

(2017) 08 RAJ CK 0002
In the Rajasthan High Court
Case No : 1303 of 2016

Naveen Jangid S/o Shri Ramchandra Jangid
Vs

APPELLANT

The State of Rajasthan

RESPONDENT

Date of Decision : 09-08-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 161](#), [Section 164](#) - Examination of witnesses by police - Recording of confessions and statements
[Indian Penal Code, 1860](#), [Section 176](#)

Citation : (2017) 08 RAJ CK 0002

Hon'ble Judges : Sandeep Mehta

Bench : SINGLE BENCH

Advocate : I.R. Choudhary, R.K. Bohra, Vipin Makkad

Final Decision : Allowed

Judgement

1. The instant revision petition has been preferred on behalf of the petitioner accused Naveen Jangid for assailing the order dated 24.08.2016 passed by the learned Additional District and Sessions Judge, Sujangarh, District Churu in Sessions Case No.26/2016 whereby, charges were framed against him for the offences under Sections 376(2), 384, 354A, 354C, 341 and 323 IPC.

2. Facts in brief are that the prosecutrix Smt. "S" submitted an FIR at the Police Station Sujangarh on 12.09.2015 alleging inter alia that her husband used to live at Delhi for earning livelihood. She had fallen ill and got herself operated for removal of her appendix and uterus at the Ghodawat Hospital where the

petitioner came into contact with her. They exchanged mobile numbers with each other. The accused often used to call her and also helped her in providing medicines etc. and also administered injections to her when she fell ill. During this period, he prepared an indecent video of the complainant and started blackmailing her under the threat of showing the video to her husband and uploading it on the internet. The accused frequently outraged her modesty and she was also threatened to establish physical relations with his friends. Under the threat of making of the video viral, the accused twice extorted sums of Rs.20,000/- from her. She complained of these happenings to her husband who confronted the accused Naveen who, rather than restraining from his vile acts, assaulted her husband and severely injured him. On the basis of this report, an FIR No.226/2015 was registered against the petitioner at the Police Station Sujangarh for the offences under Sections 384, 354A, 354C, 341 and 323 IPC and investigation commenced. No allegation of actual forcible sexual intercourse was made by the prosecutrix either in the FIR or her statement recorded under Section 161 Cr.P.C. Upon being examined under Section 164 Cr.P.C., the prosecutrix repeated the allegations levelled in the FIR and stated that the accused used to indulge in all kinds of acts with her under the threat of uploading the indecent video clippings. It is manifest that even in this statement, the prosecutrix did not clearly allege that the accused had ever subjected her to actual sexual intercourse. Subsequently, she submitted an affidavit to the I.O. clarifying that by the phrase "everything" mentioned by her in the statement recorded under Section 164 Cr.P.C., she intended to convey that the accused established forcible sexual relations with her. On the basis of this clarification affidavit, the investigating officer, added the offence

under Section 376(2) IPC to the case and proceeded to file a charge sheet against the accused. The accused contested the charges before the Sessions Judge who directed framing of charges against the petitioner as indicated above by order dated 24.08.2016 which is under challenge in the instant revision petition.

3. Shri I.R. Choudhary, learned counsel representing the petitioner, vehemently urged that ex-facie, from the FIR as well as statements of the prosecutrix recorded under Sections 161 and 164 Cr.P.C., the offence under Section 376(2) IPC is not made out and thus, the petitioner deserves to be discharged from the said offence. He contended that neither in the detailed report nor in her statements recorded under Section 161 and 164 Cr.P.C., did the prosecutrix allege that the accused actually subjected her to sexual intercourse. He urged that the subsequent clarification affidavit in which, the prosecutrix alleged that by "everything" mentioned in her statement under Section 164 Cr.P.C., she meant sexual intercourse, is ex-facie untenable. He thus craved acceptance of revision and setting aside of the impugned order to the extent charge under Section 376(2) IPC was framed against the accused.

4. Per contra, learned Public Prosecutor and the learned counsel for the complainant vehemently opposed the submissions advanced by the petitioner's counsel. They urged that the accused had recorded indecent videos of the prosecutrix who was under persistent threat of blackmail and thus, she could not clearly mention in the FIR that the accused subjected her to forcible sexual intercourse. She mentioned this fact in couched language in the report and her statements and clarified the allegation by way of her affidavit which is sufficient to frame charge against the

petitioner. They thus justified the impugned order.

5. I have heard the arguments advanced by the learned counsel for the parties and have gone through the material available on record.

6. The complainant is a major married woman. The belated FIR came to be lodged after due deliberation with her husband and thus, it was expected that the entire narration of events which actually happened with her should have been mentioned therein. Though, it is true that an FIR is not expected to be an encyclopedia but even while deposing under Sections 161 and 164 Cr.P.C., the prosecutrix limited her allegations against the accused to the extent of outraging of modesty and nothing beyond that. Evidently thus, the allegation set out in the clarification affidavit of the prosecutrix was nothing but an afterthought. It is the firm opinion of this Court that the prosecutrix knowingly and deliberately tried to improve her version step by step and has tried to implicate the accused for graver offence under Section 376(2) without any justification by an affidavit which is nothing but an attempt to improve her original version. The improved version which the prosecutrix tried to set up in her affidavit cannot be accepted ex-facie even for the framing of charge. The so-called indecent recordings under the threat whereof, the accused allegedly blackmailed the prosecutrix were not recovered by the police during investigation.

7. Consequently, the revision petition deserves to be and is hereby allowed in part. The impugned order dated 24.08.2016 passed by the learned Additional District and Sessions Judge, Sujangarh, District Churu in Sessions Case No.26/2016 is set aside to the extent charge was framed against the petitioner for the offence under Section 376(2) IPC. However, the trial of the

petitioner shall continue as per law for the remaining offences.