

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

**CRA-D-1380-DB of 2015 (O & M)
Date of decision : 21.4.2016**

Kiran

.....Applicant/Appellant

v.

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 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. Aman Priye Jain, Advocate
for the applicant/appellant

RAMENDRA JAIN, J.

CRM No. 30671 of 2015 :

Heard. Sufficient cause has been shown for condonation of delay in filing of the appeal. The application is, therefore, accepted. The delay of 59 days in filing of the appeal is condoned.

CRA-D-1380-DB of 2015 :

Put pithily, around 2.30 p.m. on 21.5.2014, the appellant after attending the school was returning home. On the way her neighbour respondent No.2 Sumit met her at bus stand to whom she asked to drop her at her house, whereupon, he started abusing her. In the meanwhile, a vehicle came there and

one boy alighted from the same and forcibly pushed the appellant inside it having some other occupants. On her raising alarm, her neighbour Mohit gagged her mouth with a handkerchief, whereupon, the appellant became unconscious and thereafter, did not know that where she was taken. On her regaining consciousness, she found herself in an abandoned place. She was forcibly raped by respondents No.2 and 3 and their companions and then left her at an unknown place having her mouth gagged with a handkerchief. The assailants also threatened her to kill, in case, she disclosed about the incident to anyone. Further, case of the prosecution is that the appellant was knowing all the assailants and their names were Aman, Sumit, Mohit, Amit, Sudhir and Sonu.

On the basis of above information, a case was registered. The statement of the prosecutrix under Section 164 Cr.P.C. was got recorded. She was also medico legally examined. Respondents No.2 and 3 and their companions were arrested. During investigation, Amit-companion of respondents No.2 and 3 was found juvenile and thus, final report against him was presented before the Juvenile Justice Board, whereas accused Sudhir was declared juvenile by the Judicial Magistrate vide order dated 9.7.2014. After completion of investigation, report under Section 173 Cr.P.C. was filed against respondents No.2 and 3 and their two companions namely Aman and Mohit.

On commitment of the case, the trial Court finding a prima facie case, charge sheeted respondents No.2 and 3 under Sections 366, 376D and 506 read with Section 34 IPC and Section 6 of the POCSO Act, 2012, to which they pleaded not guilty and claimed trial.

The prosecution in support of its case examined as many as 13

witnesses and relied upon FSL report Ex.PX. Statements of respondents No.2 and 3 and their co-accused Aman and Mohit were recorded under Section 313 Cr.P.C. In their defence, they examined DW1 Pardeep Kumar and DW2 Pooja .

After perusing the entire evidence on record and hearing learned counsel for both the sides, the trial Court did not find itself convinced with the prosecution version and thus, acquitted the private respondents and their aforesaid co-accused Aman and Mohit vide impugned judgment dated 16.5.2015.

Being aggrieved, the prosecutrix has filed the present appeal for conviction of respondents No.2 and 3 by setting aside the impugned judgment.

Learned counsel for the appellant contended that the impugned judgment is based on surmises and conjectures. There was sufficient evidence duly corroborated by the medical evidence on record to convict the private respondents.

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 initial version of the appellant-prosecutrix, she was raped by 6 persons including respondents No.2 and 3. Mohit, her neighbour had pushed her inside the car, already occupied by four persons. While raising alarm, she noticed that respondent No.3-Sonu was sitting on the driver seat. One of her six rapists got sniffed to her something through his handkerchief and resultantly, she became unconscious. However, the appellant-prosecutrix as PW5 testified that out of the six boys, who had raped her, only

Sonu- respondent No.3 and Sumit-respondent No.2, were present in Court and rest four were not. Initially, respondent No.2- Sumit committed rape upon her and then respondent No.3-Sonu. She had heard that respondents No.2 and 3 were addressing one of the four boys as Mohit. Then all four of them had also committed rape upon her turn by turn. The boy named Mohit was also not present in Court. She did not know co-accused Mohit and Aman. None of these two were present at the time of kidnapping and committing rape upon her. None of them had committed rape. Since above deposition of the prosecutrix was contrary to her initial version before the police in complaint Ex.PW5/A, she was declared hostile. During her cross-examination by the Public Prosecutor, nothing favourable to the prosecution could be elicited from her mouth, as, she denied the suggestion that co-accused Mohit and Aman were the same persons who had kidnapped and raped her. She also categorically denied the suggestion that due to compromise with the said co-accused Mohit and Aman, she was not naming them as accused.

The above contradictory version of the prosecutrix and declaring her hostile by the public prosecutor has rendered the entire prosecution case doubtful.

(ii) The things did not rest here. The prosecution case is also falsified by the mother of the appellant-prosecutrix. She as PW6, testified that her daughter disclosed to her that only respondents No.2 and 3 had committed rape upon her and had not stated that

remaining four accused had also committed rape upon her. She too was declared hostile. During cross examination, she was confronted with her statement Ex.PW6/B, but she denied to have got recorded therein, the names of co-accused Sudhir, Aman, Amit and Mohit. She also denied the suggestion that she was not naming the aforesaid persons having compromised with them.

(iii) PW10 Dr. Krishna Tahlán had medico legally examined the prosecutrix and during her examination found her hymen intact. No mark of injury on any part of body of the appellant was found by her. In the history given by the prosecutrix, she did not disclose about her gang rape by anyone. Hence, the medical evidence has falsified the entire prosecution story of rape upon the prosecutrix by respondents No.2 and 3 and their companions.

Statement of the appellant-prosecutrix is full of contradictions and inconsistencies, thus, does not inspire confidence. In her cross examination, she had shown her ignorance about the fact that whether there was any bleeding when respondents No.2 and 3 had ravished her. It is quite improbable that a minor girl, if, ravished by six persons turn by turn, would forget about her physical condition after her rape.

(iv) There is delay in lodging the FIR because, as per the appellant-prosecutrix she regained consciousness at around 10.30 a.m. on 22.5.2014 at the place of occurrence, however, the FIR was lodged at 9.00 p.m. on that day i.e. after around ten hours. More so, as per the mother of the prosecutrix as PW6, her daughter did not

return from the school on 21.5.2014. On 22.5.2014 in the noon time some police officials informed her telephonically about the presence of her daughter near Devi Lal Park whereupon, she reached there around 6.00 P.M. where 2-3 police officials were already present. Contrary to it, the investigating officer has testified that the prosecutrix had come to the police station along with her mother at 9.00 p.m. on 22.5.2014. The above major contradictions show that the things did not happen in the manner as narrated by the prosecutrix.

Learned counsel for the appellant has miserably failed to put any dent in any of the findings of the learned 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 hereby dismissed.

(T.P.S. MANN)
JUDGE

(RAMENDRA JAIN)
JUDGE

21.4.2016
Ashwani