

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRA-D-1404-DB-2015

Date of decision: 11.01.2016

Sandeep Kaur

..... Appellant

Versus

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 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. Aayush Gupta, Advocate for the appellant.

RAMENDRA JAIN, J.

Prayer in the instant appeal filed by Sandeep Kaur-appellant (complainant) is for setting aside of the impugned judgment dated 29.07.2015, passed by the learned Additional Sessions Judge, Jalandhar, whereby respondent No. 2-Hardeep Singh was acquitted of the charges framed against him under Sections 376-B and 506 of the Indian Penal Code (IPC).

2. In nutshell, the appellant-complainant was married with respondent No. 2 on 11.07.2006. Two children were born out of their wedlock. The marriage turned into a rough weather. Resultantly, the appellant-complainant filed an application under Section 125 Cr.P.C.

against respondent No. 2 which was still pending. Simultaneously, respondent No. 2 also filed a divorce petition which was dismissed by the learned District Judge, Jalandhar. Upon her complaint under the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as 'the Act'), the appellant-complainant was ordered to be given two rooms in the house of her husband i.e. respondent No. 2 in which she used to reside separately. Around 1.00 A.M. on 14.07.2013, in the midnight, respondent No. 2 forcibly entered into the room of appellant-complainant and committed rape upon her against her wishes by threatening her to keep mum otherwise she would be done to death. Thereafter, respondent No. 2 kept on maintaining illicit relations with her till 20.07.2013. On 20.07.2013, on the instigation of his mother Kulwinder Kaur, respondent No. 2 gave beatings to the appellant-complainant and after committing rape upon her, turned her out of the matrimonial home. Respondent No. 2 and his mother also threatened the appellant-complainant that he will make her pregnant and that she will be turned out of the home by levelling false allegations on her character. Respondent No. 2 had also extra marital relations with other women. He threatened the appellant-complainant of having in possession her obscene movies and he would upload the same on internet.

3. With these broad allegations, she lodged FIR No. 221 dated 24.09.2013, under Sections 376-B/506 IPC at Police Station Division No. 8, Jalandhar. The police swung into action and arrested respondent No. 2. The appellant-complainant as well as respondent No. 2 were got medico-legally examined from Civil Hospital, Jalandhar. Statements of

the witnesses were recorded and on completion of investigation, final report was presented before the learned Illaqa Magistrate.

4. After complying with the provisions of Section 207 Cr.P.C., the learned Judicial Magistrate Ist Class, Jalandhar committed the case for trial to the Court of Session vide order dated 21.12.2013.

5. On assigning of the case, the learned Additional Sessions Judge, Jalandhar on finding a *prima facie* case for offences punishable under Sections 376-B and 506 IPC, charge-sheeted respondent No. 2 to which he pleaded not guilty and claimed trial.

6. The prosecution in support of its case examined as many as 6 witnesses.

7. PW-1 HC Kuldeep Singh, deposed about depositing of two parcels and one sealed envelope with him by SI Barjinder Singh on 26.09.2013, which he sent to the office of Chemical Examiner, on the same day through HC Santokh Singh. He further deposed that the Chemical Examiner, Kharar, returned the above case property due to non-compliance of necessary formalities. Hence, on 25.10.2013, after completion of necessary formalities, the aforesaid case property was again sent to the office of Chemical Examiner, Kharar through HC Santokh Singh, who after depositing the same with the Chemical Examiner, handed over the receipt to him.

8. The appellant-complainant appeared as PW-2 and supported the prosecution story in toto, while proving her complaint Ex. PA. She categorically deposed that respondent No. 2 had raised a demand of ₹ 11 lacs and a plot. Earlier, her parents used to satisfy the demands of

respondent No. 2 and his family members, but in due course their relations got strained. Resultantly, her parents stopped giving anything to respondent No. 2 and his family members. She further deposed that in the midnight of 14.09.2013, respondent No. 2 got opened the door of her room on the pretext that their baby was not feeling well. As soon as she opened that door, respondent No. 2 took possession of her phone and at the instigation of his mother, he gave beatings to the appellant-complainant and he also made physical relations with her. Respondent No. 2 also told the appellant-complainant that he would make physical relations with her and transmit some disease as he was having relations with others also. The appellant-complainant also deposed that she was residing separately from the accused for the last two years.

