

**IN THE HIGH COURT OF PUNJAB AND HARYANAAT
CHANDIGARH**

CRA-D No. 187-DB of 2015(O&M)

Date of Decision: July 13 , 2015.

Arti

..... APPELLANT (s)

Versus

State of U.T. Chandigarh and another

..... RESPONDENT (s)

**CORAM:- HON'BLE MR.JUSTICE HEMANT GUPTA
HON'BLE MRS.JUSTICE LISA GILL**

Present: Mr. D.D.Sharma, Advocate
for the appellant.

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reports or not?
3. Whether the judgment should be reported in the digest?

LISA GILL, J.

Aggrieved of the acquittal of respondent No.2 – Ishan Bhardwaj of the charges for offences punishable under Sections 376(2)(n), 342, 365 and 506 IPC by the learned Additional Sessions Judge-cum-Judge, Special Court, Chandigarh vide judgment dated 29.09.2014, appellant/complainant has preferred the present appeal.

Complaint Ex.PB was moved by the appellant-complainant to the effect that she was a married woman having three children residing at House No.649, Sector 20-A, Chandigarh. Respondent No.2 – Ishan Bhardwaj shifted to House No.633, Sector 20-A from House No.634 in the same Sector as it was

under construction. Sakshi, sister of respondent No.2 – Ishan was her friend. They were on visiting terms with each other.

Nearly one and half years prior to the complaint, respondent No.2 – Ishan Bhardwaj came to her house and told her that Sakshi was asking her to come to their house. Without any demur or apprehension, she went to their house alongwith her son Vansh who was one and half years old. She found Ishan Bhardwaj present at their house. On asking, he told her to go to the bedroom where Sakshi was sleeping. She went to the bedroom and respondent No.2 followed her. She realised that Sakshi was not present in the room. Respondent No.2 closed the door and made advances. When she objected and tried to cry, he picked up her son and threatened to kill her son if she would cry. Thereafter, respondent No.2 threw her on the bed and committed rape upon her. He also took nude photographs of her. Respondent No.2 threatened her that in the event of disclosure of the incident to anybody, he would display all the photographs through the internet.

Holding out the threat of publication of the nude photographs, he raped her a number of times at her residence in the absence of her family members as well as by calling her at his residence. He also extracted money to the tune of ₹5,000/- to ₹10,000/-. A letter was sent to her on 31.10.2013. Using the threat of same photographs, he forced her to accompany in his car on 10.11.2013. He proceeded to Delhi not via Ambala, Kurukshetra and Karnal but via Patiala, Patran, Narwana and Rohtak. He left both his mobiles at home and carried a new number 9316709000 given to him by his father. Respondent No.2 received a call from his father at about 4.00 p.m. on the way. He was informed

that Shiv Kumar, husband of the complainant had lodged a complaint at Police Station Sector 19, Chandigarh about his wife being missing. Respondent No.2 asked his uncle about the house and for arranging a pistol who in return replied that he would arrange the articles on his return. A call was also received by respondent No.2 from his mother. After some time respondent No.2 tried to throw her out of the running car and attempted to kill her. She cried and asked him to drop her but he refused to do so. He remained in touch with his family members and according to their instructions, he dropped her at Delhi Bus Stand and asked her to go to her parents home and in case they refused to entertain her, she could go to House No.123, Sector 13, Rohini, Delhi where she would be given shelter. A telephone number was also provided to her. She proceeded on her own to her parents home from Delhi Bus Stand. Respondent No.2 was alleged to have committed rape upon her on a number of times using threat of publication of nude photographs. Her happy married life has been spoiled and respondent No.2 and/or either of his family members might kill her at any time. Accordingly legal action was prayed for against the accused.

Formal FIR Ex.PE was registered under Sections 342/376/365/506 IPC. Accused was arrested on 26.12.2013. Prosecutrix as well as the accused were medico-legally examined. CFSL report Ex.PI regarding mobile numbers and CFSL report Ex.PR was received. Specimen handwriting of the prosecutrix was obtained.

On completion of investigation, report under Section 173 Cr.P.C. was submitted. Charge was framed against the accused on 04.04.2014 for offences punishable under Sections 376(2)(n), 342, 365 and 506 IPC. Accused

pleaded not guilty and claimed trial.

Prosecution examined as many as nine witnesses to buttress its case. Accused while denying the incriminating material put to him, pleaded innocence and false implication in his statement under Section 313 Cr.P.C. A specific stand was taken that the prosecutrix was residing in his neighbourhood. She revealed to him that she was being troubled by her husband and wished to be friendly with him. He and the prosecutrix became friendly. She also sent a greeting card Mark 'N' to him. She used to call him regularly from her mobile number 9872291016 on his mobile number 9357580009. When friendship of the prosecutrix with the accused came in the knowledge of her husband and one of the neighbours, a meeting was convened and both of them were asked not to talk each other. She however kept calling him again and again. He denied having ever kidnapped the prosecutrix on 10.11.2013 or taking her to Delhi. The prosecutrix on her own had gone to Delhi and from there, she used to call him from different mobile numbers. SMS message Ex.D11 was sent to him from her mobile number. Earlier also, she used to send SMS messages to him. Prosecutrix had given a statement before the police on 26.12.2013 that she had a fight with her husband. No complaint regarding missing of the prosecutrix was lodged by her husband on 10.11.2013. Alleged incident of rape, one and half years ago was denied. There were summer holidays at that time and respondent No.2 had gone to Narwana with his family members on 25.06.2012 for attending engagement ceremony of the son of his uncle (Taya), which was fixed for 26.06.2012. Thereafter, he alongwith his family members had gone to Calcutta for vacation and returned on 09.07.2012. In the month of June, 2012, his sister

as well his grandmother were always present at home being summer holidays. Incident in question is denied. He denied ever clicking any photographs of the prosecutrix as alleged or accompanying her to Delhi or threatened or blackmailing her in any manner. Seven witnesses were examined in defence.

