

# Law Today Live Doc. Id. 15092

**PUNJAB AND HARYANA HIGH COURT**

**Before: Rajan Gupta & Karamjit Singh, JJ.**

CRM-A-928-MA-2016

Decided on: 17.03.2020

'X' (Prosecutrix)

Applicant

Versus

State of Punjab and another

Respondents

Present:

Mr. Vishal Munjal, Advocate, for the appellant.

Mr. H.S. Sullar, Deputy Advocate General, Punjab.

Mr. Dinesh Mahajan, Advocate, for respondent No.2.

**Indian Penal Code, 1860 (45 of 1860), Section 376, 506 -- Code of Criminal Procedure, 1973 (2 of 1974), Section 378(3) – Acquittal in rape case – Leave to defend – Accused was driver of the official vehicle of husband of prosecutrix – She was pregnant on the date of alleged incident – Prosecutrix and her husband did not report about the alleged incident dated 04.03.2014, to the police, till 02.02.2015 -- Even during the next 15 days after the alleged incident, she kept on accompanying accused in the official vehicle for medical check-up -- There is no corroborative evidence in the shape of medical report, to strengthen the testimony of prosecutrix regarding the alleged rape -- No reliable evidence for continuously giving threats to the prosecutrix, on her mobile phone -- Trial Court appreciated the evidence led by the parties in right perspective, while giving benefit of doubt to respondent No.2/accused -- There is no illegality in the impugned judgment – Application seeking grant of leave to appeal dismissed.**

**(Para 2, 17-19)**

**JUDGMENT**

**KARAMJIT SINGH, J. –**

1. The applicant/prosecutrix has filed this application under Section 378 (3) of the Code of Criminal Procedure, seeking grant of leave to appeal against judgment dated 20.01.2016 passed by the Court of Additional Sessions Judge, Pathankot (hereinafter referred to as 'trial Court'), whereby, respondent No.2-Sepoy Manoj Singh was acquitted in a criminal case having FIR No.27 of 06.03.2015 registered under Sections 376 and 506 of the Indian Penal Code (for short, 'IPC') in Police Station Sujjanpur (Pathankot). The name of the prosecutrix is concealed in the headnote of this judgment and she is described as 'X'.

2. As per the prosecution version, the husband of the prosecutrix was serving as a Lieutenant Colonel in the Indian Army and was posted at Pathankot. Respondent No.2 was serving as a Sepoy in the Indian Army and he was working as a driver of the official vehicle of the husband of the prosecutrix. The prosecutrix was also a qualified doctor.

3. On 02.02.2015, the prosecutrix lodged complaint with the police, in which it was alleged that, on 04.03.2014, she was pregnant and she went to hospital for medical check up, in the official vehicle of her husband, which was driven by respondent No.2. However, the concerned doctor was busy, and as such, the appointment was cancelled. On the way back to home, she purchased one mobile phone in the name of her husband from the shop of Aashirwad Communications. She also purchased grocery items and then she came back to the official residence of her husband in the vehicle. Respondent No.2 also followed her, while carrying the bag of grocery items. She went into the kitchen to drink water. In the meantime, respondent No.2 locked the front door of the house from inside and then he started molesting her. She resisted and started screaming but no-one heard her screams. Respondent No.2 threatened her and forced her to lay on the dinning table and then, he committed sexual intercourse with her against her wishes. When she tried to make call, respondent No.2 snatched her mobile phone. Thereafter, respondent No.2 left the house after giving threats to her. Due to said incident, she went into state of shock. She did not disclose anything to her husband, on that day. Her husband took her to psychiatrist, as she went into depression. After the aforesaid incident, she went to her native place in Guntur (Andhra Pradesh) and she came back in June 2014 and thereafter, she gave birth to a female child in July 2014. Thereafter, respondent No.2 started harassing by making telephone calls to her from mobile phone numbers 9876192161 and 07044144785. Due to her sexual harassment by respondent No.2 coupled with post operative complications, she went into post natal depression and on this, she informed her husband that respondent No.2 had misbehaved with her, regarding which her husband immediately informed his seniors. It took some time for her to come out of depression. Finally, on 26.01.2015, she disclosed to her husband about the aforesaid incident of rape dated 04.03.2014.

