

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

**CRA-AD-103 of 2015
Date of decision : 6.5.2016**

Harmesh Kaur

.....Appellant

v.

State of Punjab and others

.....Respondents

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

Present : Mr. Naveen Batra, Advocate
for the appellant

RAMENDRA JAIN, J.

Respondent No.2-Jaspal Singh @ Rinku and respondent No. 3-Kuldeep Singh @ Deepu (for short the “private respondents”) were booked and tried under Sections 452 and 376(D) read with Section 34 IPC on the allegations that in the night of 21.5.2014 at around 11.15 p.m. respondent No.3 trespassed into the house of the prosecutrix and committed rape upon her with the help of respondent No.2.

On appraisal of the prosecution evidence and defence of the private respondents, the trial Court did not find itself in favour of the prosecution story and thus, acquitted the private respondents vide impugned judgment dated 3.10.2015.

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 wrongly

recorded the acquittal of the private respondents, despite ample evidence on record about the commission of rape of the prosecutrix by respondent No.3 with the help of respondent No.2.

We have given our thoughtful consideration to the above submissions and find the present appeal completely meritless for the reasons to follow.

(i) As per the prosecution story, Gurcharan Singh-husband of the prosecutrix along with his relative Bahadur Singh returned in the mid night and on seeing them the private respondents fled away from the spot. Contrary to it, said Bahadur Singh as PW5 claimed that on seeing the private respondents, he informed Gurcharan Singh-husband of the prosecutrix around 12 O' Clock and resultantly, he reached in the hospital around 2.30 in the night. From his deposition it comes out that husband of the prosecutrix had directly reached the hospital, whereas, as per medical record, he had accompanied the prosecutrix to the hospital.

(ii) The prosecution has tried to build a case that it was only PW5 Bahadur Singh, who had seen the private respondents running from the house of the prosecutrix and had admitted her to Civil Hospital, Anandpur Sahib by calling an ambulance. PW5 Bahadur Singh stated that in the odd hours, he had come to the house of the prosecutrix to take some money, but before starting from his home, situated in a village about 40-45 kilometers away, he did not make any call to Gurcharan Singh to know about his availability and the prosecutrix . The above conduct of this witness is highly doubtful,

because no sane person would travel around 40-50 kilometers to meet a person in odd hours, without confirming about his availability.

(iii) The prosecutrix is a married lady having two children i.e. one daughter aged 13 years and a son aged 5 years at the time of incident. She as PW4 stated that her elder brother in law was living separately, whereas PW5 Bahadur Singh has conceded that they were living jointly. PW6 ASI Jarnail Singh has also deposed so. In such a situation, it was impossible for the private respondents to enter into the house of the prosecutrix by breaking the door of her house and committing rape. More so, the prosecutrix did not raise any alarm which could have attracted her brother in law Satnam Singh and other neighbours. Her this conduct also proved falsification of the prosecution story.

(iv) Both prosecutrix as PW4 and Bahadur Singh as PW5, in unequivocal terms testified that they did not tell anybody about the occurrence and straightway went to the hospital. While conducting the medico legal examination of the prosecutrix vide MLR Ex.PS, PW10 Dr. Ravneet Kaur found ten injuries i.e. abrasions, superficial abrasions on the person of the prosecutrix. However, the prosecutrix herself in her statements before the police Ex.PC and the Magistrate under Section 164 Cr.P.C. Ex.PD, did not disclose about any injury allegedly caused by the private respondents.

(v) PW10 Dr. Ravneet Kaur testified that there was no bleeding

from the injuries of the prosecutrix and the possibility of the same as self inflicted cannot be ruled out. There is another glaring feature in the instant case which renders the prosecution story doubtful that the prosecutrix though was knowing the private respondents, but did not disclose their names before the aforesaid PW10 Dr. Ravneet Kaur.

(vi) The false implication of the private respondents is proved from the fact that there was previous enmity between the parties. DW1 HC Gurnam Singh has proved FIR No.111 dated 21.9.2013 (Ex.DW1/A) under Sections 307, 323, 324, 148 and 149 IPC, Police station Anandpur Sahib, recorded on the statement of Sukhwinder Kaur against Gurcharan Singh-husband of the prosecutrix. According to the said FIR, Gurcharan Singh-husband of the prosecutrix along with Satnam Singh, Kulwinder Kaur, Surinder Kaur @ Shindo and Akko caused injuries to Sukhwinder Kaur and her son Kuldeep Singh on 21.9.2013 by coming to her house. When Kuldeep Singh was taken to hospital, the husband of the prosecutrix etc. again caused them serious injuries. In the said FIR, Gurcharan Singh was charge sheeted and the case is still pending. The reason given in the said FIR, behind the occurrence was that Gurcharan Singh-husband of the prosecutrix had suspicion over respondent No.3 having illicit relations with his wife (the prosecutrix).

From the above facts, no other conclusion other than that the private respondents were falsely implicated can be drawn. Taking into account

the above factor, 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

6.5.2016
Ashwani