

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

214

**CRA-AD No.2 of 2022**  
**Date of decision:14.07.2022**

Leena Gupta

...Petitioner

Versus

State of Punjab and another

...Respondents

**Coram: Hon'ble Mr. Justice G.S.Sandhawalia**  
**Hon'ble Mr. Justice Vikas Suri**

**Present:** Mr. Sandeep Jain, Advocate, and  
Mr. Sachin Jain, Advocate, for the applicant.

Ms. Anju Arora, Addl. A.G., Punjab.

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**G.S.Sandhawalia, J.**

The complainant-victim is aggrieved against the judgment dated 31.01.2020 passed by the Additional Sessions Judge, Patiala, wherein respondent no.2 has been acquitted of the charges under Sections 342, 328, 376 and 384 IPC in FIR No.22 dated 10.02.2018 registered at Police Station Kotwali, Patiala.

It is important to note the relationship and age of the parties as such before we would go on to decide whether the impugned judgment is suffering from any perversity and whether it warrants interference keeping in view the reasoning which has been given by the learned trial Court. We find that the complainant is more than 40 years of age, a married working woman being employed in a bank and mother of two children; whereas respondent no.2 is only 29 years of age, whose defence is that he had been allured into the relationship. Keeping in view the said background, we are of the opinion that the saying "*hell hath no fury like a woman scorned*"

would be directly applicable in the facts and circumstances of the present case.

The case which has been set into motion by the complainant-appellant is that she was residing at the first floor of a house in Panchkula and at that point of time, she was married and two children had been born to her. Respondent no.2 had come to her house 2-½ years back when her husband had gone for work and her children had gone to school. She opened the door since he was a regular customer of the bank and had contended that he had to hand over some documents to her, which were to be submitted in the bank and, thus, she had asked him to come inside. Respondent no.2, while putting a handkerchief on her mouth, made the complainant to inhale something, due to which she became unconscious and found herself naked in her bedroom on regaining consciousness and the accused was also present in the bedroom at that time. He had committed rape upon her against her wishes and also shown a video clipping, wherein she was seen in a compromising position. He had threatened to upload the said video on internet to be viewed by the general public in case she discloses about the incident to her husband and kill her and her children. It is on that account that she did not disclose the incident to anyone. Thereafter, respondent no.2 started blackmailing her and developed physical relations with her. She was made to visit various places and hotels under threat, where respondent no.2 committed rape upon her several times and clicked her photographs on his mobile.

She also parted with her gold ornaments and cash to the tune of Rs.2 lacs and she was taken to various hotels and made to celebrate by cutting a cake and her photographs were also taken there with a view to

blackmail her. She was also being pressurized to divorce her husband as respondent no.2 intended to marry her. Since she did not want to leave her husband and children, therefore, she had asked respondent no.2 to return her video clips and photographs, to which he refused and rather threatened to upload her videos and photographs on the internet, due to which she had gone under depression. When her husband inquired from her about her ill health, then she narrated the entire incident to him and, thereafter, she and her husband devised a scheme and asked respondent no.2 to marry her, to which he denied by stating that she could not harm him as he was in possession of her videos. It is in such circumstances, she had to file an application dated 19.01.2018 Ex.P1, which was marked to the Women Cell, Panchkula and led to the registration of FIR on 10.02.2018, i.e. 20 days later, after recording the statement of the complainant on 26.01.2018 at Patiala.

The following issues for determination were framed by the trial Court:-

“Whether in the month of June 2015 in the area of Patiala, accused illegally confined the prosecutrix in her house without her consent after making her smell some intoxicant and thereafter committed rape upon her person. Further, for the period from June 2015 upto the year 2018, accused repeatedly committed rape upon the person of prosecutrix without her consent and also extorted money and gold from her by giving threats to upload video clippings on the internet?

It has been noted by the trial Court that neither time, month and year nor the place of occurrence had been mentioned in Ex.P1 dated 19.01.2018 and after a month thereof, in Ex.P2, the month of occurrence was fixed as June, 2015 and when she was examined in the Court on 27.09.2018,

it was changed to May, 2015. It is noticed that there was a delay as such of 2-½ years regarding the first incident and the version had been changed since the schools are closed in the month of June due to summer vacations and, therefore, the stand taken by her that her husband had gone for his work and the children had gone to school had been improved upon. The explanation as such given by her that the police official had not read over the contents of Ex.P2 to her and only her signatures had been obtained thereunder has been rightly rejected by the trial Court. The ground given was that she was a Senior Manager in the Bank and could not have signed the statement without reading its contents since the application was moved before the Police after much deliberations while taking into confidence her husband and relatives and it is also admitted by her that the contents of the said application had also been typed by herself. The finding was, thus, recorded that the complainant had allowed respondent no.2 to come inside on the date of alleged occurrence because she was more than acquainted with him and as such granted him such easy access. The photographs Mark D7 to Mark D23 had been put to her and she categorically admitted them to be of her. It has been noticed that she was in happy mood and also seems to be without any pressure as such and nothing was reflected that she was under any force, rather she was enjoying being photographed by respondent no.2 and, therefore, there was apparently no threat as such to her.

Similarly, regarding the issue of Rs.2 lacs and gold ornaments having been parted with by the complainant under threat, no date, time and place had been specified. While noticing that there was a huge delay in lodging the FIR, it was also noted that respondent no.2 had pressurized the complainant to divorce her husband as he intended to marry her but she did

not want to leave her husband and children. Keeping in mind the fact that she had gone to various places and hotels along with him in Zirakpur and also at Shimla, resultantly, the trial Court came to the conclusion that the complainant is not a sterling witness, her statement could not be accepted and neither her husband was examined and, thus, has acquitted respondent no.2.

It has also come on record that whenever she had gone for training at Noida, Gurugram and also at Gaziabad, respondent no.2 as such had also been following her and staying in the night with her. Apart from this, they had also gone to Shimla and stayed there for two days in November, 2017. The said sequences of events would, thus, go on to show that it was a consensual relationship between the parties over a couple of years before it had come to an end and, thus, it cannot be said that the offence under Section 376 IPC can be attracted in such a case.

The Apex Court, in the case of **Narender Kumar vs. State (NCT of Delhi)**, 2012(3) RCR (Criminal) 66, in similar circumstances where the prosecutrix was married and 25 years of age, granted the benefit of doubt as such by holding that the testimony of such a person has to be appreciated on the principle of probabilities. It was held that if the Court finds it difficult to accept the version of the prosecutrix on its face value, it may search for evidence, direct or substantial, which may lend assurance to her testimony, which in the present case is missing.

In the present case, keeping in view the delay which had occurred in lodging the FIR, we are of the considered opinion that the reasoning given in the case of **Parkash Chand vs. State of Himachal Pradesh**, 2019(2) R.C.R. (Criminal) 40, whereby on account of 7 months

delay, the Apex Court had granted the benefit of acquittal by noticing that plausible explanation should have been given to the delay caused, which apparently in the present case is also absent. Thus, keeping in mind the principle that the sterling quality in the evidence of the prosecutrix is missing and the status of the parties *interse* was of a client and the bank employee, who had been following her at the places of her training which was obviously with the consent of the complainant, therefore, the reasoning, which has been given by the trial Court to acquit respondent no.2 cannot be said to be perverse in any manner which would warrant interference by this Court. In view of the aforesaid facts and circumstances, no case is made out for interference in the well reasoned judgment of the trial Court.

Accordingly, the appeal is dismissed.

**(G.S. Sandhawalia)**  
**Judge**

**July 14, 2022**  
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**(Vikas Suri)**  
**Judge**

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No