4. The matter was enquired by the police and FIR was registered against respondent No.2, on 06.03.2015. Respondent No.2 was arrested in this case, on 09.04.2015. Challan was presented in the Court of Illaqua Magistrate and the case was committed to the Court of Sessions. Charge was framed under Section 376 and 506 IPC, to which, respondent No.2 had not pleaded guilty.

5. In total, prosecution examined 16 witnesses. PW1-Dr. Prashanta K Das, being doctor in the Indian Army, performed Caesarean Section on prosecutrix, on 19.07.2014 and he proved records (Exhibit PW1/A and Exhibit PW1/B) regarding said medical treatment. PW2 proved bill (Exhibit PW2/A) regarding purchase of one mobile phone from his shop in the name of the husband of the prosecutrix, on 04.03.2014. PW3-Havaldar B.M.Krishna proved record regarding official vehicle used by the husband of the complainant, which was driven by respondent No.2. He proved documents (Exhibit PW3/A, Exhibit PW3/B and Exhibit PW3/C). PW4-Amandeep Singh, official of Military Hospital, Pathankot, produced record regarding posting of the husband of the complainant as officiating Commanding Officer in Military Hospital, Pathankot and he proved documents (Exhibit PW4/A and PW4/B). PW5-Lieutenant Colonel Hans Raj Bhagat deposed regarding the arrest of respondent No.2, who was arrested by Sub Inspector Chhaju Ram, on 09.04.2015 and he proved documents (Exhibit PW5/A and Exhibit PW5/B) with regard to his arrest. PW6-Rajesh Kumar proved scaled site plan (Exhibit PW6/A) of the place of occurrence. PW7-Jaspal S.P (D), Pathankot, deposed that on

02.02.2015, complainant moved complaint (Exhibit PW7/A) to Senior Superintendent of Police, Pathankot. He enquired the matter and recorded statement (Exhibit PW7/C) of the prosecutrix and finally, submitted his report (Exhibit PW7/D). PW8-Vijay Kumar, Head Clerk, produced the record regarding allotment of official accommodation to the husband of the complainant in Pathankot and he proved documents (Exhibit PW8/A and PW8/B) in this regard. PW10-P.S.Ghotra, JMIC, Pathankot, proved statement (Exhibit PW10/B) of the prosecutrix, which was recorded by him under Section 164 Cr.P.C, on 04.07.2015. The prosecutrix, while appearing in the witness box as PW12, narrated the entire occurrence, which took place on 04.03.2014 and she proved complaint dated 02.02.2015, which was lodged by her against respondent No.2. She also proved her statement (Exhibit PW10/B), which was recorded by the learned Judicial Magistrate under Section 164 Cr.P.C. PW13-Lieutenant Colonel M Jaya Sekhar, who is husband of the prosecutrix, corroborated her statement. PW14-Colonel Vijay Pande, who was working as Psychiatrist in Military Hospital, Pathankot, deposed that in October, 2013, prosecutrix came to him, being an old case of Schizo-affective psychosis. She was hospitalized for delivery on 18.07.2014 and she delivered a female child on 19.07.2014 and even thereafter, she was managed with anti-psychotics injections. PW15-SI Chhaju Ram deposed regarding the investigation carried out by him in this case, he, being the Investigating Officer. PW16-Surjit Singh, Nodal Officer of Idea Cellular Limited produced the record of mobile phone number 8729098347 issued in the name of M. Jaya Sekhar. He proved the copy of Consumer Application Form (Exhibit PW16/A) and call detail record (Exhibit PW16/C) and tower location record (Exhibit PW16/D) with regard to aforesaid mobile phone number, which was supported by requisite certificate (Exhibit PW16/E) issued under Section 65-B of the Indian Evidence Act.

