

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

**CRA-D-688-DB of 2015 (O & M)
Date of decision : 4.3.2016**

Suman Singla

.....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. Lalit K. Gupta, Advocate
for the appellant

Mr. Praveen Bhadu, AAG, Haryana
for respondent No. 1-State

Ms. Ashwarya Bajaj, Advocate, for
Mr. Sauravh Bajaj, Advocate
for respondent No. 2

RAMENDRA JAIN, J.

The appellant-prosecutrix filed a complaint against respondent No.2 namely Anuj under Sections 354A, 376, 384, 452 and 506 IPC and 67-A of the Information Technology Act, 2000 with the allegations that respondent No.2 being a relative used to visit her house. In March 2013, when she was taking bath, respondent No.2 made a video of her on his mobile through

ventilator of the bath room. On the basis thereof, respondent No.2 started blackmailing, abusing and sexually exploiting her in the absence of her husband. Respondent No.2 also started usurping ornaments of the appellant. He also usurped ₹ 4 lakhs from her, handed over by her husband to her. Thereafter, he started threatening to kill her and her family through his various mobile numbers. The appellant had apprehension that respondent No.2 had uploaded her nude video on the internet.

With the aforesaid allegations, a case was registered against respondent No.2 in Police Station Taraori. Investigation was conducted. After completion of the same, final report under Section 173 Cr.P.C. was presented in the Court against respondent No.2. On commitment of the case to the Court of Sessions, respondents No.2 was charge sheeted under the aforesaid sections, to which he pleaded not guilty and claimed trial.

The prosecution in support of its case, examined as many as 14 witnesses. In defence respondent No.2 examined Sumant as DW1 and Paras Soni as DW2, Nodal Officers of Vodafone.

On hearing learned counsel for the parties and going through the evidence on record, the learned trial Court acquitted respondent No.2 vide impugned judgment dated 20.2.2015, which is now the subject matter of the present appeal filed by the complainant.

Learned counsel for the appellant contended that impugned judgment of the learned trial Court is based on surmises and conjectures. Learned trial Court has failed to appreciate that respondent No.2 after preparing nude video of the appellant without her consent and knowledge, while she was taking bath had started blackmailing and sexually exploiting her for a sufficient

long time. He also usurped her jewellery and cash amount under duress and threat. Respondent No.2 has wrongly and illegally been acquitted by ignoring the fact that the prosecution has proved its case to the hilt. The learned trial Court has misconstrued and misinterpreted the statements of the prosecution witnesses which has resulted into miscarriage of justice. The findings of the learned trial Court that the appellant was a consenting party to the entire episode is palpably wrong and illegal.

We have given our thoughtful consideration to the above submissions and find the present appeal completely devoid of any merit for the reasons to follow.

PW1 Dr. Kailash Garg has medico legally examined respondent No.2 vide MLR Ex.P2. PW2 Dr. Neerja Kumari has medico legally examined the appellant vide MLR Ex.P5 on application of the police Ex.P3. PW3 SI Rajbir Singh had simply registered the formal FIR Ex.P6 on receipt of the application of the appellant from the office of Superintendent of Police. PW4 SI Nasib Singh had prepared final report under Section 173 Cr.P.C. after completion of investigation. PW5 C. Rajesh Kumar has collected call details Ex.P8 of two mobiles and had taken the same into possession vide recovery memo Ex.P9. PW6 EHC Shakti Singh had prepared scaled site plan of the alleged place of occurrence. PW7 HC Raj Kumar had testified that investigating officer had deposited the case property with him which he had further sent to the FSL authorities through EHC Suresh Kumar. PW9 Ms. Rajni Kaushal, the then JMIC, Karnal deposed that upon application Ex.P15 moved by the police, she had recorded the statement of the appellant under Section 164 Cr.P.C., Ex.P17 and appended her certificate Ex.P18 on the same. PW10 EHC

Suresh Kumar has deposed that he had simply deposited the case property to the FSL authorities on being handed over to him by MHC Raj Kumar PW7. PW13 ASI Salinder Kumar, the investigating officer has deposed about the steps taken by him during the course of investigation of this case. PW11 C. Bala Devi and PW12 EHC Jaswinder Singh remained associated with the investigating officers of the case during the course of investigation. The statements of aforesaid witnesses are formal in nature as their role came into play after the occurrence.

