

In the High Court of Punjab and Haryana at Chandigarh

CRA-D-1778-DB-2014

Date of decision: 10.08.2015.

Pooja

..... Appellant

Vs.

Robin and another

..... Respondents

**CORAM: HON'BLE MR. JUSTICE HEMANT GUPTA
HON'BLE MRS. JUSTICE RAJ RAHUL GARG**

Present: Mr.B.S.Bhalla, Advocate
for the appellant.

RAJ RAHUL GARG.J.

This is an appeal against acquittal filed by prosecutrix (name withheld). By way of this appeal, she has assailed the judgment dated 11.09.2014 rendered by Sh. Ahwani Kumar, Additional Sessions Judge-1, Fatehabad, whereby accused Robin was acquitted for the offence punishable under Sections 450 and 376 of Indian Penal Code (for short 'IPC) for which he was charged against.

As per the story given by the prosecutrix in complaint Ex.P3, she was divorcee and having son from Gursharan. They were to file a petition for divorce by mutual consent in the Court's at Tohana. She was having a son of the age of 2 years who was residing with her. Her parents are no more. She has been residing with her brother Dinesh, who seldom visits village Kullan as he was running a shop at Uchana, District Jind.

On 27.01.2014, accused came to her residence situated at Kullan, District Fatehabad, in inebriated condition and abused her.

Thereafter, at about 10/10:30 p.m. in the night, he again entered into her

house and committed rape on her against her wishes and without her consent. That very night at about 2/2:30 am, she had gone to the house of Robin to lodge protest with the parents of Robin. Accused was present at home at that time. They gave a threat to the complainant-prosecutrix that in case she disclosed this fact, then they would kill her as well her son. Thereafter, they turned her out of the home by catching hold of her by her arms. The following day at about 11 a.m./12:00 noon, she was going to the police station for lodging complaint against accused, when she was in front of the shop of accused, his mother called her and asked her to accompany to her house as they would like to have a talk on the issue. At this, she accompanied Robin's mother to her house. As per complainant, they took her to their T.V. Room. Robin's father was already present there. Robin's father caught hold of the mouth of the prosecutrix whereas his mother held tightly both of her hands from behind and then Robin poured some poisonous substance from the bottle forcibly into her mouth. As per complainant 2/3 drops of that substance went inside her throat and when she was becoming unconscious, she fell down. At that juncture all the aforesaid three persons forcibly dragged her upto to her house. When she regained consciousness, she telephonically called at 100 number whereupon, the police reached her house and called ambulance whereupon she was taken to Civil Hospital, Tohana. On the basis of aforesaid complaint, police machinery was set in motion. Investigations were conducted. The prosecutrix was got medico-legally examined. Statement of prosecutrix under section 164 Cr.P.C. (Ex.P4) was got recorded from the Magistrate. Thereafter, on 29.01.2014, accused was arrested and got medico-legally examined. During the course of investigation, no case was

found against Sukhdev Singh and Mahender Kaur, parents of accused. As such, challan was presented only against accused Robin, who alone was charge-sheeted for committing offence punishable under Sections 450 and 376 IPC. Though, the prosecution has examined as many as 12 witnesses in order to prove its case including doctor witnesses who medico-legally examined prosecutrix as well the accused, yet in view of the defence taken by the accused, there is no need to make a mention in detail about their testimonies. At the time of recording of statement of accused under Section 313 Cr.P.C., he took the defence that he has been falsely implicated in this case by the complainant. She had sexual relation with him with her consent and free will for about 2 years. The prosecutrix planned to seek divorce from her husband and then marry him. The accused was also ready and willing for this marriage. On 28.01.2014, prosecutrix came to meet his mother and disclosed her plan for seeking his mother's consent, but his mother did not agree to this marriage. Thereupon, the prosecutrix threatened his mother with dire consequences, but his mother did not relent and the prosecutrix got annoyed and lodged FIR against him and his parents. It is further the defence taken by the accused that even after lodging of FIR and during judicial proceedings, the prosecutrix kept on sending messages through Karnail Singh son of Shankar, Bhura Ram son of Elma Ram, residents of village Kullan and Jagwinder @ Bobby, the Sarpanch of village Kullan and even met him in the Court that if they agreed for this marriage, the prosecutrix will resile from her previous statement. He also examined Karnail Singh as DW1 and Monu one of his neighbours as DW2.

