

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.**

CRR No.1125 of 2004.

Date of Decision: April 29, 2015.

Suman

....Petitioner.

VERSUS

State of Haryana and others

....Respondents.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

1. Whether the judgment should be reported in the digest? Yes/No
2. Whether to be referred to the Reporter or not? Yes/No

Present: Mr. R.A. Sheoran, Advocate for the petitioner.

Mr. D.R. Singla, Deputy Advocate General, Haryana.

Ms. Avnika Gupta, Advocate for
Mr. Vinod Bhardwaj, Advocate for respondent No.2.

SNEH PRASHAR, J.

This is a revision preferred by petitioner Suman, assailing the judgment of acquittal dated 06.01.2004 passed by learned Additional Sessions Judge (Fast Track Court), Bhiwani, in case bearing First Information Report No.279 dated 29.07.2000 under Sections 376, 452 and 506 of the Indian Penal Code (for short "I.P.C.") registered at Police Station Sadar, Bhiwani.

2. Precisely, the case of the prosecution is that on 29.07.2000 a written complaint was given by the prosecutrix, wife of Ompal, resident of

Kharak Kalan, to Assistant Sub Inspector Om Parkash who was present at bus stand Kharak Kalan. She stated that she was married to Ompal in the year 1997. Her husband had five brothers and all of them were residing separately with their respective families. She alongwith her family and Brijpal, elder brother of her husband, is residing on the first floor of the house, whereas Rajpal and Shreepal, brothers of her husband, alongwith their families were residing on the ground floor. The other two brothers were residing separately.

The prosecutrix further stated that her elder brother-in-law Rajpal had misbehaved with her number of times about which she had complained to other members of the in-laws family. Before them Rajpal admitted his mistake and the matter was compromised.

Narrating the occurrence, the prosecutrix stated that on 20.07.2000 at around 10/10:30 a.m., when she was sweeping the house, Rajpal entered her room and started misbehaving with her. He forcibly fell her on the bed and committed sexual intercourse with her. He threatened to finish her and her husband in case she disclosed the incident to anyone. When her husband came to the house, she narrated the incident to him and other members of the family, who assured to take necessary action against Rajpal. Ultimately, when she did not get justice from the family, she had given the complaint.

Stating that she had been raped by Rajpal against her wishes and had also been intimidated threatening to her life by him, the prosecutrix sought legal action against him.

3. Based on the statement of the complainant, a formal First Information Report under Sections 376, 452 and 506 I.P.C. was registered and investigation commenced. The accused was arrested. On completion of investigation, he was challaned and sent to the court for trial.

To the charge-sheet served on the respondent, he pleaded not guilty and claimed trial. To substantiate its charges, the prosecution adduced ocular and documentary evidence. Statement of the respondent as envisaged under Section 313 of the Code of Criminal Procedure (in short, "Cr.P.C.") was recorded. He again denied the incriminating evidence put to him and pleaded innocence. In his defence, he examined five witnesses who all supported his claim of innocence.

4. Considering the evidence available on record and the submissions made on behalf of the prosecution as well as the revisionist-complainant and respondent-Rajpal (accused), learned Additional Sessions Judge, Bhiwani, came to the conclusion that no incident of rape, as alleged by the prosecutrix, had taken place. It was also held that the accused had not entered the house of the prosecutrix and had never intimidated any kind of threatening to her. Accordingly, accused-respondent Rajpal was acquitted of the charges levelled under Sections 376, 452 and 506 I.P.C.

5. Aggrieved by the judgment of acquittal dated 06.01.2004 passed by learned Additional Sessions Judge (Fast Track Court), Bhiwani, the prosecutrix filed this criminal revision petition.

6. The submissions made by Mr. Mr. R.A. Sheoran, learned counsel representing the petitioner-complainant, Mr. D.R. Singla, Deputy

Advocate General, Haryana and Ms. Avnika Gupta, Advocate appearing for Mr. Vinod Bhardwaj, learned counsel representing respondent No.2 have been considered.

7. The prosecutrix being brother's wife of respondent-accused Rajpal was closely related to him. Her allegation was that on 20.07.2000 at 10/10:30 a.m., when she was sweeping her room, Rajpal entered the room, caught hold of her and forcibly felling her on the double bed he raped her. He then threatened to kill her and her husband in case she disclosed the occurrence to anyone and went away. Learned counsel for the prosecutrix relying on the written complaint dated 29.07.2000 Ex.PK which formed the basis of First Information Report Ex.PL, statement of the prosecutrix Ex.PJ/1 dated 11.08.2000 recorded by the Magistrate under Section 164 Cr.P.C. and the deposition of the prosecutrix, who stepped into the witness box as PW10 during the trial, argued that in all three statements the prosecutrix unequivocally narrated the occurrence and stated in clear words that she had been forcibly raped by Rajpal in her house and had been threatened of being eliminated.

Learned counsel further pointed out that the statement of the prosecutrix was corroborated by PW11 Kela who was none else but mother-in-law of the prosecutrix and mother of Rajpal. She was present in the courtyard on the ground floor of the house and had seen Rajpal coming down running through the stairs from the first floor and leaving the house. After him, the prosecutrix came down weeping and narrated to her the entire incident.

