

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRA-AD-80-2015 (O&M)

DATE OF DECISION: March 21, 2016

Shalu

...Appellant

versus

State of Haryana and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE T.P.S.MANN

HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: Mr. R.S.Mamli, Advocate for the appellant.

RAMENDRA JAIN, J.

CRM No.34168 of 2015

Sufficient cause has been shown to condone the delay in filing the appeal.

The application is, therefore, allowed. The delay of 76 days in filing the appeal is condoned.

CRA No.AD-80-2015

The judgment of acquittal of respondents Nos.2 to 6 is challenged before this Court by way of the present appeal.

Briefly stated, on 31.8.2012, a complaint was received in Police Station, City Hisar through post from the office of Superintendent of Police, Sirsa, wherein, the appellant sought action against Pawan and Vikram, sons of Bhagwan Dass, Sunita and Sachin, wife and son of Vikram, respectively, Bhuwani Devi wife of Bhagwan Dass, Ishwar Singh, Satbir,

Devender, Hoshiari Lal Saini and Tej Ram. According to her, she was married to Pawan Kumar on 11.11.2003. An amount of ₹3 lacs was spent in her marriage. Her Istridhan was handed over to the accused persons. After about 1-1/2 months, her husband-Pawan Kumar (respondent No.2) got a job in Border Security Force. Thereafter, in order to get rid of her, the respondents started teasing her for more dowry. They used to demand gold ring, cash, motor-cycle, etc. The appellant was blessed with a son on 24.10.2005. At that point of time, respondent Nos.2, his mother Bhuwani Devi and sister-in-law Sunita, had assaulted the appellant for not bringing gold ornaments and silver utensils, though her mother had spent ₹1.5 lacs in Chuchak. Thereafter, the appellant gave birth to a daughter. Again sufficient articles were given in Chuchak. However, the respondents were not satisfied. She was constantly given beatings by respondent No.2. Many panchayats were convened. Finally, her husband respondent No.2 assured to keep her with him at the place of his posting. Several times, her brother-in-law-respondent No.6 had outraged and raped the appellant. In this regard, she had complained to her husband, but he did not believe and listen to her. On 25.11.2011, under the pretext of registration of marriage and to separate their mess from the other family members, her husband-respondent No.2 brought her at Civil Court, Hisar. She was brought there twice. Thereafter, on 26.5.2012, she had accompanied her husband to Jammu and remained in his

company upto 23.6.2012. During this period, respondent No.2 had made physical relations with her. On 24.6.2012, she was sent back to Hisar. On 30.7.2012, she and her sister Rajni were thrown out of her matrimonial home by respondent No.6 and his son Sachin. They approached the Police Post Mill Gate, Hisar, but of no consequence. This led to their return journey to parental home at Sirsa. On 9.8.2012, her husband had contacted her on telephone and assured that in case she would come to Hisar, nobody would taunt her. Believing him, she along with her sister Rajni came back to Hisar. When she was going upstairs, respondent No.2-Pawan (husband), respondent No.6 Vikram and Hoshiari Lal had dragged her by hairs and took her to a room on Ist Floor. Her clothes were torn. They turn-by-turn forcibly ravished her. She was subjected to beatings. On hearing her shouting, her sister Rajni came and tried to save her, but respondent No.3 Satbir, respondent No.5 Ishwar and Sunita caught her by hairs and assaulted her. Respondent Nos.3 and 5 tore her clothes and took her to a separate room and attempted to rape her. However, she was rescued by the ladies of the house. This incident was apprised to the police and their mother. Instead of taking action, the police handed over to the appellant a divorce order obtained by her husband in a clandestine manner. However, the case under Sections 498-A, 323, 506, 406, 420, 376(g), 511, 342, 34 IPC was registered. Investigation was commenced. During

investigation by Deputy Superintendent of Police, Mukesh Kumar, Vikram, Bhuwani, Sunita, Sachin, Ishwar, Satbir, Devender, Hoshiari Lal and Tej Ram were found innocent. Sections 498-A, 506, 406, 511, 342, 34, 376(G) IPC were deleted and only section 376 IPC was added qua respondent No.2 Pawan Kumar. On completion of investigation, final report under Section 173 CrPC was presented before the concerned Magistrate.