Learned trial court on appreciating the evidence on record as well as the facts and circumstances, concluded that the prosecution failed to prove its case beyond reasonable doubt against the accused thereby, acquitting him of the charges against him. Aggrieved therefrom, present appeal has been preferred by the complainant/prosecutrix.

Learned counsel for the appellant vehemently argues that in the event of the prosecutrix herself verifying the facts, there is no need for seeking any corroboration. Prosecutrix in this case has been victimized. Her married life has been completely spoiled by the accused under the threat of publication of her nude photographs. Accused had taken undue advantage and has raped her on numerous occasions. There is sufficient evidence on record to prove the commission of offence by the said respondent. He prays that in these circumstances respondent No.2 is liable to be convicted of the offences as charged and he be suitably punished.

We have heard learned counsel for the appellant and gone through the file. Doubtlessly conviction of an accused can be based on the sole testimony of the prosecutrix in case, it is found to be trustworthy and it may not be necessary to look for any corroboration thereof. Evidence of the prosecutrix would be at par with that of an injured witness. At the same time, it is open to the court to look for an assurance of the version set forth by her in given

circumstances. In the instant case, it would not be safe and justified to convict respondent No.2 on the sole testimony of prosecutrix which has been closely scrutinized in the factual matrix of this case. Testimony of the prosecutrix indeed fails to inspire confidence for various reasons.

There is no evidence on record as to why she never disclosed to anyone the occurrence which had taken one and half years prior to the lodging of complaint. DDR No.61 recorded by ASI Vijay Kumar on 26.12.2013 (Ex.D6 and Ex.D7) reveals that her husband had submitted a complaint to SI Sohan Singh that the prosecutrix had gone to Delhi without disclosing anything to him. Police had come to her residence on 26.12.2013 and no allegations of rape was levelled against respondent No.2 at that time and she only disclosed regarding a fight with her husband vide DDR No.40 dated 26.12.2013 (Ex.D8). She has admitted to making the phone calls to respondent No.2 – Ishan Bhardwaj.

PW5 SI Sohan Singh, Investigating Officer has specifically deposed that no written complaint has been given by Shiv Kumar against respondent No.2 or regarding missing of his wife. Neither the prosecutrix or Shiv Kumar made any complaint prior to 26.12.2013. Police party led by ASI Vijay Kumar alongwith a lady constable met the prosecutrix and her husband at their residence in Sector 20-A, Chandigarh on 26.12.2013 and at that time no allegations of rape or kidnapping was alleged against respondent No.2. She never revealed about any occurrence one and half years ago. Prosecutrix told the Investigating Officer that she had gone to her parents home at Delhi from 10.11.2013 to 26.12.2013.

Prosecutrix did not make any effort whatsoever to try and raise any alarm on the way to Delhi though it is admitted that they crossed many toll

barriers and police posts. Stand of the prosecutrix is that under the threat of publication of the nude photographs, she was called to the residence of respondent No.2 on a number of occasions and respondent No.2 himself used to come to her house in the absence of her family members and commit rape upon her. There are no such photographs on record. It is improbable that she would have been under such a dread that she would not have revealed such an incident to anyone, neither to her husband, her in-laws, her own parents at Delhi or even to her friend Sakshi who is sister of the accused. She raised no protest at any time.

It would not be safe to rely on her testimony inasmuch as while raising such allegations she has admitted having exchanged SMS messages with the accused. Ex.D11 on record reveals that she repeatedly sent messages reflecting her affection for the accused. Appellant/complainant is a 29 years old woman having three children knowing fully well the consequences of her actions. By no stretch of imagination it can be said that she was subjected to sexual exploitation at the hands of the accused. There is nothing on record to show that she was raped by the accused being forcibly induced or threatened.

Learned trial court has scrutinized the evidence in detail and has rightly held that every relationship turned sour does not fall within the ambit of rape. It is rightly concluded that prosecutrix was not under any stress, strain, pressure or threat in any way which forced her to maintain and sustain her illicit sexual relationship with the accused and submit to sexual exploitation at his hands for such a long period.

Learned counsel for the appellant is unable to point out any illegality, perversity or infirmity in impugned judgment dated 29.09.2014

passed by the learned Additional Sessions Judge-cum-Judge, Special Court, Chandigarh. Merely because another view is possible in the facts and circumstances cannot be a ground for interference.

Consequently, this appeal is dismissed.

(HEMANT GUPTA)
JUDGE

(LISA GILL)
JUDGE

July 13 , 2015.
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