

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

CRR No.2266 of 2018 (O&M)
Date of Decision: January 27, 2020

Saroj and others

...Petitioners

Versus

State of Haryana and another

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Ajay Singh Ghanghas, Advocate
for petitioners No.3 and 4.

Ms. Mahima Yashpal, AAG Haryana.

Mr. Yogesh Goel, Advocate
for respondent No.2.

JAISHREE THAKUR, J. (Oral)

1. The instant criminal revision has been filed seeking to challenge the order dated 30.05.2018 passed by the Addl. Sessions Judge, Sonapat whereby, charges have been framed against the petitioners herein under Sections 498-A, 406, 506, 323 read with Section 34 of Indian Penal Code, apart from framing additional charges under Section 377 of Indian Penal Code against petitioner No.2-Vikram and under Sections 376, 354-A, 354-B of Indian Penal Code against petitioner No.5-Hari Parkash in FIR No.69 dated 19.08.2016 registered at Police Station Women Cell, Sonapat.

2. In brief, the facts as stated in the FIR are, that a marriage was solemnized between complainant-respondent No.2 (Kavita) and petitioner

No.2 (Vikram) on 07.12.2015 as per Hindu rites and ceremonies, in which parents of the complainant spent sufficient money as per their capacity. Prior to that on 18.10.2015, an engagement ceremony was organized, in which parents of the complainant had given ₹ 5 lacs as cash and part of dowry articles to the accused persons, besides other dowry articles at the time of marriage, but her in-laws were not happy with the same. Within 2-3 days of the marriage, the complainant was taunted for bringing less dowry and was asked to bring ₹ 5 lacs more from her parents. She went to her parental home and narrated the entire incident. When her husband came there to take her back to the matrimonial home, her father gave another ₹ 1 lac to him, after borrowing the same, however, her husband and in-laws continued to harass her for not bringing ₹ 5 lacs. It was alleged that on 19.01.2016 at around 10.00 p.m. when her husband was not at home and she was alone, her father-in-law sneaked into her room with an intention to commit rape upon her and caught hold of her and touched her improperly. She tried to rescue herself, but her efforts were in vain. When she told this incident to her mother-in-law, instead of supporting her, her mother-in-law asked her to keep mum. There were other allegations levelled by the complainant against her husband, who under the influence of liquor tried to commit unnatural sex with her, despite her refusal. Ultimately, it was alleged that on 25.03.2016, all the accused persons beat her up and after snatching her *istridhan*, threw her out of the matrimonial home and asked her to bring ₹ 5 lacs, in case she wanted to come back. She was also threatened with elimination, in case she narrated the incident to anyone.

3. After registration of the aforesaid FIR, statement of the

complainant was recorded under Section 164 Cr.P.C. and thereafter, a challan was presented. Since the offence under Section 376 of Indian Penal Code was triable exclusively by the Court of Sessions, the Judicial Magistrate Ist Class, Sonapat committed the case to the Court of Sessions by an order dated 19.05.2017. The Addl. Sessions Judge, Sonapat framed the charges against the accused persons under Sections 498-A, 406, 506, 323 read with Section 34 of Indian Penal Code, apart from framing additional charges under Section 377 of Indian Penal Code against petitioner No.2-Vikram (husband) and under Sections 376, 354-A, 354-B of Indian Penal Code against petitioner No.5-Hari Parkash (father-in-law) by an order dated 30.05.2018, which order has been challenged in this criminal revision.

4. Notice of motion was issued in the matter qua petitioners No.3 and 4 only namely Jai Karan and Neelam, who are none other than brother of mother-in-law of the complainant and his wife i.e. *Mama* and *Mami* of husband of the complainant.

5. Counsel appearing on behalf of petitioners No.3 and 4 namely Jai Karan and Neelam argued that they had nothing to do with the matrimonial life of the complainant. It is submitted that petitioners No.3 and 4, as mentioned in the FIR, were resident of Aashoda, Tehsil Bahadurgarh, District Jhajjar, Haryana whereas, matrimonial home of the prosecutrix was at Delhi and they were not joint in residence. It is also argued that the only allegations as set out in the FIR are that Jai Karan and his wife abused the complainant and subjected her to beating, which allegations are general in nature, without any specification as regards date

and time or any medical evidence. It is contended that only bald allegations have been levelled against petitioners No.3 and 4 by the complainant, just to harass them and put a pressure upon her in-laws. It is also pointed out during the pendency of these proceedings before this court, proceedings in the present FIR qua the husband, mother-in-law and father-in-law concluded in their acquittal by the Addl. Sessions Judge, Sonapat, finding no substance in the allegations levelled by the complainant, which would also reflect that petitioners No.3 and 4 have been intentionally falsely implicated in the present case by the complainant.

6. Per contra, counsel appearing on behalf of the respondent-State as well as complainant-respondent No.2 oppose the instant criminal revision, however, are not in a position to dispute that proceedings qua remaining three accused persons i.e. husband, mother-in-law and father-in-law have already concluded in acquittal of the said accused.