9. PW-3 HC Santokh Singh, deposed about handing over of one sealed envelope and two parcels by MHC Kuldeep Singh (PW-1) on 25.10.2013, for onward depositing the same with the office of Chemical Examiner, Kharar and after doing the needful, he handed over the receipt to MHC Kuldeep Singh, on the same day. He also deposed that as long as the above parcels remained in his custody neither he nor anybody else was allowed to tamper with the same.

10. The Investigating Officer, SI Barjinder Singh, appeared as PW-4 and deposed about the steps taken by him during investigation. He proved certain documents i.e. endorsement Ex. PW-4/A, FIR Ex. PW-4/A/1, site plan Ex. PW-4/D, Rapat Ex. PW-4/B, special report Ex. PW-4/C, application Ex. PW-4/D/1 regarding medico-legal examination of the appellant-complainant and memo Ex. PW-4/E.

11. PW-5 Dr. Harjot Sidhu, Medical Officer deposed that on 26.09.2013, she had medico-legally examined the appellant-complainant and found no injury marks on her person vide MLR Ex. PW-5/A. She further deposed as per report of the chemical examiner Ex. PW-5/B, spermatozoa were detected in the contents of Ex. I and II and possibility of sexual assault cannot be ruled out.

12. PW-6 Dr. Surinderpal, Medical Officer has deposed that on 22.10.2013, he medico-legally examined respondent No. 2 and gave his report Ex. PW-6/A declaring him fit to make sexual act.

13. After the closure of prosecution evidence, statement of respondent No. 2 under Section 313 Cr.P.C. was recorded, putting entire incriminating evidence brought on record against him to which, he denied and pleaded his innocence. He took the plea that the appellant-complainant had lodged the FIR on false allegations against him just to blackmail him and his family members. Earlier also, the appellant-complainant had lodged a false FIR No. 300 dated 27.10.2009 under Sections 376/498-A/120-B IPC against him, his parents and un-married sister. However, she was not able to prove the allegations and, thus, they all were acquitted. The appellant-complainant was residing at her parental house at Ludhiana. After filing the aforesaid case, she started harassing him and his father a diabetic patient. The appellant-complainant and her family members along with others illegally trespassed into the house of his mother and caused injuries to his parents for which a case under Section 323/324 IPC was registered against her and others at Police Station Division No. 8, Jalandhar. During the

pendency of aforesaid case, his father expired on 07.03.2012. The appellant-complainant was not even caring for the children and, thus, they were being educated and maintained by his mother. No occurrence as alleged by the appellant-complainant was ever taken place.

14. In his defence, respondent No. 2 has examined three witnesses, namely; DW-1 Dr. Bhupinder Kaur, DW-2 Dr. Manoj Chaudhary and DW-3 Sumant.

15. DW-1 Dr. Bhupinder Kaur, Medical Officer, deposed that around 4.40 P.M. on 24.09.2011, she had medico-legally examined Nirmal Singh S/o late Lashkar Singh and found three simple injuries on his person. The weapon used was blunt in nature. On the same day, she also medico-legally examined Balwinder Kaur w/o Nirmal Singh and found four simple injuries on her person. The weapon used was blunt in nature.

16. DW-2 Dr. Manoj Chaudhary, Consultant Nephrologist, deposed that on 04.03.2012, Nirmal Singh S/o late Lashkar Singh, was admitted in New Ruby Hospital Private Limited 26, Link Road, Lajpat Nagar, Jalandhar, with the history of generalized weakness for few weeks, intermittent fever one day, breathlessness since one day and he was diagnosed as type-II diabetes. Diabetic kidney disease, CKD5, Septicemia, septic shock and UTI and he finally died on 07.03.2012 at 12.20 A.M. in the hospital. This witness proved bed head ticket of the patient while deposing that earlier also Nirmal Singh was hospitalized on 24.09.2011 and 15.04.2011 for one day each vide bed head tickets Ex. DW-2/B and Ex. DW-2/C, respectively.