The whole controversy revolves around the statements of the appellant-prosecutrix PW8 and her brother Dinesh Kumar PW14. Hence, it has to be seen that whether they have been able to prove the guilt of the accused beyond any reasonable shadow of doubt.

The appellant-prosecutrix in her application, which set the criminal law into motion had specifically mentioned that under fear she did not disclose her alleged blackmailing and sexual exploitation by respondent No.2 to anyone. However, she has miserably failed to explain that what refrained her to nip in the bud at the initial stage itself. In other words, it is unexplained on the file that why the appellant did not disclose about her nude video clipping prepared by respondent No.2, to her husband or other family members at the initial stage itself. It is also unexplained that why she went on permitting respondent No.2 to blackmail her financially and to exploit her sexually for around six months. In the absence of any such explanation, what to talk of any plausible one, the learned trial Court has rightly observed that the appellant was a consenting party to the entire episode.

The appellant-prosecutrix in her cross examination admitted that she had moved a complaint Ex.D1 in the month of July 2013 against her

husband for assaulting her on his suspicion about her physical relation with respondent No.2. Pursuant to the said complaint, the Protection Officer had recorded the statements of her husband in which he had disclosed that he was disturbed due to the character of his wife and for that reason he did not want to keep her along with him. Finally, her father withdrew the aforesaid complaint on the ground that they do not want to initiate any action against her husband as she has already gone with him to her matrimonial home. From the above factual position, it is evident that husband of the appellant-prosecutrix had already a doubt on her character and for that reason gave her severe beatings. However, matter was patched up in between them and her complaint Ex.D1 was filed by the Protection Officer on 29.8.2013 i.e. twenty days prior to the lodging of the FIR of the instant case. Therefore, the learned trial Court has rightly observed that the present application Ex.P13 was moved by the prosecutrix after due deliberation and consultation.

From the cross examination of the appellant-prosecutrix, it is evident that she was talking to respondent No.2 regularly. Had the accused been talking to her without her consent, in that eventuality, there was no question of her talking with him. It has also come on record that the appellant had once became pregnant from the loins of respondent No.2. She did not bring this fact to the notice of her husband as is clear from the deposition of PW14 Dinesh Kumar, that he was not aware of this fact.

The statement of the prosecutrix was not consistent. In her application Ex.P13 she complained that respondent No.2 had started extracting her ornaments on the basis of her nude video clipping and also usurped ₹ 4 lakhs given to her by her husband under the threat to kill her and her family.

Contrary to it, in her statement Ex.P14 before Legal Aid counsel, she alleged that respondent No.2 had given threats to kill her husband. This particular fact was not disclosed by the appellant-prosecutrix in her application Ex.P13. Hence, her narration of inconsistent story, raises suspicion about her conduct, more particularly, when as PW8 she testified that respondent No.2 had demanded her jewellery on the pretext of his need. Meaning thereby, respondent No.2 had taken the jewellery of the prosecutrix without any threat or blackmailing. Her stand qua taking of ₹ 4 lakhs by respondent No.2 is also contradictory. In her initial version, she stated that amount of ₹ 4 lakhs were given to her by her husband, whereas, as PW8 she testified that the said amount was her savings. She went on the extent of deposing that whenever she refused to budge to the demands of respondent No.2, he used to beat her. However, no such story was introduced by her in her initial version.

More so, the prosecutrix as PW8 has deposed that in a panchayat convened on 27.10.2013, father of respondent No.2 had assured to return the cash and jewellery to them. However, her husband Dinesh Kumar as PW14 testified that she did not attend any such panchayat. It is pertinent to mention here that convening of any panchayat was not disclosed by the appellant-prosecutrix in her initial complaint Ex.P13, her statement Ex.P14 and further statement recorded under Section 164 Cr.P.C. Ex.P18.

The appellant-prosecutrix in her statement Ex.P18 has testified that her husband has a doubt on respondent No.2 and therefore, terminated his services whereas, in her statement as PW8, she changed the above version by deposing that she had narrated the entire position to her husband and resultantly, her *jeth* terminated the services of respondent No.2 from his factory. Besides

above, there are other major contradictions which have rendered the prosecution case doubtful.

We have 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.

Since there is no merit in the appeal, therefore, the application for additional evidence being academic is also dismissed.

(T.P.S. MANN)
JUDGE

(RAMENDRA JAIN)
JUDGE

4.3.2016

Ashwani