6. Respondent No.2 was examined under Section 313 Cr.P.C, to which, he pleaded innocence and stated that he was falsely implicated in this case. In his defence, respondent No.2 examined DW1-Nodal Officer of Tata Tele Services Ltd., who produced record regarding mobile phone number 7696638926, which was in the name of respondent No.2 and he proved document (Exhibit DW1/A), in this regard. Respondent No.2, himself, appeared as DW2, after seeking permission of the trial Court under Section 315 Cr.P.C. He stated that he was possessing mobile phone having number 7696638926. He also deposed that earlier he was posted in Military Cantonment, Pathankot, as a driver from where he was transferred to Barrackpur (West Bengal). In December 2014, he went to his village and left the aforesaid mobile phone with his father. DW3-Yogesh Pal Singh, father of respondent No.2, corroborated the statement of his son. He also stated that some SMS messages were received on the aforesaid mobile phone. The printouts of the same are Mark DA and Mark DB. DW4-Gurpreet Singh deposed that, on 21.01.2015, Yogesh Pal Singh brought his mobile phone and then he took printout, Mark DB, from the said mobile phone with regard to SMS messages, which were received in the said mobile phone.

7. After hearing learned counsel for the parties, the trial Court acquitted respondent No.2, while observing that the prosecution had failed to prove its case beyond reasonable doubt against him.

8. Aggrieved by the said judgment, the present application seeking grant

of leave to appeal has been filed by the prosecutrix.

9. We have heard learned counsel for the parties and gone through the record of the trial Court.

10. Learned counsel for the applicant contended that the learned trial Court disbelieved the prosecution story mainly on the ground of delay in lodging of the FIR. It is contended that the delay in lodging of FIR has been fully explained by the prosecution. It is vehemently argued that in such like sexual offence cases, the victim as well as her family show reluctance in approaching the police to save the honour of the family. Learned counsel for the applicant further contended that in this case at the time of the occurrence, the prosecutrix was pregnant and she lateron, delivered a female child on 19.07.2014, as is evident from the testimony of PW1. She was already suffering from some psychiatric problem for which she was getting treatment since October, 2013 from PW14. It is further argued that the incident of rape dated 04.03.2014 caused a huge mental agony and physical pain to the prosecutrix, besides this, she also suffered psychological trauma and severe depression. The prosecutrix went to her native place in Andhara Pradesh, just after three-four days of the occurrence. Also in this case, respondent No.2 was constantly threatening the prosecutrix by making calls on her mobile phone. Learned counsel for the applicant further argued that the prosecutrix also suffered post natal complications. The cumulative effect of all these circumstances was that the prosecutrix was not in a position to disclose about the aforesaid incident of rape even to her husband. When she got recovered from the trauma, she disclosed about the said incident to her husband for the first time in January, 2015 and immediately thereafter, the matter was reported to the police and consequently, a FIR was registered in this case.

11. Learned counsel for the applicant further argued that it was very difficult for a married woman to falsely implicate some third person in such like case, by putting the honour of her family on stake. It is further contended that the record of SMS messages relied upon by the defence was wrongly believed by the learned trial Court. Such type of computer generated record could not be taken into consideration in the absence of certificate issued under Section 65-B of the Indian Evidence Act. It is further contended that the alleged record of SMS messages was fake and it was not proved by the official of any telecom. It is further contended that the testimony of the prosecutrix finds corroboration from the other evidence led by the prosecution. So, the prosecution case against respondent No.2 stands proved. Prayer is made that respondent No.2 be convicted and sentenced, accordingly.

12. The learned State counsel also argued on the same lines and contended that the application seeking grant of leave to appeal filed by the prosecutrix deserves to be allowed.

13. On the other hand, learned counsel for respondent No.2, while supporting the impugned judgment, argued that there was inordinate delay in lodging of FIR, which has not been explained by the prosecution, in any manner. The prosecutrix, who was a qualified doctor and even her husband was serving as a doctor in the Indian Army, remained silent for a period of about ten months and the alleged incident was reported to the police for the first time on 02.02.2015. It is contended that, as per the prosecution version, the alleged occurrence took place on 04.03.2014 and thereafter, the

prosecutrix went to her native place in Andhara Pradesh from where she came back in June, 2014. As per the testimony of PW1, it is clear that the prosecutrix delivered child on 19.07.2014. PW14 admitted that the husband of prosecutrix informed him about the incident of rape in November 2014. But even thereafter, prosecutrix and her husband remained silent for another two months, which creates doubt regarding the prosecution story. It is further argued that there is no medical evidence to support the version of the prosecutrix with regard to the alleged rape.