17. DW-3 Sumant, Nodal Officer-II, Bharti Airtel Limited, Chandigarh, had proved the application Ex. DW-3/A for issuance of sim card in the name of appellant-complainant along with her ID, attested copy of which was Ex. DW-3/B. He also proved the call details of mobile phone No. 97796-54111 w.e.f. 01.05.2014 to 28.02.2015 and attested copy of the same is Ex. DW-3/C containing 189 pages owned by the appellant-complainant. This witness also proved another application Mark DW-3/A for issuance of sim card in the name of appellant-complainant and attested copy of her ID proof is Mark DW-3/B. He also proved the call details of mobile phone No. 98764-52226 for the period from 01.05.2014 to 28.02.2015 attested copy of the same is Ex. DW-3/D containing 268 pages. This witness also proved certificate Ex. DW-3/E issued under Section 65-B of the Indian Evidence Act, certifying the information pertaining to the above said mobile and combined tower location Ex. DW-3/F containing 24 pages and also non-availability of call details for the period from 01.07.2013 to 31.01.2014 Ex. DW-3/G.

18. After hearing learned counsel for the parties and going through the evidence brought on record, the learned trial Court acquitted respondent No. 2 of the charges framed against him under Sections 376-B/506 IPC by giving him the benefit of doubt.

19. Aggrieved against the same, the appellant-complainant has preferred the instant appeal.

20. Learned counsel for the appellant-complainant contended that the impugned judgment is based on surmises and conjectures and, thus, is liable to be set aside. Appellant-complainant as PW-2 had fully

supported the prosecution story, while deposing that on 14.09.2013 to 20.09.2013, she was forcibly raped by respondent No. 2. The learned trial Court had erred in not relying upon her unblemished deposition, though it was well proved on record that appellant-complainant was residing separately from respondent No. 2, since, for the last 2 years. The ingredients of offence under Section 376-B read with Section 506 IPC against respondent No. 2 were well proved on record, because the appellant-complainant in her cross-examination too had deposed that respondent No. 2 had committed rape with her during the period from 14.09.2013 to 20.09.2013. The learned trial Court had failed to appreciate that Section 376B IPC envisages that whoever committed sexual intercourse with his own wife, who is living separately, whether under a decree of separation or otherwise, without her consent is said to have committed the offence under Section 376B IPC.

21. After giving our thoughtful consideration to the submissions made by learned counsel for the appellant-complainant, we find that the instant appeal is completely devoid of any merit for the reasons to follow:-

- (i) In the initial complaint Ex. PA, the appellant-complainant narrated her forcible rape by respondent No. 2 during the period from 14.07.2013 to 20.07.2013, but in the witness-box as PW-2 she deposed that the alleged occurrence took place in between 14.09.2013 to 20.09.2013. There is a vast difference of two months in the initial version given by

the appellant-complainant in her complainant Ex. PA and her deposition in Court as PW-2. The appellant-complainant miserably failed to explain the same.

- (ii) As per allegations of the appellant-complainant, she was raped for around 7 days by respondent No. 2 against her wishes from 14.09.2013 to 20.09.2013, but she kept mum. Even she did not disclose her woeful story to anyone and about misconduct and threats of respondent No. 2. The above conduct of the appellant-complainant is highly improbable and unnatural because huge litigation i.e. divorce petition, proceedings under Section 125 Cr.P.C. as well as the complaint under the Act was going on between the appellant-complainant and respondent No. 2.
- (iii) On the initial day i.e. on 14.07.2013 as mentioned in complaint Ex. PA or on 14.09.2013 as deposed by the appellant-complainant as PW-2 in Court, if respondent No. 2 had got opened the door of her room on the pretext of illness of their baby, in such an eventuality, it cannot be expected from a man of prudence that she will not raise any grouse or disclose her forcible rape by respondent No. 2 to anyone.
- (iv) Even if on the initial day i.e. on 14.07.2013 or 14.09.2013 as per the case of appellant-complainant that respondent No. 2 got opened the door of her room

on the pretext of illness of their baby, in that case also it is unexplained on record that she was forcibly raped by him and why the appellant-complainant kept on opening the door for respondent No. 2 on the subsequent dates i.e. from 15.09.2013 to 20.09.2013, more particularly when relations were strained in between them and their children were also not staying with her and she kept on allowing respondent No. 2 to commit rape with her against her wishes.

