct the medical vide Ex. P-N.”

Had the rape on the person of prosecution been forcible, then it

is not understandable as to how spermatozoa were detected in the intra vaginal swab of the prosecutrix which was taken by the doctor and sent to FSL for report and as per FSL report, Ex. PM, Dr. Ramanpreet PW-8 opined that sexual intercourse occurred in five to seven days of examination. She further deposed during the course of her cross-examination that:

“It is correct that in case sexual intercourse took place 1-1/2 months ago, then it is not possible that spermatozoa could be detected during test report by chemical examiner.”

Thus, with this medical evidence on record, we do not find that the impugned judgment of acquittal is either perverse or the result of misreading of evidence by the learned Trial Court so as to warrant our interference in this case.

For the reasons recorded above, finding no merit in this appeal, maintaining the impugned judgment dated 13.08.2014, this appeal is ordered to be dismissed.

(Hemant Gupta)
Judge

(Raj Rahul Garg)
Judge

08.09.2015

Waseem Ansari