

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

**CRM-A-446-MA of 2016 (O & M)
Date of decision : 12.4.2016**

State of Haryana

.....Applicant

v.

Raju Kalia @ Raj Kumar

.....Respondent

**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. Kapil Aggarwal, Addl. AG, Haryana
for the applicant

RAMENDRA JAIN, J.

CRM No. 7517 of 2016 :

Heard. Sufficient cause has been shown for condonation of delay in filing of appeal. The application is, therefore, accepted. The delay of 52 days in applying for leave to appeal is condoned.

CRM-A-446-MA of 2016 :

The respondent was booked and tried under Sections 452, 376, 354C and 506 IPC for raping the prosecutrix twice under threat to kill her and to show her video clipping to public at large, by trespassing into her matrimonial

home.

In support of its case the prosecution had examined in all 14 witnesses.

After perusing the prosecution evidence and statement of the respondent under Section 313 Cr.P.C. and hearing learned counsel for both the sides, the learned trial Court did not find itself in favour of the prosecution and thus, acquitted the respondent vide impugned judgment dated 29.9.2015.

Being not satisfied, the state has preferred the present appeal along with an application under Section 378 Cr.P.C. seeking leave to file it.

Learned State counsel contended that the impugned judgment is based on surmises and conjectures. The learned trial Court has erred in disbelieving the prosecution evidence.

We have given our thoughtful consideration to the above submissions and find the present appeal completely meritless for the reasons to follow.

(i) Admittedly, the prosecutrix is major and a married woman. No rape can be committed upon such a lady without her consent, that too, in her matrimonial home situated in a thickly populated area. It is very astonishing that on both the alleged occasions, she was allegedly raped by the respondent but, she did not raise any alarm. The story put forth by the prosecutrix that she could not do so, because her mouth was shut and the respondent had extended threat to her as he was having a knife, however, the factum of knife with the respondent was not disclosed by the prosecutrix while recording the FIR. Thus, the above concealment by her requires to draw an

adverse inference against the prosecutrix that the things did not happen in the manner as narrated by her.

(ii) That apart, after the incident the prosecutrix visited her parental home twice but there also, she did not disclose her rape by the respondent to her parents.

(iii) As per the prosecution story, the respondent had prepared the video of the prosecutrix on his mobile in one hand and the knife in the other. On 3.8.2014 husband of the prosecutrix showed her video clipping on his mobile and asked her to leave his home and informed her parents about that fact. It is pertinent to mention here that at the request of learned defence counsel, a CD Ex.P27 was played before the trial Court, which was admitted by the prosecutrix to be of her. After watching the same, it was observed by the Court below that “the prosecutrix knowingly and willingly got prepared the same herself, because she was figuring alone and having male voice in it, therefore, it appears to be a case of consent and not otherwise.” Comfort level of the prosecutrix in the CD creates doubt upon her allegations that it was prepared by the accused while committing rape at the point of knife. Hence, it is explicit that the respondent was known to the prosecutrix prior to her marriage. The husband of the prosecutrix did not join the investigation. His above conduct shows his displeasure that when he came to know about the intimacy of his wife after watching her video prepared by the accused, he shunted her out from the matrimonial home to save their prestige. Even he did not report the

matter to the police. The parental side of the prosecutrix moved complaint against the accused. The medical evidence brought on record after a long time of alleged incident of rape was nothing, but a formality having no relevancy.

Learned counsel for the applicant-complainant has miserably failed to put any dent in any of the above findings of the trial Court.

We have also gone through the impugned judgment and find no illegality or perversity in the same.

In view of the discussion above, the instant application being completely devoid of any merit is dismissed. Leave to appeal is declined.

(T.P.S. MANN)
JUDGE

(RAMENDRA JAIN)
JUDGE

12.4.2016
Ashwani