14. Learned counsel for respondent No.2 further argued that respondent No.2 was falsely implicated in this case. The defence raised by respondent No.2 was believed by the learned trial Court, being probable. The SMS messages sent by the prosecutrix to respondent No.2 also proved his innocence. It is further argued that no such incident as alleged by the prosecutrix took place on 04.03.2014 and in case, the Court comes to the conclusion that the incident did happen, then it was consensual sexual intercourse. Learned counsel for respondent No.2, while summing up his arguments, contended that the application seeking grant of leave to appeal deserves to be dismissed, having no merit.

15. We have considered submissions made by the learned counsel for the parties.

16. The uncontroverted facts of the case are that prosecutrix was wife of PW13, who was serving as a Lieutenant Colonel in the Indian Army and was posted at Pathankot, at the time of the alleged occurrence dated 04.03.2014. The prosecutrix was also a qualified doctor. Respondent No.2 was working as a driver of the official vehicle of PW13, being a Sepoy in the Indian Army. The matter regarding the said incident was reported to the police for the first time, on 02.02.2015. The statement of the prosecutrix under Section 164 Cr.P.C was recorded on 04.07.2015 by PW10, the learned Judicial Magistrate, Pathankot. Concededly, there is no medical examination report dated 04.03.2014 of the prosecutrix.

17. The trial Court disbelieved the prosecution story mainly on the ground that there was inordinate and unexplained delay in lodging of FIR. There is no doubt regarding the fact that social stigma is attached with the victims of such like sexual crimes. They also undergo physical and psychological trauma. In the present case, the prosecutrix was pregnant at the time of alleged incident, which took place in 04.03.2014. As per the testimony of PW1, prosecutrix delivered a female child on 19.07.2014 and she suffered some post natal complications. As per the prosecution version, the prosecutrix was also suffering from some psychological disorder regarding which, she was getting treatment from PW14, since October, 2013. As per the prosecutrix, after the alleged occurrence, she went to her native place in Andhara Pradesh, from where, she came back in June, 2014.

18. Be that as it may, long silence regarding the alleged occurrence, of prosecutrix and her husband, both of whom were well educated, creates doubt regarding the prosecution story. The explanations putforth by the prosecution regarding delay in lodging of FIR are not appealing to the mind of this Court. It is settled proposition that conviction can be based on the sole testimony of prosecutrix, if the same is trustworthy, unblemished and of sterling quality. However, in the case in hand, the testimony of prosecutrix is not beyond doubt.

The prosecutrix stated that she disclosed about the alleged incident of rape to her husband in January 2015. Even her husband, while appearing in the witness box as PW13, stated that he came to know about the said incident from his wife in January, 2015. However, as per the testimony of PW14, the husband of prosecutrix, who was his colleague, disclosed to him about the incident of rape in question, in November 2014. It means that PW13, husband of the prosecutrix, was already in knowledge about the said incident. It is not clear as to why the prosecutrix and her husband did not report about the alleged incident dated 04.03.2014, to the police, till 02.02.2015. The prosecutrix, while appearing in the witness box, admitted that even during the next 15 days after the alleged incident, she kept on accompanying respondent No.2 in the official vehicle, to the hospital, for her medical check up. This fact also improbably the alleged incident of rape. Also there is no corroborative evidence in the shape of medical report, to strengthen the testimony of prosecutrix regarding the alleged rape. Even no reliable evidence is available to prove that from 04.03.2014 onwards, respondent No.2 was continuously giving threats to the prosecutrix, on her mobile phone.

19. In the light of the above discussion, we are of the view that the learned trial Court appreciated the evidence led by the parties in right perspective, while giving benefit of doubt to respondent No.2. There is no illegality in the impugned judgment. Consequently, this application seeking grant of leave to appeal is hereby dismissed being devoid of merits.

**Appeal dismissed.**

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