

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

**CRA-D-572-DB of 2015
Date of decision : 22.3.2016**

Pooja

.....Appellant

v.

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 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. J.S. Saneta, Advocate
for the applicant-appellant

RAMENDRA JAIN, J.

In nutshell, respondent No.2 was booked and tried under Sections 376, 506 and 292(2) IPC on the complaint of the appellant that she was black mailed and raped by him for about one and a half year by clicking her nude photographs without her consent, while she was taking bath under threat that if she would not make illicit relations with him, in that eventuality, he would upload her nude photos on the mobile phones of other persons and her family members.

After hearing learned counsel for both the sides and perusing the evidence on record, the learned trial Court did not find itself in favour of the prosecution and thus, resultantly, acquitted respondent No.2 vide impugned judgment dated 4.12.2014.

Being aggrieved, the prosecutrix has preferred the present appeal.

Learned counsel for the appellant contended that the impugned judgment of the learned trial Court is based on surmises and conjectures. The learned trial Court has given undue weight to the minor discrepancies, relating to the significant aspects of the case, while acquitting respondent No.2.

After giving our thoughtful consideration to the above submissions, we find no merit in the present appeal for the reasons to follow.

(i) The appellant has introduced three different versions which have rendered the prosecution case completely doubtful. In her complaint Ex.PH, the appellant alleged that in the day time in April/May 2011, respondent No.2 clicked her nude photographs, while she was taking bath in the bath room having no door which she could not notice and thereafter, showing the same to her, respondent No.2 started black mailing and raped her. Contrary to it, in her statement under Section 164 Cr.P.C, Ex.PJ, she testified that Sonia, cousin of respondent No.2-her class mate once called her at her house and made her unconscious by giving some intoxicant in sweet. Thereafter, respondent No.2 raped her and made a film. The things did not rest here. In her statement Ex.DD to the police, she stated that on noticing that respondent No.2 was clicking her photographs, while she was taking bath, he ran away from the spot. Hence, it is difficult to arrive at a conclusion that which of the version of the appellant was true and correct.

(ii) In her complaint, which set the criminal law into motion, the appellant stated that around 8.30 p.m. on 28.7.2012 when she was

returning home, respondent No.2 caught hold of her, gagged her mouth and took her to a vacant place and tried to break open the string of her salwar, however, she rescued herself from the clutches of the accused/respondent by raising alarm. Contrary to it, in her statement under Section 164 Cr.P.C. she testified that she had disclosed the entire episode to her parents on 22.5.2012 i.e. two months prior to the occurrence. Thus, it is unexplained on the file that why the parents of the appellant kept silent for such a long period and did not report the matter to the police. Their above conduct has rendered the entire prosecution case doubtful from this angle too.

(iii) The appellant is a married lady and major. It does not appeal to reason that such a woman could be ravished by someone on the pretext of uploading her nude photos/film on the mobiles of her family members and husband for such a long period. Had it been so, the appellant had ample opportunities to disclose her woeful story at any stage to her parents during the long period of one and a half years in which she was allegedly black mailed and raped by respondent No.2. Her silence in itself is sufficient to draw an adverse inference that the things did not happen in the manner as narrated by the prosecution.

(iv) The prosecutrix as PW6 has admitted that she used to enjoy sexual intercourse during night hours and at mid night and intentionally used to keep the door open of her house for respondent No.2. Her above admission, completely falsify the

prosecution story. Even otherwise, forcible rape with a lady is not possible during night hours in her own house without her consent.

(v) The mobile allegedly recovered from respondent No.2 was not found to be in working condition. Even no mechanical report was procured by the prosecution to show that the same was in order to click photographs. Hence, the prosecution has miserably failed to prove that respondent No.2 had clicked nude photographs of the appellant. To the contrary, Virender Singh, husband of the appellant as PW10 has smashed the entire prosecution case by deposing that on 6.10.2012, the accused himself had told about his love affair with the appellant. According to him, respondent No.2 had also handed over a chip as well as photographs which he had further handed over to the family members of the appellant. According to the appellant her photographs were sent by respondent No.2 to her husband on his mobile, but the same was not taken into possession by the police which falsify the above testimony of the appellant.

(vi) On visual examination of the CD recovered by the police, the learned trial Court found it to be prepared during night time. However, there is no such case of the prosecution. Hence, the observation of the learned Court below that “the prosecutrix was under constant vigil of her family members at the relevant time as there was love affair between her and respondent No.2, they caught them in a compromising position and concocted a false story to implicate the accused”, is quite convincing, more particularly in view of the admission of the appellant that she had enjoyed sex

with respondent No.2 for the last time in May 2012 at the roof of her own house.

(vii) Semen was detected on the salwar and dupatta of the appellant as per FSL report Ex.PZ, taken into possession by Dr. Shailza Mangla PW5 on 3.8.2012 at the time of her medico legal examination. However, it is not explained as to how the clothes of the appellant contained human semen for such a long time i.e. for about three months. More so, PW5 Dr. Shailza Mangla has opined that the appellant was habitual of sexual intercourse, contrary to the version of the appellant, that she was raped by respondent No.2 on two/three occasions.

(viii) The appellant has kept on changing her stand, because as PW6 at one point of time she stated that her nude photographs were taken prior to intercourse, but at another stage, she deposed that she was given some intoxicant before committing rape by respondent No.2 and then her photographs were taken.

We have gone through the impugned judgment very carefully and find no irregularity or perversity in the same.

Accordingly, the appeal being completely devoid of any merit, is hereby dismissed.

(RAMENDRA JAIN)
JUDGE

(T.P.S. MANN)
JUDGE

22.3.2016
Ashwani