

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM No. A- 1143-MA of 2013 (O&M)

Date of decision : 20.04.2015

Usha Sharma

.....Appellant

Versus

State of Punjab and another

....Respondents

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

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

LISA GILL, J.

Appellant being aggrieved of dismissal of complaint under Sections 420, 376, 148, 149 IPC and consequent acquittal of accused respondent- Dev Sharma has preferred the instant appeal.

As per prosecution version, an advertisement for matrimonial alliance was given by respondent No. 2 – Dev Sharma. Pursuant to this advertisement, complainant approached respondent No. 2 and ultimately their marriage was settled on 06.01.2007. At that time, accused Nos. 2 to 5 were also present. (Complaint against accused Nos. 2 to 5 was dismissed on 26.02.2009 by the Judicial Magistrate First Class, Fazilka.) Date of marriage was yet to be fixed. However, respondent No. 2 started visiting the complainant's house after settlement of marriage and took the complainant out to the

market and other places. Allegedly respondent No. 2 often stayed at the complainant's house as he was a resident of Amritsar, which is far from the residence of the complainant at Fazilka. He insisted the complainant for developing physical relations with him and on her refusal, he threatened that he would not contract marriage with her. It is further alleged that a week after the settlement of marriage i.e. on 13.01.2007 respondent No. 2 came to the complainant's house in drunken condition, stayed at her house and wanted to develop physical relations with her. On her refusal, he became furious and committed rape upon her. Complainant thereafter approached the other accused and insisted upon fixing the date of marriage. Despite their assurance, date of marriage was not fixed. Ultimately, respondent No. 2 refused to marry her in the first week of September 2007 whereupon she submitted a written complaint to Senior Superintendent of Police, Ferozepur on 14.09.2007 for registration of a case against all the accused persons including respondent No. 2. However, when no action was taken, she approached this Court for registration of a case. Her petition was disposed of with liberty to file a complaint before appropriate forum. She thereafter filed the instant complaint.

It is only respondent No. 2 who was summoned to face trial for the offence punishable under Section 376 IPC. Learned trial Court on appreciation of evidence on record dismissed the complaint and acquitted respondent No. 2 of the charge framed against him vide impugned judgment dated 23.04.2013 while specifically holding that there was miserable failure to prove the case against the

accused.

Learned counsel for the appellant vehemently argues that acquittal of respondent No. 2 is per se illegal. Learned trial Court has grossly erred in not convicting the said accused of the offence punishable under Section 376 IPC. It is urged that the complainant herself has testified the factum of rape being committed on her on 13.01.2007. It is not necessary that there should be any other corroborating evidence to substantiate her statement. Reference is made to a judgment of Single Bench of this Court in **Farukh versus State of Haryana 2005 (2) RCR (Criminal) 210** in this respect.

It is further submitted that the learned trial Court has been wrongly swayed by the alleged delay in the lodging of this complaint. Complainant has duly approached the police authorities. She even approached this Court when they refused to take any action and it is only thereafter that the complaint was filed.

While referring to judgment of Hon'ble Supreme Court in **Satpal Singh versus State of Haryana 2010 (3) R.C.R. (Criminal) 777**, it is submitted that the delay in lodging the FIR in sexual offences should be considered with a different yardstick. In view of the specific statement of the complainant, respondent No. 2 should have been convicted for offence punishable under Section 376 IPC and sentenced accordingly.

We have heard learned counsel for the appellant and find no infirmity or perversity in the impugned judgment dated 23.04.2013, which would warrant interference by this Court.

Alleged incident is stated to have occurred on 13.01.2007

i.e. one week after settlement of marriage on 06.01.2007 in pursuance to advertisement in the newspaper. Complaint to the SSP, Fazilka is moved after 8 months i.e. on 14.09.2007. As per the allegations in the complaint, respondent No. 2 visited her house in drunken condition on 13.01.2007, committed rape upon her and left her house in the morning on 14.01.2007. It has been observed by the learned trial Court that the complainant has one son Munish Sharma, who was present in the house on 13.01.2007, when the accused had come to the house. When she raised hue and cry her son Manish Sharma did come to the room but the accused told him to leave on which her son left. Said version of raising hue and cry and the complainant's son Manish Kumar being there, is not even mentioned in the complaint or in the examination-in-chief. Manish Kumar has not been examined. Complainant has admitted that she had obtained divorce from her first husband Rajesh Sharma as he was addicted to intoxicants and had obtained a sum of ₹60,000/- from him though it is stated by her in the cross examination that it was Panchayti divorce. She subsequently married one Ved Parkash with whom she lived for six months but thereafter she obtained divorce from him and received ₹1,50,000/- from him. Complainant has admitted that she accompanied respondent No. 2 on 29.01.2007 i.e. after the alleged incident on 13.01.2007 to the Court Complex, Fazilka and purchased agreement bond of ₹15/- each for the purpose of marriage. However, this fact also does not find mention in the complaint. Registration of FIR No. 135 dated 22.10.2007 under Sections 406, 420 and 120 B IPC by respondent No. 2 against

complainant for fraud and misappropriation of the amount of ₹3,57,700/- is admitted by her. It is admitted by the complainant that respondent No. 2 was taken by her to the house of Sh. Balbir Sachdeva, Advocate, where it was agreed that joint fixed deposit of ₹10 lakh would be prepared by contributing ₹5 lakh by both sides and the income generated from the interest would be utilized for running the household in future when their marriage was finalized. There is not even a whisper of these material facts in the complaint filed by the complainant.

It is in these circumstances that complaint filed by her has been dismissed and respondent No. 2 acquitted of the charge framed against him. Doubtlessly, delay in registration of FIR in sexual offences has to be considered with a different yardstick but at the same time it is not that delay in such cases has to be divorced from the circumstances and totally ignored. The entire conspectus of facts has to be considered to find out whether delay in registration of a case/submission of complaint has resulted in embellishment and exaggeration or is result of an afterthought or a concoction. In the present case, complainant has for the first time submitted her complaint after a lapse of 8 months from the alleged incident. She submitted complaint on 14.09.2007 before SSP, Fazilka in respect to the incident to rape which allegedly took place on 13.01.2007. Thus, lack of corroboration of the complainant's version on material aspects is material in this case.

In view of the facts and circumstances, it would indeed be unsafe to convict respondent No. 2 on the sole testimony of the

complainant, which does not inspire complete confidence. It is trite that in a given case testimony of prosecutrix can be acted upon without corroboration of material particulars. However, in the present case, her testimony fails to pass muster. Material facts have been concealed by her, which cast a doubt on the veracity of her testimony, thereby rendering it unsafe to convict respondent No. 2 solely on the basis of her testimony.

There is no misreading of any evidence by the trial Court, neither has any evidence been ignored. Learned counsel is unable to point out any infirmity or illegality in the impugned judgment calling for any interference.

Consequently, we find no merit in this appeal, which is dismissed.

(Hemant Gupta)
Judge

(Lisa Gill)
Judge

April 20, 2015
rts