

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

**CRA-AD-11 of 2016
Date of decision : 16.5.2016**

Pooja Rani

.....Appellant

v.

State of Haryana and others

.....Respondents

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

Present : Mr. Diwan S. Adlakha, Advocate
for the appellant

RAMENDRA JAIN, J.

On 20.2.2014 respondents No.2 to 4 finding the appellant Pooja Rani wife of Parveen Kamboj alone, entered her house and committed rape upon her one by one on knife point of respondent No.2 under threat that in case, she would disclose the incident to anyone, she and her family members will be done to death. Hence, under fear and keeping in view the dignity and honour of her family, she did not disclose the above incident, even to her husband and family members. Thereafter, after 10 days of the incident, when she had gone to the market, respondents No.2 to 4 again met her there and by giving threats forced her to repeat the act. Thereafter, the three respondents along with respondent No.5 prepared obscene MMS of her and transmitted the same on internet, whereupon her husband and other family members had a talk with the private respondents, but with no results. Hence, she moved an application to the police on 4.4.2014 to take action against the private respondents.

On the basis of above information, a case was registered. The appellant was medico legally examined. Her statement under Section 164 Cr.P.C. was got recorded. The private respondents were arrested. Their disclosure statements were recorded. After completion of investigation, final report under Section 173 Cr.P.C. was presented against the private respondents before the Illaqua Magistrate.

On commitment of the case to the Court of Sessions, the private respondents were charge sheeted under Sections 120, 452 and 376 IPC as well as under Sections 66A and 67 of the Information Technology Act, 2000 to which they pleaded not guilty and claimed trial.

The prosecution in support of its case examined 16 witnesses.

On appraisal of evidence led by the prosecution, the trial Court did not find itself convinced with the prosecution story and thus, acquitted the private respondents vide impugned judgment dated 6.10.2015.

Being aggrieved, the prosecutrix has preferred the present appeal.

Learned counsel for the appellant contended that the impugned judgment is based on surmises and conjectures. The trial Court has failed to appreciate that the case of the prosecution was proved beyond any shadow of doubt. The appellant has categorically testified about her rape by the private respondents on the point of knife and threatening to eliminate her husband upon disclosing the incident to anyone. The medical evidence has also corroborated the prosecution story and thus, the trial Court ought not to have given much weight to the delay in lodging the FIR and minor contradictions which are bound to occur with the passage of time.

We have given our thoughtful consideration to the above

submissions and find the present appeal completely meritless for the reasons to follow.

(i) The alleged incident of rape with the appellant took place on 20.2.2014, whereas the FIR was recorded on 4.4.2014 i.e. after unexplained delay of 43 days which is quite fatal to the prosecution case.

(ii) Admittedly, the appellant did not disclose about her alleged rape by the private respondents even to her husband till 3.4.2014, on which date, he received MMS on his mobile and enquired from respondents No.2 and 3, who are none else, but real brothers and living in the neighbourhood. But, when no satisfactory reply was given by them to the husband of the appellant then he enquired about the MMS from the appellant. She disclosed that on 20.2.2014 around 12.00 noon, she was raped by the private respondents on knife point, but under fear she did not disclose this fact to him. Non disclosure of such a serious and traumatic incident by the prosecutrix to her husband for 43 days requires to draw an adverse inference against her that the things did not happen in the manner as narrated by the prosecution.

(iii) The appellant is a married lady aged about 28-29 years having two children. She lives in a joint family consisting of her mother in law, brother in law, wife of brother in law, who was her real sister. In such a situation, it is quite improbable that the private respondents would succeed in committing rape upon the prosecutrix living with such a big family.

(iv) PW5 Dr. Rameeta, while conducting medico legal examination of the appellant did not find any injury mark on her body. Even clothes worn by her at the time of alleged rape were not produced before the said doctor. Thus, the medical evidence also goes against the prosecution.

(v) Admittedly, no alarm was raised by the appellant-prosecutrix at the time of alleged rape, though her house was surrounded by her relatives. This fact renders the entire prosecution story doubtful, more particularly, when the appellant in her statement under Section 164 Cr.P.,C. did not state that the private respondents were armed with a knife or that she was forcibly raped at knife point. In her above statement, she simply testified that the private respondents had only threatened her. The above major contradiction in between the deposition of the appellant during trial and under Section 164 Cr.P.C. is a major improvement.

(vi) Had the appellant been under fear of alleged threat of the private respondents, in that eventuality, she would not have roamed freely in the market time and again in between the dates of alleged rape and reporting the matter to the police. She did not feel it necessary to disclose about her alleged rape to her husband, even upon threatening to her for the second time in the market by the private respondents. The appellant in her complaint did not name respondent No.4, rather she testified that she had seen him for the first time in the Court. Identity of respondent No.4 is also disputed in view of the deposition of PW14 Parveen Kamboj-husband of the

prosecutrix that he was not amongst those persons facing trial against whom his wife had complained.

(v) The complicity of Shubham - respondent No.5 is not proved in preparing obscene MMS of the appellant. PW14 Parveen Kamboj did not disclose that from whose cellphone, he had received the alleged MMS. He simply testified that after receipt of the MMS, he had sent his mobile through his employee Sanjay to a photographer to develop the same. However, he did not disclose the name of that photographer. That apart, he also did not disclose the name of his alleged employee through whom he had sent his mobile to the photographer. He was not joined in the investigation nor was examined as a witness. It is not the case of the prosecution that the alleged MMS was prepared on the date of the incident.

(vi) After perusal of photograph, the Court below has observed that the appellant does not seem to be under any threat or fear at the time it was taken, rather it clearly shows consenting pose of the appellant with respondent No.2-Rahul. It is needless to mention here that it is the consistent defence of the private respondents that the appellant was having love affair with respondent No.2 since last many years and when the same was exposed, the private respondents were falsely implicated in this case. The above defence seems to be quite probable, in view of the deposition of PW13 Parveen Kamboj that respondent No.2 was known to his in-laws and he used to visit them. Non-disclosing of this fact by the appellant shows that she had every intention to hide the factum of

visit of respondent No.2 to her matrimonial home as well as parental home.

(vii) The mobile phones of respondents No.2 and 5 though were taken into possession, but were not sent to Forensic Science Laboratory for their examination to reveal the truth that whether alleged obscene MMS was ever transmitted from the same. The benefit of this lapse in the investigation has rightly been given to the private respondents. Even no recovery of knife allegedly used in the commission of crime was effected from the private respondents.

From the above facts, no conclusion other than that the private respondents were falsely implicated can be drawn. Taking into account the above factors, the trial Court has rightly acquitted the private respondents.

Learned counsel for the appellant has miserably failed to put any dent in any of the findings of the Court below. We have also gone through the impugned judgment and found no illegality or perversity in the same.

Accordingly, the appeal being completely devoid of any merit, is dismissed.

(T.P.S. MANN)
JUDGE

(RAMENDRA JAIN)
JUDGE

16.5.2016
Ashwani