We have heard learned counsel for the appellant besides

appraising the entire material and evidence coming on record.

It was contended by learned counsel for the appellant that the learned trial Court had side tracked the issue. The learned trial Court was swayed with the defence propounded by the accused and unnecessarily laid much stress on the act and conduct of the appellant on the day of the incidence and after the day of incidence. For proving an offence of rape, it is not necessary that there must be a mark of struggle at the scene of crime as well as on her body. Simply because the complainant did not raise hue and cry and collect the people at the night, the learned trial Court formed the opinion that it was not a forcible sexual intercourse. The incident is of the month of January. As such, it was not possible for the prosecutrix to go to the police station that very night for lodging the report. The following day, she lodged the report. As such, it cannot be said that the delay of 10 hours in lodging the report in any way is fatal for the prosecution.

It was next contended by learned counsel for the appellant that the story propounded by the accused that his parents did not agree to their marriage, as such a false case has been registered against them, is not tenable and since accused has sexually assaulted her, therefore, he is guilty of rape and liable to be convicted.

It is a peculiar case in which accused has admitted his sexual relation with the prosecutrix for about 2 years and also took the specific defence that prosecutrix planned to seek divorce from her husband and then to marry him. He was also ready to marry the prosecutrix but since his parents were not agreeing to this marriage, therefore, she came to meet his mother on 28.01.2014 and disclosed her plan and sought the consent of his mother to which she did not agree and thus lodged a false FIR against them.

Not only this, even during the course of trial, she contacted Karnail Singh, Bhura Ram and Jagwinder @ Bobby, Sarpanch of village and conveyed that in case accused agrees to marry her, she will resile from her previous statement. Karnail Singh (DW1) fully supported the version of accused in this regard. He deposed that two days prior to Holi festival, the prosecutrix visited his Dhani and asked him to settle the dispute with the accused. The next day, he visited the house of Bhura Ram and called Ex. Sarpanch Balbir Singh, Sarpanch Jagwinder @ Bobby and Balkar Ram, Member Panchayat and Sant Lal. They all discussed the matter there; and then reached the house of Sukhdev @ Ghoku. They tried to bring them round to which the parents of accused and his brother Ravinder agreed for the marriage of accused with prosecutrix. Thereafter, they all five members had gone to the house of prosecutrix and told about the same. However, the prosecutrix replied that if father of Robin transfers his half acre of land in her name, then she is ready to patch up the matter, but Sukhdev Singh refused this proposal and under these circumstances, the matter could not be settled. He further deposed that since parents of the accused were not agreeing to this marriage, therefore, a false case got registered by the prosecutrix against them.

Statement of Monu (DW2) is also relevant for the purpose of decision of this case. The house of accused is in front of her house. She deposed that marriage of the prosecutrix with Gursharan was a love marriage against the wishes of her mother and brother. She further deposed that on 27.01.2014 at about 8/8:30 pm, she was present in her house and did not listen any noise of quarrel or cries in the street or in the house of the prosecutrix. She used to sleep at about 11/11:30 pm. On 28.01.2014, the

prosecutrix came out of the house of accused stating that she would falsely implicate him and his parents in a rape case as the mother of the accused was not agreeing to their marriage. She also stated that accused was having relation with prosecutrix for the last about two years.

The afore-discussed defence taken by the accused which is duly supported by DW1 and DW2 become quite probable when we peruse the statement of prosecutrix made in the Court which is discrepant with the statement made by her to the police (EX.P3) and the statement made by her to the Judicial Magistrate 1st Class, Tohana on 29.01.2014 (Ex.P4).

On material points, her statement is discrepant which clearly goes to show that the present case is made up affair and genuineness of the prosecution case is not free from doubt.

