

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRA-D-1413-DB-2013 (O&M)

Date of decision: 24.05.2016

Meena

..... Appellant

Versus

Manoj and another

..... Respondents

**CORAM: HON'BLE MR. JUSTICE T.P.S. MANN
HON'BLE MR. JUSTICE RAMENDRA JAIN**

1. *Whether Reporters of the 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?*

PRESENT: Mr. Sudhir Sharma, Advocate
for the appellant.

Mr. Surinder Gandhi, Advocate
for respondent No. 1.

Mr. Praveen Bhadu, AAG, Haryana.

RAMENDRA JAIN, J.

CRM-47517-2013

Heard.

Sufficient cause has been shown for condoning delay in filing the appeal.

The application is, accordingly, accepted. Delay of 42 days in filing of the appeal is condoned.

CRA-D-1413-DB-2013

Being aggrieved, the prosecutrix by way of present appeal has challenged the impugned judgment dated 26.03.2013, passed by the learned

Additional Sessions Judge, Jhajjar, acquitting respondent No. 1-Manoj under Sections 376, 420 and 506 of the Indian Penal Code (IPC).

2. According to the prosecutrix, on the pretext of procuring a job for her nephew-Manjeet (son of her brother Ashok), respondent No. 1 usurped ₹ 2 lacs from her out of total amount of ₹ 4 lacs demanded by him. On his asking, on 12.01.2010, she by boarding a bus from her village reached Bahadurgarh-Jhajjar turn and handed over the bio-data of her nephew to him. Respondent No. 1 took the prosecutrix in his car, on the pretext of taking receipt against submission of bio-data, in a hotel room situated at G.T. Road about 3-4 kilometres from Bahdurgarh and committed rape upon her against her wishes with a threat of dire consequences, in case, she would disclose the episode to anyone. Hence, out of fear, she did not disclose the above incident to anyone. Respondent No. 1 neither returned the aforesaid amount which he had taken from the prosecutrix on the pretext of securing job for her nephew nor secured any job as such. Consequently, she narrated the entire story to her brother-Ashok (PW-5) and on his advice, lodged FIR. The police swung into action. The prosecutrix was taken for her medico-legal examination, but she refused for the same. Respondent No. 1 was arrested and medico-legally examined. The place of occurrence was inspected and its site plan was prepared. On completion of investigation, final report under Section 173 Cr.P.C. was presented before the Area Magistrate.

3. On commitment of the case, respondent No. 1 was charge-sheeted under Sections 376, 420 and 506 IPC by the trial Court to which he pleaded not guilty and claimed trial.

4. On appraisal of evidence led by the prosecution and hearing

learned counsel for both the sides, the learned trial Court did not find itself in favour of the prosecution story and resultantly, acquitted respondent No. 1 vide impugned judgment dated 26.03.2013.

5. Learned counsel for the appellant contended that the impugned judgment is based on surmises and conjectures. The deposition of prosecutrix (PW-4) was fully corroborated by her brother PW-5 Ashok Kumar and thus, there was no scope of acquittal of respondent No. 1. It was well established on the record that the prosecutrix was raped by respondent No. 1 in a hotel at Bahadurgarh by taking her along in his car on the pretext of handing over the receipt against the submission of bio-data of her nephew and thus, the learned trial Court ought to have convicted him.

6. On the other hand, learned counsel for respondent No. 1, vehemently opposed the above arguments.

7. After giving our thoughtful consideration to the submissions made by learned counsel for the appellant, we find no merit in the instant appeal for the reasons to follow.

- (i) The prosecutrix at the time of alleged occurrence was married and aged around 36 years. According to her on 12.01.2010, she came to Bahadurgarh-Jhajjar turn by bus to hand over the bio-data of her nephew to respondent No. 1. However, on the asking of respondent No. 1 to take the receipt against submission of bio-data, she accompanied him in his car. She was taken to a hotel situated at G.T. Bahadurgarh, where she was raped against her wishes under the threat of dire consequences. Under the alleged fear, she did not disclose the incident

to anyone for about a year. The above conduct of the prosecutrix for remaining silent for more than one year creates suspicion about the prosecution story.

- (ii) On the very next day of the registration of FIR, the prosecutrix made a supplementary statement to the effect that on the fateful day respondent No. 1 had taken her away to V.C. Hotel in his Maruti Car No. HR-10-9535. He had gone to the counter of said hotel and got opened a room for taking meal. Respondent No. 1 had disclosed the prosecutrix as his wife to the person sitting on the counter and then they both took meals in room No. 104 and then respondent No. 1 committed rape upon her against her consent. From the initial complaint and supplementary statement of the prosecutrix, it emerges that respondent No. 1 took her along from a public place and dropped her back on the same place i.e. Bahadurgarh-Jhajjar turn. Respondent No. 1 himself drove the car and thus, it is evident that his both the hands were engaged in driving.

Admittedly, respondent No. 1 was not carrying any deadly weapon. The conduct of the prosecutrix of not questioning respondent No. 1 that why she was brought in a hotel proves her implied or express consent about her rape especially when she even did not protest to respondent No. 1 that why he was disclosing her as his wife to the counter manager. She calmly went upstairs

with respondent No. 1 and took meal with him in the room without any protest or objection. All above factors clearly speak that she was a consenting party to the entire episode.

- (iii) The prosecutrix made some improvements as PW-4. According to her complaint Ex. P-4, she was raped by respondent No. 1 on 12.01.2010, but as PW-4 she testified that not only on 12.01.2010, respondent No. 1 also tried to molest her on 24.05.2011 also. She was confronted with her application Ex. P-4 in this respect. As per prosecution case, the prosecutrix had handed over a sum of ₹ 2,65,000/- to respondent No. 1, contrary to the deposition of her brother PW-5 Ashok Kumar that he had handed over ₹ 2 lacs to him on 03.01.2010 at his house. Various other omissions and commissions mentioned in her application Ex. P-4 discussed in para 26 of the impugned judgment were put to the prosecutrix in her cross-examination, but she could not satisfactorily reply the same.
- (iv) The prosecutrix did not raise any hue and cry or resistance at the time of her alleged rape. Even the clothes worn by her at the time of occurrence were not torn which also show that no force was used upon the prosecutrix by respondent No. 1. That apart, she had refused for her medico-legal examination, upon her production before the medical officer by the police which

requires to draw an adverse inference against her that the things did not happen in the manner as narrated by her.

8. Learned counsel for the appellant has not been able to put any dent in any of the above findings of the learned trial Court. Hence, finding no other option the same are to be upheld.

9. In view of the above discussion, the instant appeal being completely devoid of any merit is dismissed.

(T.P.S. MANN)
JUDGE

(RAMENDRA JAIN)
JUDGE

May 24, 2016

rishu