

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

**CRM-A-2059-MA of 2015
Date of decision : 5.4.2016**

Baljit Kaur

.....Applicant

v.

State of Punjab and others

.....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. Vikram Satpal Anand, Advocate
for the applicant

RAMENDRA JAIN, J.

The instant application under Section 378(4) Cr.P.C. has been filed by the complainant against acquittal of respondents No.2 to 5 (private respondents) vide judgment dated 17.11.2005 passed by the learned Sessions Judge, Ferozepur.

Briefly stated, the private respondents were booked and tried under Sections 366, 376B, 341 IPC on the allegations that on 17.8.2012, they along with Gurmeet Kaur and Karam Singh forcibly dragged and illegally confined the applicant-complainant in the house of respondent No.3 and committed rape upon her turn by turn. Kirpal Singh @ Pala and Gurmeet Kaur had guarded the

room from outside, while she was raped by respondents No.3 to 5. On raising alarm, the applicant was also given beatings. On raising alarm by her mother-in-law namely Surjit Kaur, respondent No.3 inflicted a dang blow on her left wrist. After rescuing themselves from the clutches of the private respondents and their accomplices, the applicant and his mother in law came to their house. Thereafter, Chiman Lal-husband of the applicant brought her to Civil Hospital, Ferozepur, but the doctors made her a shuttle cock by referring her to Mallanwala and further back to Ferozepur and then to Zira. Finally, she was medico legally examined at GGS Medical College and Hospital, Faridkot. After discharge from the hospital, the applicant reported the matter to the police.

During investigation, finding no substance in the above allegations of the applicant, the police did not take any action against the private respondents. However, when the private respondents started threatening the applicant with dire consequences, she instituted a private complaint in the Court.

During pendency of the complaint, Gurmeet Kaur and Karam Singh, co-accused died and thus proceedings against them were dropped. After recording preliminary evidence, the private respondents were summoned and sent to the Court of Sessions to face trial under Sections 366, 376B, 346 and 343 IPC, to which they pleaded not guilty and claimed trial.

After going through the evidence led by the prosecution and hearing learned counsel for both the sides, the learned trial Court did not find itself convinced with the allegations of the prosecution against private respondents and accordingly, acquitted them vide impugned judgment dated 17.11.2015.

Learned counsel for the applicant contended that impugned judgment is based on surmises and conjectures. The learned trial Court has failed to appreciate that PW2 Dr. Gurpreet Singh, while medico legally examining PW4-Surjit Kaur- mother in law of the applicant had found swelling on her left forearm above the wrist joint. PW4 Surjit Kaur has fully corroborated the testimony of PW3 applicant, who had categorically deposed about her forcible dragging and rape by the private respondents. The learned trial Court has failed to appreciate that no lady would level false allegations of her rape against anyone, putting her own honour and reputation at stake. The learned trial Court should not have scrutinized the testimony of the applicant with suspicion. Chemical report was also indicative of rape upon the applicant, because spermatozoa was found on her vaginal swab. Delay in lodging the FIR was well explained and thus was not fatal.

We have given our thoughtful consideration to the above submissions and find no merit in the application for the reasons to follow.

- (i) Admittedly, FIR was registered after five days of the occurrence without any explanation. The applicant has made a futile exercise to cover up the said delay by putting forth a case that she was made a shuttle cock by the doctors of Ferozepur, Mallanwala and Zira, but did not bring any evidence in this respect on record.
- (ii) As per the prosecution, the occurrence took place in the house of respondent No.3- Bakhshish Singh, who resides there with his wife and two sons. Karam Singh accused (since deceased) along with his wife was also residing in the same house. The allegations of rape are against the private respondents as well as Karam Singh

son of respondent No.3. It does not appeal to reason that a father and son would jointly commit rape upon a lady in the same room that too in the presence of their wives. It also does not appeal to reason that Gurmeet Kaur (since deceased) co-accused, would help her husband and son in the commission of alleged rape by them upon the applicant. Learned trial Court has thus rightly scrutinized the prosecution evidence with utmost care and caution.

(iii) At the time of medico legal examination of the applicant, no external mark of injury was found on her person, despite her specific stand that she was given slaps and her mouth was also gagged. It also does not appeal to reason that the applicant would not receive any injury, external or internal, when raped by four persons one by one during one and a half hour. The above factual aspect of the case shows that the things did not happen in the manner as narrated by the prosecution.

(iv) The applicant deposed that her clothes had also got torn, but the same were never produced in the Court. Her medico legal report negated her alleged pregnancy of 20 weeks. Since no damage was found to her fetus, therefore, deposition of the applicant that she started bleeding after rape has rendered the whole prosecution case doubtful.

(v) Detection of semen on the vaginal swab of the applicant relates to insignificant aspect of the case, because she was a married woman and remained in the company of her husband after the incident.

(vi) Kidnapping of a married woman in broad day light, that too in the presence of villagers is impossible, more particularly, in view of the admission of the applicant that she and her mother-in-law had quarreled with Gurmeet Kaur accused and her daughter in law in which residents of the village had intervened and separated them.

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

We have gone through the impugned judgment and found 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

5.4.2016
Ashwani