

In the High Court of Punjab and Haryana at Chandigarh

CRA-D-50-DB-2015 (O&M)

Date of decision: 18.08.2015.

Rajveer Kaur

..... Appellant

Vs.

Gurdeep Singh and 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?
3. Whether the judgment should be reported in the Digest?

Argued by: Mr. Surinder Singh Walia, Advocate
for the appellant.

RAJ RAHUL GARG.J.

This is an appeal against acquittal preferred by prosecutrix arising out of the impugned judgment dated 10.03.2014.

The case against respondent No.1-accused was one under Sections 376/506 of Indian Penal Code (for short 'IPC'). The stand of the Prosecutrix is that she was married to Arjun Singh son of Jagmail Singh on 30.09.2009. Gurdeep Singh-accused is the *Jeth* of prosecutrix. He resides at Samana with his father. About one month back, he came in village Kharodi and at that time her husband Arjun Singh was not at home. Gurdeep Singh, had forcibly committed rape on her and also gave threat to her life that in case she discloses this fact to

anybody, she will be done to death. Thus, due to shame and fear, she did not disclose this fact to anybody. Week back, when she had gone to meet her parents at Ambala, there also she did not disclose this fact to her parents.

On 16.06.2013, when her mother Jaswant Kaur asked her the reasons for remaining sad then while weeping she disclosed this fact to her mother. As such, on the application dated 17.06.2013 of the prosecutrix, this case was registered. Investigations were conducted. During, investigation, spot was inspected. Prosecutrix was got medico-legally examined from General Hospital, Kaithal. Her statement under Section 164 Cr.P.C. was got recorded. On 29.08.2013, accused was arrested. He was also got medico-legally examined. He also demarcated the place of occurrence. After completion of necessary investigation, accused-respondent No.1, was challaned in this case.

Accused-respondent-No.1 was charge-sheeted for committing offences under Sections 376 and 506 IPC, to which he did not plead guilty but claimed trial.

After taking entire prosecution evidence, statement of accused under Section 313 Cr.P.C. was recorded wherein he denied each prosecution allegation and alleged his false implication. In defence, he examined Arjun Singh, the husband of the prosecutrix as DW1.

We have heard learned counsel for the appellant and examined the entire material and evidence on record.

This is an appeal against acquittal as such the matter would have to be examined in the light of the observations of the Hon'ble Apex Court in **Ashok Kumar Vs. State of Rajasthan, 1991 (1) SCC, 166**, which are that interference in an appeal against acquittal would be called for only if the judgment under appeal was perverse or based on misreading of the evidence and merely because the Appellate Court was inclined to take a different view, could not be a reason calling for interference.

It is settled proposition of law that ordinarily the Court should not insist upon the corroboration to the testimony of prosecutrix as her testimony is equivalent to the testimony of injured witness. There is also catena of judgments that conviction for offence under Section 376 IPC can be based on the sole testimony of a rape victim unless there are compelling reasons which necessitate looking for corroboration of her statement.

The facts of the present case are peculiar. In this case, the prosecutrix is a married lady. Her husband has appeared as defence witness (DW1). She is having strained relations with her husband and his family members. After 1 ½ year of her marriage, she started living with her husband separately from other family members. Father-in-law and *Jeth* (accused) were living at Samana. The prosecutrix as PW4 and her father Khem Singh as PW6 admitted during the course of their cross-examination that prosecutrix had filed a written complaint in the District Women Cell Ambala City against her husband and other family

members for her harassment on account of demand of dowry which was filed prior to the present FIR. A compromise was effected in that case. Khem Singh (PW6) voluntarily stated during the course of his cross-examination that the house occupied by the prosecutrix was purchased against an amount of Rs.4 lacs by her daughter about two years back from this incident. Arjun Singh-husband of the prosecutrix as DW1 deposed during the course of his cross-examination that a Panchayat was convened in the year 2010 as prosecutrix wanted to get transferred the ownership of the house in her name from him including his brothers and sisters but they did not get transferred the ownership of house in her name so far. Mark 'B' is the agreement to sell and Mark 'C' is affidavit of sellers. Thus, from this material on record, it is established that relations of prosecutrix with her husband and his family members were not only strained but inimical as well. Under these circumstances, infirmities found in the statement of prosecutrix and further delay in lodging the FIR cannot be overlooked.

The statement of prosecutrix is not consistent with the prosecution case and even with her own statement recorded under Section 164 Cr.P.C. (Ex.PJ). In FIR Ex. PA, she simply stated that one month ago her *Jeth* Gurdeep Singh came to village Kharodi, at that time her husband was not at home and then committed rape on her forcibly without her consent whereas in her statement Ex.PJ she stated that one month ago, her husband was away to *Chika* for purchasing provision articles. She was all alone at about 1/2:00 pm. Her *Jeth* Gurdeep Singh,

entered into her house and while she was asleep, her mouth was closed by him so that she may not be able to cry. Then, he pulled her hairs and gave beatings to her and, thereafter, forcibly committed rape on her. Even, thereafter, he gave merciless beatings to her and also gave threat to her life in case she discloses this fact to anybody. In Ex.PA, closing of mouth so that she may not cry, pulling of hairs and giving of beatings are missing. Above all, when she appeared as witness, she deposed that after entering into her house, the accused gagged her mouth with his hands and committed rape upon her forcibly. She further deposed that the accused kept on gagging her mouth till he committed the rape. It is highly improbable that a person would be able to keep gagging the mouth of a fully grown up married women till the action of committing rape is complete. Even this has not been mentioned in FIR and statement recorded under Section 164 Cr.P.C. This discrepancy is a material discrepancy appearing in the statement of prosecutrix regarding the offence of rape and the manner in which it was committed.

Even she has not given the date of commission of rape in FIR Ex.PA. In her statement before the Court, she gave 3 dates i.e. 18-19-20th May, 2013. No one ever forgets the date of such a traumatic incident if that has actually taken place. The incident is not of remote past. Her statement that accused stayed in their house for about 23-24 days after commission of rape is also not believable particularly when the rape is a forcible rape. How the prosecutrix would permit her rapist

to stay in the house is beyond imagination.

The prosecutrix stated that her husband came to the house that very evening. This shows that she was living with her husband at that time. She did not disclose this fact to her husband. Not only this, she even did not disclose the factum of rape to her parents for about one week even when she had gone to their house to reside. This conduct of the prosecutrix makes the entire prosecution version doubtful and an afterthought to falsely implicate the relations of her husband.

Under the above-discussed unexplained delay of 1 month in lodging the FIR also assumes importance. Delay in lodging the FIR gives room to introduction of coloured versions, thought out stories and twisting of facts. When she did not lodge report even after going to her parents' house, plea of fear and threat is not sustainable.

Dispute regarding purchase of house is still alive between the parties. As such, the possibility of false implication of accused in this case cannot be ruled out.

For the reasons recorded above, finding no merit in this appeal as there is nothing on record to show that the finding of the trial Court are in any way perverse or misreading of evidence, therefore, this appeal is ordered to be dismissed.

(HEMANT GUPTA)
JUDGE

(RAJ RAHUL GARG)
JUDGE

18.08.2015
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