- (v) Admittedly, on earlier occasion also the appellant-complainant got registered false FIR No. 300 dated 27.10.2009 under Sections 376/498-A/120-B IPC against respondent No. 2 and his parents in which they were acquitted. Hence, the above conduct of appellant-complainant also puts a dent in the prosecution story.
- (vi) Even otherwise, FIR in the present case was lodged belatedly by the complainant, because as per her complaint Ex. PA, respondent No. 2 had committed rape with her on 14.07.2013, but FIR in the instant case was lodged on 24.09.2013. Even if, it is presumed that the dates of occurrences i.e. 14.07.2013 to 24.07.2013 were mentioned wrongly, in that eventuality, there is no explanation on the file why the prosecutrix kept mum for four days and got lodged the

FIR on 24.09.2013.

- (vii) Admittedly, respondent No. 2 is the husband of appellant-complainant and their relations were not healthy. Thus, it can safely be presumed that the appellant-complainant for taking revenge got lodged the present false FIR against respondent No. 2.
- (viii) The learned trial Court has observed that as per Court order Ex. DX, passed in the divorce petition filed by respondent No. 2, the appellant-complainant was living in the house of respondent No. 2 with undue pressure of the police and other elements.
- (ix) The appellant-complainant as PW-2 in her cross-examination specifically admitted that their children were got admitted in the school by her mother-in-law, which means that their children were not taken care of by her. Hence, the story put forth by the appellant-complainant that respondent No. 2 got opened the door of her room on the pretext that their child was ill does not sound genuine.
- (x) The appellant-complainant in her cross-examination also admitted that tenants were also residing on the upper floor of the same house in which she was residing. Thus, it is quite un-natural and improbable that she does not raise any hue or cry or to inform anyone of them about her rape by respondent No. 2,

more particularly when she was free to move anywhere without any restriction from any corner. Since, there was no restriction upon her to go anywhere so it was very easy for her to go to the police station to complain about her rape by respondent No. 2, but she did not do so which requires to draw an adverse inference against her that things did not happen in the manner as narrated by her.

(xi) In cross-examination, the appellant-complainant also deposed that after the occurrence, respondent No. 2 visited her on last Friday as he usually comes to her after a week or ten days. Her above deposition clearly proves beyond doubt that respondent No. 2 was usually visiting the appellant-complainant even after the occurrence, but she did not take any action against him which means that with her consent, alleged intercourse was committed by respondent No. 2 with her.

(xii) The Investigating Officer/SI Barjinder Singh (PW-4) deposed that the appellant-complainant made her statement before him on 24.09.2013. He further deposed that he kept on waiting for the appellant-complainant for her medical examination on 25.09.2013, but she did not turn up. On 26.09.2013, the appellant-complainant was again called for her

medical examination. The appellant-complainant never came to him to make statement about the incident rather he himself traced out her for getting her statement. The above conduct of the appellant-complainant shows that after filing the complaint, she did not bother to make her statement to the police or had gone to the hospital for her medical examination.

(xiii) PW-5 Dr. Harjot Sidhu, in her cross-examination admitted that she did not find any external or internal mark of injury on the person of appellant-complainant which again proves that she was a consenting party to the alleged episode, if any.

22. No other point was urged before us.

23. In view of the above discussion, the instant appeal is completely devoid of any merit and, therefore, dismissed.

(T.P.S. MANN)
JUDGE

(RAMENDRA JAIN)
JUDGE

January 11, 2016

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