As per FIR, on 27.01.2014, accused came to her house in the evening under the influence of liquor. He called bad names to her and went away. Thereafter, that very night at about 10/10:30 pm, he again came to her house in inebriated condition. At that time, he committed rape upon her forcibly against her wishes. In her statement under Section 164 Cr.P.C. (Ex.P4), accused came to her house at about 8:30 pm under the influence of liquor, abused her and also gave a threat to her and, thereafter, went away. She further stated that at about 11:00 pm, he again came to her house under the influence of liquor and at that time he forcibly and against her wishes committed sex with her. In statement Ex.P3, prosecutrix did not state that when accused came to her house at 8:30 p.m., he gave a threat to her. She even did not state as to what was that threat. In Ex.P3, statement to the police, she did not made a mention about the time. She simply stated that in the evening accused came to her house under the influence of liquor, called

bad names and then went away. The prosecutrix when appeared as PW4 deposed that at about 8:00 pm, accused came to her house under the influence of liquor, abused her and returned. Thereafter, she had gone to the house of accused and lodged protest in this regard to the parents of the accused to which his parents told her that he is a boy and had gone to her house and tomorrow he may go to the house of another lady and they also abused her and quarreled with her and, thereafter, she returned home. This statement of prosecutrix is not in consonance with the statements Ex.P3 and Ex.P4, as the factum of going to the parents of the accused for lodging the protest, is missing. At one time, she states one thing whereas at the other time the other thing. Unless the prosecutrix was friendly with the accused, it is not understandable as to why the accused would go to her house and call bad names to her. The reason for calling bad names to the prosecutrix is also unknown (not stated anywhere by the prosecutrix).

Above all, the prosecutrix further stated as PW4 that at about 10:30 pm accused again came to her house and knocked at the door of her house and, thereafter, she opened the door. Accused was under the influence of liquor. He abused her and also gave beatings to her and, thereafter, he forcibly committed rape upon her against her wishes. During the course of her cross-examination she deposed that before opening the door at about 10:30 pm, she asked about the person who was knocking at the door and before opening the door, she knew that it was Robin. With this statement of prosecutrix, it is evident that prosecutrix was a consenting party as otherwise there was no point for her to open the door at 10:30 pm in the winter night. She also deposed that Robin is known to her from childhood as he is her neighbour. The house of complainant as well of the

accused are situated in the residential area. Complainant is well aware of calling police by dialing 100 number. she admits that she was having a mobile telephone. As per prosecutrix, she called the police on the next day by dialing 100 number. She also lodged a criminal case against her husband Gursharan. Under these circumstances, had there been forcible rape by the accused, she would have called the police there and then and also would have raised hue and cry, instead of going to the house of accused at 2/2:30 pm for lodging protest with his parents. She also did not lodge report with the police when accused came to her house in inebriated condition and called bad names to her. Above all, the story propounded by the prosecutrix i.e. on 28.01.2014 while she was going to the police for lodging the report, she was called by the mother of the accused under the pretext of having a talk on the issue and, thereafter, poured some poisonous substance into her mouth forcibly by catching hold of her mouth by Sukhdev and holding back her hands by mother Mahender Kaur, is not believable. The prosecutrix did not name the poisonous substance. In treatment chart Ex.P38 only presence of kerosene oil on the cloth of the prosecutrix was found. Dr. Kusum Gupta, who conducted the medico-legal examination of the prosecutrix, as PW8 deposed by way of her affidavit Ex.PW8/A that there was no external injury all over the body and further that kerosene oil smell was present from clothes, kerosene smell was absent from nostril and mouth. She was examined by the doctor on 28.01.2014. Had there been any attempt to pour kerosene oil into the mouth of prosecutrix, the smell of kerosene would have been there from nostril and mouth of the prosecutrix. Its absence further shows that this story is also concocted one only with an object to implicate the parents of accused in this case. Besides this, the prosecutrix is

a married lady. She gave her age as 23 years. She is having 2 years old son. Had there been forcible rape on her, she would have offered resistance. As, it is very difficult for any person to rape single handedly a grown up and an experienced woman without meeting the stiffest possible resistance from her and the absence of any injury either on the accused or the prosecutrix was a clear pointer to the fact that she had not put any resistance to the alleged rape leading to the irresistible conclusion that she was a consenting party.

In fact, prosecution story itself is not believable and does not inspire confidence in the mind of the Court regarding genuineness of the prosecution case.

The above discussed contentions of learned counsel for the appellant are devoid of any merit and thus not sustainable. Prosecution has failed to establish it's case beyond reasonable doubt. On the other hand defence version seems probable which is sufficient to cause dent in prosecution case. As such, we do not find that the judgment under appeal in any way perverse or based on mis-reading of evidence so as to call upon the interference at our end.

Dismissed.

(HEMANT GUPTA)
JUDGE

10.08.2015
smriti

(RAJ RAHUL GARG)
JUDGE