

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

**CRM No. 9645 of 2016 in/and
CRA-AD-64 of 2015
Date of decision : 16.5.2016**

Nisha

.....Applicant/Appellant

v.

State of Punjab and another

.....Respondents

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

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporters?
3. Whether the judgment should be reported in the Digest?

Present : Mr. Ashu Kaushik, Advocate
for the applicant/appellant

RAMENDRA JAIN, J.

Somnath-respondent No.2 was booked and tried under Section 376 IPC on the allegations that he used to harass the applicant and on 7.2.2013, he by forcibly taking her in a Scorpio jeep to a deserted room committed rape upon her.

On appraisal of evidence, the trial Court did not find itself convinced with the prosecution story and thus, acquitted respondent No.2 vide impugned judgment dated 20.7.2015.

Being aggrieved, the applicant-prosecutrix has filed the instant application under Section 378 (4) Cr.P.C. seeking leave to file the accompanying appeal for conviction of respondent No. 2 by setting aside the impugned judgment.

Learned counsel for the applicant contended that the impugned judgment is based on surmises and conjectures. From the deposition of applicant as PW1, her mother Sulochna Devi as PW3 and Kanchan Bala as PW5, it was clearly evident on record that the applicant-prosecutrix was raped by respondent No.2 on 7.2.2013 and thus, he has wrongly and illegally been acquitted. The trial Court has wrongly given undue weight to the delay in lodging the FIR.

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

(i) Admittedly, the alleged rape with the applicant was committed by respondent No.2 on 7.2.2013 whereas the FIR was lodged on 24.4.2013 i.e. after unexplained delay of more than two months which is quite fatal to the prosecution case. The prosecution has not been able to explain that why the applicant did not file any complaint to the police promptly after the occurrence.

(ii) PW4 Dr. Deepinder Kaur, while medico legally examining the applicant did not find any mark of violence on her body. She has testified that the applicant did not name any person responsible for her rape. Therefore, the medical evidence also does not support the prosecution case.

(iii) The applicant as PW1 has testified that after rape, she and her clothes had smeared with blood. PW5 Kanchan Bala had met her and brought her to her house. Contrary to it, PW5 Kanchan Bala and PW3 Sulochna Devi, mother of the applicant denied the factum of smearing of clothes of the applicant with blood. Even otherwise, the clothes of the prosecutrix were never handed over to the police.

(iv) According to the applicant, respondent No.2 was following her for the last about four years. However, during this period, she did not file any complaint against him before the police or any other authority for the reasons best known to her. Even in her complaint Ex.PA, she did not get mention the fact that she was pulled inside the vehicle by respondent No.2. She also did not disclose therein, the identity of two boys accompanying respondent No.2 at the time of commission of offence.

(v) PW7 Kesar Singh, Investigating Officer testified that during enquiry, it had come to his notice that the applicant and respondent No.2 were having physical relations with their consent. The applicant was having affair with respondent No.2 for the last two years. Respondent No.2 even used to take the applicant to his house. The applicant is a mature lady aged around 24 years. Even otherwise, complaint Ex.PA was got drafted by the applicant from Ms. Seema Moudgil, Advocate. Thus, the possibility of colourful version in the same after due deliberations and consultations cannot be ruled out.

From the above facts, the only irresistible conclusion which can be

drawn is that respondent No.2 was falsely implicated. Taking into account the above factors, the trial Court has rightly acquitted respondent No.2.

Learned counsel for the applicant 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 application being completely devoid of any merit, is dismissed. Leave to appeal is declined and the appeal is dismissed.

(T.P.S. MANN)
JUDGE

(RAMENDRA JAIN)
JUDGE

16.5.2016
Ashwani