

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRA-AD-14-2016

Date of decision: 26.05.2016

Ankil

..... Appellant

Versus

State of Haryana and others

..... 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. Diwan S. Adhlakha, Advocate
for the appellant.

RAMENDRA JAIN, J.

According to the appellant, in the early morning of 05.09.2014, her husband-respondent No. 2 by entering her room desired for sexual intercourse. Despite her resistance, he did sexual intercourse with her. Immediately thereafter, his brother-respondent No. 3 and brother-in-law respondent No. 4, entered their room and with the consent of her husband-respondent No. 2, they too forcibly raped her, despite her best possible efforts to save herself, but could not succeed. While leaving, respondent No. 3 threatened her with dire consequences, in case, any action was taken against them by her. Earlier also, on many occasions, her husband and his

brother had maltreated her for which the appellant had made several complaints, but they kept on torturing, hurling abuses and giving her beatings. Even her husband-Deep Chand in collusion with one Ram Kumar had transferred his entire property in favour of his mother-Jiwni Devi to which too she did not object.

2. On the basis of above information, a case was registered. Police swung into action. Statement of the appellant under Section 164 Cr.P.C. was got recorded. Respondents No. 2 and 3 were arrested and medico-legally examined. Their disclosure statements were recorded. During investigation, respondent No. 4 was found innocent. On completion of investigation, final report under Section 173 Cr.P.C. was presented in the Court only against respondents No. 2 and 3, by placing respondent No. 4 in its column No. 2 as innocent.

3. On commitment of the case and summoning of respondent No. 4 as an additional accused under Section 319 Cr.P.C., respondents No. 2 to 4 (hereinafter referred to as 'the private respondents') were charge-sheeted under Sections 376-D and 506 IPC.

4. The prosecution in support of its case examined as many as 12 witnesses.

5. On appraisal of evidence led by the prosecution and hearing learned counsel for both the sides, the learned trial Court did not find itself convinced with the prosecution story and resultantly, acquitted the private respondents vide impugned judgment dated 18.11.2015.

6. Being aggrieved the prosecutrix has filed the instant appeal for conviction of the private respondents by setting aside the impugned

judgment.

7. Learned counsel for the appellant contended that the impugned judgment is based on surmises and conjectures. Learned Court below has failed to appreciate that in a rape case, deposition of the prosecutrix alone is sufficient to base conviction of an accused. The appellant has specifically deposed about her rape by respondents No. 3 and 4 under threat to eliminate her children, in case, the episode was disclosed to anyone, by not permitting her to raise alarm and gagging her mouth. The trial Court has failed to appreciate that the deposition of the appellant was also corroborated by the medical evidence. The identity of the private respondents was also not disputed, as they were closely related amongst themselves and to the appellant. The learned trial Court ought not to have given much weight to the delay in lodging the FIR, which was well explained.

8. 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 defence taken by the private respondents as per para No. 22 of the impugned judgment is as under:-

“xxxxx No such occurrence ever took place. After the marriage, victim started pressurizing her husband i.e. accused Deep Chand to transfer his entire land in her name and also threatened that in case he will not transfer his land in her name, she will implicate him in a false case of dowry. She also used to move false complaints against accused

Deep Chand to the police, so on 12.06.2014 she, in collusion with Shri Dhoom Chand Aggarwal, Advocate and two other persons, who were constructing the lawyer's chambers in Court premises, whose names were later on known as Sham Lal and Gulab Singh, got executed a Will from accused Deep Chand in favour of the victim under pressure and also got executed an agreement dated 12.06.2014 in respect of his property in favour of the victim, under pressure. Later on, when accused Deep Chand told this fact to his brother Baldev and brother-in-law Subhash, they advised him to get transferred his property in the name of his mother Smt. Jiwni. Therefore, he got executed a registered transfer deed dated 21.07.2014 in respect of 06K-19M of land out of the total land for which the victim had got executed a Will and agreement in her favour. When victim came to know that accused Deep Chand had got transferred his land in favour of his mother on the advise of his brother Baldev and brother-in-law Subhash, she got annoyed and registered this false case upon all the three persons in order to put pressure for transfer of entire property of Deep Chand in her favour.”

It would now be safer to scan the prosecution evidence in the light of above defence plea to do substantial justice.

