

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRA-D-427-DB-2015

Date of decision: 17.03.2016

Eti Bhasin

..... Appellant

Versus

State of Haryana 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. J.S. Bedi, Senior Advocate, with
Mr. Gurbir Singh, Advocate
for the appellant.

RAMENDRA JAIN, J.

Complainant-Eti Bhasin, has preferred the present appeal against the judgment dated 14.01.2015 passed by the learned Additional Sessions Judge, Special Court, Sonapat, acquitting respondent No. 2-Gaurav Malik, under Sections 328, 354(c), 376(2), 386, 420 and 506 of the Indian Penal Code (IPC) while convicting him under Section 496 IPC and sentenced to undergo rigorous imprisonment for a period of 4 years and to pay a fine of ₹ 10,000/- and in default, further undergo

simple imprisonment for a period of one month.

2. Briefly stated, the appellant and respondent No. 2 came into contact with each other on a social site and became friends. Respondent No. 2 showed his desire to marry the appellant by telling her that he was unmarried. However, in between January, 2011 and June, 2012 both of them did not remain in contact with each other as their parents have come to know about their relationship. Thereafter, respondent No. 2 again procured the mobile number of the appellant and started pressuring her for marriage. Finally on 13.03.2014, he took the appellant for lunch and after administering her some pills committed rape upon her in a car. Respondent No. 2 also prepared audio and video clips of the appellant, while committing rape and then threatened to upload the same on the internet in order to defame her. He also threatened that he would eliminate her and her family members. One-two days thereafter, respondent No. 2 called the appellant to Delhi with her original testimonials, besides ₹ 1 lac to solemnize their marriage. Consequently, under fear and threat of respondent No. 2, the appellant along with her sister met him and solemnized marriage with him. Thereafter, she returned home. However, after 3-4 days, respondent No. 2 telephonically demanded ₹ 1 lac from her under threat of uploading her audio video clips on the internet. He also disclosed to her that he was already married and was just blackmailing her.

3. On the basis of above complaint, FIR under Sections 494, 497, 420, 386, 376, 328 and 506 IPC was registered. During investigation, statement of the appellant under Section 164 Cr.P.C. was

also got recorded. She was medico-legally examined. Respondent No. 2 was arrested. After completion of investigation, final report under Section 173 Cr.P.C. against respondent No. 2 was presented before the learned Illaqa Magistrate.

4. On commitment of the case to the Court of Sessions, the learned trial Court charge-sheeted respondent No. 2 under Sections 328, 354-C, 376(2), 386, 420, 496 and 506 IPC to which he pleaded not guilty and claimed trial.

5. The prosecution in support of its case examined as many as 14 witnesses, besides, tendering FSL reports Ex. PX and Ex. PY.

6. In his statement under Section 313 Cr.P.C., respondent No. 2 denied all the incriminating evidence brought on record against him and pleaded his false implication. He took the stand that he never committed rape upon the appellant nor had ever physical relations with her. The appellant with an intention to marry him invited him in a marriage of her cousin at Gaziabad in January, 2011. However, her cousins picked up a quarrel with him there. Thereafter, he stopped talking to the appellant and deleted all her contacts. Thereafter, in June, 2012, the appellant with a fictitious name Preeti Sharma created a fake social ID and became friendly with him. She disclosed her real identity to him after about 6 months and showed sympathy towards him regarding his dispute and litigation with his wife and thereafter, started meeting him. They kept on going for outings at many occasions at Delhi and other places, but did not develop any physical relations. The appellant finally married him on 01.04.2013 in the presence of her elder sister and mother with her own

free will and consent.

7. Learned counsel for the appellant contended that the impugned judgment is based on surmises and conjectures. Respondent No. 2 has wrongly been acquitted under Sections 328, 354(c), 376(2), 386, 420 and 506 IPC. Learned trial Court has failed to consider that the prosecutrix was subjected to sexual intercourse by respondent No. 2 under intoxication and threats. The learned trial Court has erred in ignoring the fully corroborated evidence of the prosecution while acquitting respondent No. 2.

8. After giving our thoughtful consideration to the submissions made by learned counsel for the appellant, we find no merit in the instant appeal for the reasons to follow.