Finding a prima facie case, respondent No.2 Pawan Kumar was charge sheeted under various Sections vide order dated 2.1.2014.

During trial, respondent No.3 to 6 were ordered to be summoned under Section 319 CrPC to face trial for commission of offences punishable under Sections 323/354 IPC. The respondent No.2 was then charge sheeted under Sections 420, 376, 323, 354, read with section 34 IPC, whereas, respondents Nos.3 to 6 were charge sheeted under Sections 354, 323 read with section 34 IPC to which they pleaded not guilty and claimed trial.

In order to prove its case, the prosecution examined as many as fourteen witnesses.

The entire incriminating evidence was put to respondents No.2 to 6. They pleaded their false implication.

In their defence, they examined Shri Surender Singh Saini, Advocate as DW1.

After hearing learned counsel for both the parties, the trial Court acquitted respondent Nos.2 to 6 of the charges framed against them.

Learned counsel for the appellant has strenuously contended that PW9-prosecutrix and her sister Rajni (PW10) had fully supported the prosecution story, thus, discrediting their testimonies only on the premise that the same lacked credence is illegal. Resultantly acquittal of respondent Nos.2 to 6 is also not legally justifiable. The trial Court was not justified in rejecting ocular version of the occurrence. Respondent Nos.2 to 6 are liable to be convicted for the said offences.

We have given our thoughtful consideration to the arguments advanced by learned counsel for the appellant.

The prosecution examined prosecutrix (PW9) and her sister Rajni (PW10) to give ocular version of the incident. The allegations against accused-respondent No.2 are that he had fraudulently obtained divorce from the appellant and had established physical relations with her even thereafter. The appellant and her sister were assaulted. Their clothes were also torn off. The appellant was raped. Even an attempt was made to forcibly ravish her sister.

Allegation of fraud/cheating in getting the divorce under Section 13-B of the Hindu Marriage Act does not hold water in the light of the evidence available on record. Initially, a petition for mutual divorce Ex.P15 was filed. In the first

motion, on 25.11.2011, joint statement of appellant and respondent No.2 was recorded. Whereafter, in the second motion, on 26.5.2012, again joint statement of the parties was recorded. On the very same day, a decree of mutual divorce was passed. Before the trial Court, the appellant admitted about factum of presentation of divorce petition and visiting the Court after a period of six months. Even the defence witness, namely, Surender Singh Saini, Advocate (DW2) also proved the factum of divorce by mutual consent. Thus, the contents of complaint Ex.P2 presented before the Superintendent of Police on 30.8.2012 are surrounded with clouds of doubt qua fraud and cheating.

So far as the argument that respondent No.2 had continuously established physical relations with her even after divorce is also substance-less. In the absence of any cogent evidence, this Court cannot infer that respondent No.2 had taken the appellant at the place of his posting or any other place, particularly, when on 26.5.2012, the divorce by mutual consent had already been taken place.

It is not possible that on 30.7.2012, respondents No.3 and 5 could make any effort to outrage the modesty of the sister of appellant in the presence of other family members. Moreover, alleged attempt to outrage the modesty of the appellant on 9.8.2012 by respondents No.2, 4 and 6 seems to be a concocted story, because it was not possible that the

husband (respondent No.2) would have called the appellant to live in the matrimonial home after mutual divorce between the parties. Rather, the defence of respondent Nos.2 to 6 is found to be tangible that it was settled between the parties that the children would remain with respondent No.2 and the appellant had come to take them away from his custody. This alleged incident on thorough investigation was found to be false by the police. Thus, it can be safely concluded that no such incident had taken place on the aforesaid pin pointed dates.

Even the FIR of the alleged incidents was not lodged promptly. No explanation has come forward that why the appellant did not approach the police for the alleged incident taken on 9.8.2012. It casts doubt on the prosecution story projected by the appellant.

In view of the aforesaid discussion, we find no merit in the present appeal and the same is hereby dismissed.

(T.P.S.MANN)
JUDGE

(RAMENDRA JAIN)
JUDGE

March 21,2016
KD