8. Elaborating further, learned counsel asserted that the testimony of the prosecutrix is corroborated by medical evidence. She was medico legally examined by PW2 Dr. Poonam Bawa at General Hospital, Bhiwani, on the day the case was registered i.e. on 29.07.2000. Her medico legal report is Ex.PC. Based on her findings, PW2 Dr. Poonam Bawa stated that the possibility of sexual intercourse with the prosecutrix could not be ruled out.

9. Last but not the least, learned counsel urged that there may have been delay of about nine days in lodging the First Information Report but that is of no consequence in the light of explanation given by the prosecutrix. She stated that immediately after the occurrence she had informed her husband and other members of the in-laws family about the illegal act of Rajpal who had assured to do justice to her by taking necessary action. It was on their pursuance that she did not approach the police immediately. Ultimately, when she realized that there was no redressal of her grievance from the family members, she lodged the report with the police on 29.07.2000.

Learned counsel contended that there was close relationship between the prosecutrix and Rajpal. No substantive or reliable evidence could be produced by the prosecution to prove that there was any property dispute between the parties. Even if it is assumed for the sake of arguments that there was any such dispute, the prosecutrix and her husband would not have staked their honour and reputation of the family by levelling allegation that Rajpal had raped the prosecutrix. The mother of Rajpal would not have

supported the prosecutrix in levelling such allegation had it been false.

10. The cosmetic arguments of learned counsel for the prosecutrix may appear to be attractive but are completely devoid of merit. Indeed, it is a settled proposition of law that in a case of rape the solitary statement of the prosecutrix is sufficient for proving the allegation and for relying upon to base conviction, but at the same time it is necessary that the deposition of the prosecutrix should appear trustworthy to the conscious of the court. In the case in hand, there is not one but number of surrounding circumstances which firmly indicate that the story of rape presented by the prosecutrix was nothing but result of manipulation and concoction on her part and on part of her husband and his mother because of internal family disputes.

According to the prosecutrix, the occurrence took place at 10/10:30 a.m. on 20.07.2000. Admittedly, the complaint Ex.PK on the basis of which the First Information Report was registered, was given by the prosecutrix to the police on 29.07.2000. There was a gap of nine days between the occurrence and the date the report was lodged. The explanation of the prosecutrix was that after the occurrence when her husband came home, she narrated the incident to him and they also informed the other members of the family, who stopped her from going to the police and assured that the matter would be resolved at their level. She ultimately lodged the report as the family members could do no justice.

11. The above explanation of the prosecutrix could have been accepted at its face value, had it been true. Importantly, during cross-examination of the prosecutrix, the accused put to her an application dated

25.07.2000 Ex.DA, which the prosecutrix admitted, was given by her regarding the occurrence in question to Superintendent of Police, Bhiwani. She stated that she had mentioned all facts regarding the occurrence in the application and that at the time of presentation of the application, her husband Ompal was accompanying her. It is also in her statement that the application Ex.DA was got typed in the court premises and in the presence of her counsel. Meaning thereby that application Ex.DA contained the first and complete version of the prosecutrix about the occurrence, but that is completely contrary to her subsequent complaint Ex.PK which formed the basis of First Information Report.

12. In the application Ex.DA the prosecutrix stated that her elder brother-in-law Rajpal was having a bad eye on her since the time of her marriage and one way or the other he had been pressurizing her to satisfy his desire and that she had been tolerating his cruelties and obscene acts because she comes from a respectable family. Further, that her husband, who was employee in Army, had to leave job because of the cruel behaviour of Rajpal. It was also stated by her in the application that on 20.07.2000 when she was alone at home, Rajpal armed with a countrymade pistol entered her house at 10 a.m. and on the point of pistol he threatened her to either accept him or he would eliminate her husband Ompal in the fields and would bury him there and then she will be forced to accept him. Because of the threatening she got upset and could not speak anything. Lateron, she came to know that Rajpal alongwith other accused had badly beaten her husband Ompal and had made him unconscious on the pretext of

having breached the watercourse. Her husband was picked up and brought home by Mangej, Subhash, Lala and her brother-in-law Satpal etc. A report about the occurrence was lodged with the police but no action had been taken by them till date. She expressed that Rajpal, who has a countrymade pistol, can attack her husband at any time and can kill him and she fears danger to her life and property at his hands.

13. Apparently, in the application Ex.DA, it was no where the story of the prosecutrix that on the day of occurrence i.e. 20.07.2000 when she was sweeping her room, accused Rajpal had entered her house, caught hold of her, fell her on the bed and had forcibly committed sexual intercourse with her against her wishes. It was also not her version that after committing rape upon her and before leaving Rajpal had threatened to kill her and her husband in case she disclosed the incident to anyone and further that when her husband came home, she narrated the occurrence to him and then they informed the family members about the illegal act of Rajpal, who stopped them from going to the police and assured to do justice to her. In the application Ex.DA, the prosecutrix did not attribute any kind of assault on her to Rajpal. She only stated that Rajpal threatened her on pistol point and out of fear she could not speak anything.