- (i) The appellant as PW-10 testified that firstly tablet was administered to her in between 11.30 and 12.00 p.m. After administering of tablet, she did not regain full consciousness till 7.30 P.M. During this period, she did not talk to anyone. However, call details Ex. PW-4/C belie her above deposition, because at 6.56 P.M. she was found conversing with her mother for about 34 seconds and at 6.59 P.M. she had received a call from her Bhabhi and conversing with her for about 85 seconds. Further as per appellant after reaching home around 8.00 P.M., she did not talk to anyone on mobile. Again contrary to the above, at 8.17 P.M. she had received a call from her Bhabhi and

conversed with her for about 46 seconds and then around 8.28 P.M. she received a call from respondent No.2 and the conversation took place for 1034 seconds. The above major contradictions have rendered the prosecution case doubtful. More so, the appellant kept on changing her stand.

- (ii) It has come on record that the appellant and respondent No. 2 were in regular touch of each other, right from 14.03.2013 to 09.04.2013. Even they used to converse in late night hours. Had respondent No. 2 committed forcible rape upon the appellant against her wishes on 13.03.2013, in that eventuality, there was no reason for her to continue her relations with him. Remaining in touch with respondent No. 2 by the prosecutrix after 13.03.2013 speaks otherwise that she was a consenting party to the sexual intercourse. The appellant has alleged that she was scared on account of threat extended to her by respondent No. 2 that he would upload her audio-video clips on internet to defame her and her family. However, the above stand of the appellant has rightly been disbelieved by the learned trial Court on the ground that had there been any danger to the appellant, she must have disclosed the same to her family members or parents on the initial date of incident itself i.e. 13.03.2013. Her silence for

more than 1½ months clearly speaks about her consent to sexual intercourse with respondent No. 2. The learned trial Court after minutely going through the testimony of the appellant as PW-10 and her statement under Section 164 Cr.P.C. had reached at the conclusion that there was a love affair between her and respondent No. 2 and she used to meet him on her own accord even after 13.03.2013.

- (iii) As per FSL report Ex. PY, no audio or video clipping relating to the present case could be retrieved from the mobile phone, laptop and pen-drive of respondent No. 2. Had respondent No. 2 prepared any such audio or video clips as alleged by the appellant, the same could have been retrieved by the experts. The appellant as PW-10 had categorically admitted about preparing of a fake ID in the name of Preeti Sharma and contacting respondent No. 2. Her above admission fortifies the stand of respondent No. 2 that it was not he, rather the appellant who used to contact him.
- (iv) The performance of marriage of appellant under threat is also denied by DW-4 Pandit Pappu Dube by testifying that before starting the ceremony of Saptpadi, he had enquired from both the parties that whether they were solemnizing their marriage out of

their own free will or consent and without any pressure to which they replied in affirmative and thereafter, he solemnized their marriage in a happy atmosphere. DW-1 Shashi Pal, Advocate, DW-2 Mahabir, DW-3 Surender and DW-5 Jaswant Singh, Advocate, in unequivocal terms have testified that they have prepared and attested the affidavits and marriage documents of the appellant with her own free will and consent as she was not under any threat or pressure in their presence. The appellant had voluntarily signed her affidavit after reading its contents. Even she herself had shown her documents to them. She had thumb marked and signed the register. Their marriage was performed happily with the consent of the appellant without any pressure or threat. Despite their lengthy cross-examination, nothing favourable to the prosecution could be elicited from their mouth.

- (v) The marriage photographs Ex. D-4 to Ex. D-7 are admitted by the appellant to be of her marriage with respondent No. 2. Learned trial Court has observed that in these photographs, the appellant is smiling and, thus, does not seem to be under any pressure at the time of marriage ceremony. The learned trial Court has also considered her statement Ex. D-2 given by her that “for this marriage there was not any fear or

pressure from any side”. During her cross-examination she admitted that the same was in her own writing.

9. In view of the above factual position, the findings of the learned trial Court that appellant was the consenting party to the entire episode do not warrant any interference. Even otherwise, learned counsel for the appellant has also failed to put any dent in any of the above findings of the learned trial Court.

10. We have gone through the impugned judgment and found no illegality or perversity in the same. The instant appeal, being completely devoid of any merit, is dismissed.

(T.P.S. MANN)
JUDGE

(RAMENDRA JAIN)
JUDGE

March 17, 2016

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