7. I have heard counsel for the parties and with their able assistance, have gone through the case file.

8. During the course of proceedings before this court, the Addl. Sessions Judge, Sonapat came to acquit Saroj (mother-in-law), Vikram (husband) and HariParkash (father-in-law) by its judgment dated 01.03.2019 by *inter alia* observing in its judgment as under:-

“30. The testimony of prosecutrix further does not show the exact act and conduct of the accused persons whereby she was harassed or tortured by them. Merely by saying that accused persons harassed and extended beatings to her is not sufficient to establish the charge levelled against the accused. Only general allegations

have been levelled against all the accused in this regard without stating as to what exactly was stated by which particular accused on which particular occasion or which accused persons harassed or tortured her. No medical evidence is available on record to prove that the accused persons ever gave beatings to prosecutrix. As per detailed bio-date of prosecutrix Mark X, the prosecutrix is a commando trained and is serving in police, it is highly improbable her version that she suffered any atrocities on the part of accused or that despite beaten up accused, she did not get herself medico-legally examined and did not report the matter to police despite having opportunity for the same as the prosecutrix was not confined in her matrimonial home and she used to attend her duty as admitted by her. Therefore, in the over all the facts and circumstances, the testimony of the complainant/prosecutrix does not inspire confidence and cannot be relied and acted upon beyond doubt so far as the allegations qua raising of demand of money, causing simple hurt and extending threat to her by the accused persons are concerned and from the evidence on record, the guilt of accused for committing act of cruelty, causing hurt and extending threat to the prosecutrix by them has also not been established.

31. *Furthermore, the act and conduct of the prosecutrix also creates a doubt in the prosecution story. The prosecutrix during her cross-examination admitted that she had moved a complaint against her real brother, against son of her maternal uncle and other relatives. The perusal of Ex.D1 the copy of complaint moved by prosecutrix before SHO, P.S. Sadar Sonapat shows that in her said complaint the prosecutrix levelled allegations of her molestation and causing injuries to her and her*

mother by the accused in that case, who are her brother and her other relatives and upon that complaint of prosecutrix FIR No.308 dated 30.09.2008, under Sections 323, 325, 354, 34 proved as Ex.DW2/H was registered but the matter was compromised and the prosecutrix and her father turned hostile in the said case and vide judgment dated 18.12.2008 Ex.DW2/N all the accused were acquitted by the court. But when the prosecutrix was questioned about that case in her cross-examination, she tried to ignore this question and then deposed that she does not remember whether FIR No.308 dated 30.09.2008 was registered or not and deposed that it was a family dispute and compromise was effected in that matter. The accused have examined defense witness to prove the documents relating to the aforesaid FIRs. The perusal of the documents relating to the said FIRs i.e. Ex.DW2/A copy of challan, Ex.DW2/B copy of complaint moved by sister-in-law (Bhabhi) of prosecutrix, Ex.DW2/C copy of charge sheet, Ex.DW3/E statement of sister-in-law of prosecutrix and Ex.DW2/F statement of brother of prosecutrix show that the sister-in-law of prosecutrix had lodged FIR No.307 dated 30.09.2008 against the prosecutrix, brother and father of prosecutrix levelling allegations of molestation, causing hurt and extending threat upon the prosecutrix and her family members. The prosecutrix as well as her brother and father were acquitted in the said case vide judgment dated 18.12.2008 Ex.DW2/G. There is specific admission of prosecutrix in her cross-examination that FIR No.308 lodged by her was a counter blast of FIR No.307 lodged by her sister-in-law.”

9. A reading of the judgment of acquittal of the co-accused would

reflect that the allegation of rape levelled by the complainant against her father-in-law were found to be false, since on the alleged date i.e. 19.01.2016 her father-in-law Hari Parkash was on duty from 7.45 a.m. to 9.50 p.m. as per DDRs produced on record in this regard and it took one and half/two hours to reach to the place of incident from Rashtrapati Bhawan i.e. place of posting of Hari Parkash, whereas the alleged incident has been stated to have taken place at 10.00 p.m on 19.01.2016, thus, it created doubt in the mind of the court regarding the story of prosecution regarding the alleged incident of rape. The trial court has also observed that the prosecutrix improved her version in the statement recorded under Section 164 Cr.P.C. as well as in her testimony on oath.

10. It is also observed by the trial court that maternal uncle of husband of the complainant namely Jai Karan did not have any licenced gun with him on 20.01.2016, as the same had been deposited by him in the police station due to election in the village. The licenced gun had been deposited in the police station on 28.12.2015 and he received back the same on 09.03.2016. Meaning thereby, he was not in possession of the gun on the date of alleged occurrence.

11. The trial court has also observed that even the allegations of unnatural sex have not been established as per the MLR that was available on the record. Her allegations that there was a demand of dowry and her father had given ₹ 1 lac to her husband were not substantiated as father of the prosecutrix, who was most material witness to corroborate her statement, was not examined by the prosecution and given up as a witness, which also leads to a doubt regarding the story as set up. Other than the

allegations that petitioners No.3 and 4 had beaten her, which allegations have not been substantiated by any medical available on the record, no other allegations were against them. The entire story of the prosecutrix has been discarded by the Addl. Sessions Judge, holding the same to be unsupported by any medical evidence. This court is of the opinion that the instant FIR registered against petitioners No.3 and 4, who are maternal uncle and aunt of the husband of the complainant and residing separately and who have nothing to do with their day-to-day matrimonial life, is nothing but an abuse of process of law.

12. In view of the above discussion, the instant criminal revision is allowed and the FIR in question stands quashed against petitioners No.3 and 4 herein.

January 27, 2020
vijay saini

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No