14. In the complaint Ex.PK, which the prosecutrix subsequently gave to the police on 29.07.2000, as already mentioned above, she narrated a completely different story levelling allegation of commission of rape on her by the accused. Strange enough, in that application she did not state that Rajpal was armed with a countrymade pistol when he entered her room.

Also the allegation that the accused possessed a countrymade pistol was neither stated in the statement Ex.PJ recorded by the Magistrate under Section 164 Cr.P.C. nor was mentioned in her deposition when she appeared in the witness box as PW10.

15. From the above, it is proved that the complaint Ex.PK, on the basis of which the First Information Report Ex.PL was registered was not the first version of the prosecutrix. In fact, Ex.DA was also not the first version because in that application the prosecutrix stated that after she had come to know that her husband had been badly beaten by Rajpal and 12 other persons, named by her in the head note of that application, she had lodge a report with the police on which no action had been taken. That particular statement/written complaint referred to was neither produced nor proved. In the said set of facts, it is crystal clear that the First Information Report Ex.PL was lodged after due consultation and consideration and did not contain a true account of facts. From that it follows that the delay of nine days in lodging the First Information Report is certainly fatal to the prosecution case.

16. The prosecutrix examined PW11 Kela Devi, her mother-in-law as an eyewitness of the occurrence. PW11 deposed that on the day of occurrence at 10/10:30 or 11 a.m., she was present in the courtyard of her house when her son Rajpal alias Raju came down running through the stairs from the first floor of the house and left the house. After him, Suman came down weeping and disclosed to her that Rajpal had forcibly committed sexual intercourse with her. Neither in her complaint Ex.DA given on

25.09.2000, which was given with a different story of course, nor in the complaint Ex.PK which formed the basis of First Information Report or in her statement Ex.PJ/1 recorded by the Magistrate under Section 164 Cr.P.C., the prosecutrix stated that after the occurrence she came down weeping and met her mother-in-law in the courtyard, who had seen accused Rajpal running through the stairs, and had told her that she had been raped by him. It was not even so started by her when she stepped into the witness box as PW10. On the contrary, her version was that after the occurrence when her husband came home, she narrated the incident to him and that their family members kept assuring them of doing justice but did nothing till ultimately she gave complaint Ex.PK to the police.

17. Apart from there being no reference by the prosecutrix regarding presence of PW11 Kela in the courtyard of the house when she came down after the occurrence, it is also quite strange that the mother-in-law was present on the ground floor of the house, but she neither saw the accused going to the first floor with or without pistol in his hand and also heard no shout/cry of the prosecutrix when the accused raped her forcibly. It is quite clear that introduction of Kela as an eyewitness was result of an afterthought and she was brought in only to create evidence. Certainly, no credence can be attached to the testimony of PW11 Kela.

18. There is further ample evidence to establish that the accused was implicated in the instant case because of property dispute between the parties. It was not only a deliberate act of the prosecutrix but PW11 Kela also appeared as witness against the accused because of the property

dispute. The prosecutrix in her cross-examination admitted that her husband had been given less share in the property. PW11 Kela also had a similar grudge. She stated that she was residing separate from her husband for the last 25 years. Her husband owned 52 acres of land out of which he had sold 13 acres but had given no share to her. She admitted that her husband was residing with accused Rajpal and that her sons Ompal and Brijpal had been demanding their share of land from her husband but Rajpal had been forcing him not to give their share of land to them. It was also her admission that because of the pressure of Rajpal her husband had not given any land to her also. Apparently, the prosecutrix and her mother-in-law, who were living together, had a grudge against Rajpal because of the property dispute and that led to the launching of instant prosecution against him.

Two brothers of the accused namely Dharampal and Shreepal, who are also real brothers of Ompal, husband of the prosecutrix appeared as DW3 and DW4 respectively. They unequivocally stated that their father Chandgi Ram is living with Rajpal whereas their mother Kela is residing with Ompal. Their parents were not on speaking terms for the last 25-30 years and that a false case of rape had been got registered by Ompal against their brother Rajpal through his wife-prosecutrix. To the same effect is the testimony of DW1 Ramapt, DW2 Ram Kumar and DW5 Madan Singh.

19. As far as the medical evidence is concerned, no injury was found on the person of the prosecutrix. Otherwise also, she was medico legally examined on 29.07.2000 whereas the occurrence had taken place on

20.07.2000. On the basis of the findings, doctor gave the opinion that 'possibility of sexual intercourse with the prosecutrix could not be ruled out'. The opinion was of no advantage for the prosecution because admittedly the prosecutrix was a married lady.

Thus, there appears no ground for intervention in the finding of learned trial court that the prosecution had utterly failed to prove its charges against the accused-respondent Rajpal beyond the shadow of doubt. The revision petition of the prosecutrix being devoid of merits is hereby dismissed.

(SNEH PRASHAR)
JUDGE

April 29, 2015
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