- (ii) Undisputedly, it was the second marriage of the appellant with respondent No. 2 solemnized on 18.08.2012. First marriage of the appellant took place in the year 2003. Two children i.e. one son and a daughter aged around 12-13 years and 11½ years, respectively were born to her from her previous wedlock. It is also not disputed that the house, where the appellant was residing with her husband-respondent No. 2 consists of only two rooms, out of which in one room she was residing with her husband and her mother-in-law along with her children in the adjacent room. It is also not disputed that both the children of the appellant from her first marriage were being looked after and maintained by respondent No. 2 and his mother. According to the appellant, at the time of her rape, the private respondents had caught-hold of her hands and feet and also gagged her mouth. Consequently, she could not raise any alarm. The above story put forth by the appellant is quite improbable, because such incident could not have taken place in the early hours of morning, when generally elderly people wake up. The appellant did not level any allegation against her mother-in-law. Some commotion might have also taken place at the time of alleged resistance by the

appellant to the hasty action of rape upon her by respondents No. 3 and 4. Hence, it is impossible to swallow that her resistance or any commotion in her room, while committing alleged rape by respondents No. 3 and 4 did not attract the attention of her children and mother-in-law living in the adjoining room. More so, in her complaint Ex. PT, the appellant had levelled allegations against respondent No. 4 also, but he was found innocent during investigation. He was summoned later on as an additional accused under Section 319 Cr.P.C. during the trial.

- (iii) According to the appellant, she was raped in the early hours of 05.09.2014, whereas the FIR was got registered after 6 days on 11.09.2014 without any explanation. The appellant though made a futile exercise to justify the delay in lodging the FIR by testifying that she had moved an application on 06.09.2014, besides making a call to the helpline No. 1091 on the same day, but there is no such evidence on the record. Even otherwise, when the appellant was aware to contact the aforesaid helpline number, in that eventuality, there was no reason for her to not to pursue her case on the date of incident itself. Since, delay in lodging the FIR has not been explained, thus, possibility of introduction of colourful version cannot be ruled out.

(iv) Undisputedly, agreement Mark-DB dated 12.06.2014 was executed in between respondent No. 2 and his appellant-wife vide which he had relinquished all his rights in his immovable property in her favour. Thereafter, on 21.07.2014, respondent No. 2 re-transferred his share in favour of his mother Jiwni Devi, vide transfer deed Ex. DW-2/A duly proved by DW-2 Sanjay Kumar, Registration Clerk, Tehsil Mustafabad (Yamuna Nagar). The above factual position, if considered in view of the above defence of the private respondents, the only irresistible conclusion which can be drawn is that the bone of contention between the parties was the landed property of the husband of the appellant, which he had initially transferred in her name, but subsequently, got executed a transfer deed in favour of his mother-Jiwni Devi against the wishes of the appellant, which led to registration of the present case as a counter-blast against the private respondents. It has also come in evidence that agreement Mark-DB vide which respondent No. 2 had relinquished his rights in favour of the appellant was attested by Sh. DC Aggarwal, Advocate, representing her in the instant case. This fact also creates suspicion that the appellant under ill advice of her above counsel had got registered the instant case falsely against the private

respondents.

- (v) The appellant as PW-8 has admitted about moving of application Ex. DA by her to the Superintendent of Police mentioning about the present incident and that on the next day, she had gone to the police station to lodge the report. Application Ex. DA finds mentioned the date of incident as 05.08.2014, contrary to 05.09.2014. Further, it is also mentioned therein that there was some dispute between the appellant and the other family members of her husband-respondent No. 2 with regard to land on lease. It is also mentioned in it that on 28.10.2014, the appellant had gone to Police Station, Sadhaura in order to lodge a complaint against the private respondents. The above contents of application Ex. DA clarifies that the same was moved much later to 11.09.2014.
- (vi) The medical evidence led by the prosecution also does not prove the complicity of the private respondents, because as per FSL report, semen was detected on the salwar of the appellant, hanky as well as on the underwears of respondents No. 2 and 3. PW-11 Dr. Shelly Goel, has testified that at the time of medico-legal examination of the appellant, she had given the history of her previous sexual intercourse with her husband one day prior to the occurrence which rules out

the involvement of respondents No. 3 and 4, more particularly, when no external mark of injury on the breast or any other part of her body was found. Admittedly, the appellant was examined after six days of the occurrence on 11.09.2014. Prior to her examination, the clothes allegedly worn by her at the time of incident were not handed over to the police. For the first time her clothes were brought by her before the doctor at the time of her medico-legal examination. Some linear scratches found over right forearm inner aspect and outer aspect of left forearm of the appellant do not prove her alleged resistance at the time of her rape by the private respondents. Thus, the possibility of interpolation and creation of false evidence cannot be ruled out.

- (vii) It has come in evidence that earlier also, the appellant had lodged a criminal complaint against someone by levelling allegations of sexual harassment, but subsequently, did not support her version. This fact also shows that the appellant is habitual of levelling false allegations of rape against anyone, who does not fall to her prey.

After her medico-legal examination, the custody of the appellant was handed over to her brother-Mange Ram, who testified that his sister did not confide with him, rather he came to know about the alleged incident

from the police.

10. In view of above discussion, the impugned judgment is patently legal, being based on complete and proper appreciation of evidence and thus does not call for any interference by us.

11. The instant appeal being completely devoid of any merit is dismissed.

(T.P.S. MANN)
JUDGE

(RAMENDRA JAIN)
JUDGE

May 26, 2016
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