

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

Criminal Appeal No.D-709-DB of 2013

Date of Decision : February 18, 2015

Harpreet Kaur

.....Appellant

Versus

Sunny Sharma and another

.....Respondents

CORAM :HON'BLE MR.JUSTICE T.P.S. MANN
HON'BLE MR.JUSTICE DR. SHEKHER DHAWAN

Present : Mr. R.K. Singla, Advocate
for the appellant.

Ms. Neha Jain, Advocate for
Mr. Manish Dadwal, Advocate
for respondent No.1.

Mr. P.J.S. Hundal, Assistant A.G., Punjab
for respondent No.2-State.

T.P.S. MANN, J.

The prosecutrix has filed the present appeal for challenging the judgment dated 8.3.2013 passed by the Additional Sessions Judge, Ludhiana, whereby respondent Sunny Sharma, hereinafter referred to as 'the accused', was acquitted of the charge under Section 376 IPC.

The case of the prosecution, as set up by the prosecutrix in her statement made before SI Jagir Singh on 17.6.2012, was that she was a student of 10th class and living with her parents. Her family was on visiting terms with the accused. About 25 days ago

when she went to apply henna on the hands of the mother of the accused, it became dark and at the asking of his mother, she stayed back in the house of the accused. She also informed her mother on telephone regarding her staying there. Even earlier, she had been sleeping in the house of the accused. At about mid-night, the accused committed forcible sexual intercourse with her. On 9.6.2012, the mother of the accused came to her house and told her that the accused would die without her and the accused used to threaten the prosecutrix that he had made a movie of her and if she disclosed to anyone, he would upload that movie. He would also give her intoxicating pills. The prosecutrix apprised her mother about the matter.

On the basis of the aforementioned statement made by the prosecutrix, the police registered the FIR. The accused was arrested. The prosecutrix was medically examined. Subsequently challan under Section 376 IPC was presented against the accused. Upon commitment, the accused was charged for the aforementioned offence, to which he pleaded not guilty and claimed trial.

In support of its case, the prosecutrix examined herself as PW1, while her mother Sarabjit Kaur as PW2. However, both of them did not support the case of the prosecution and were declared hostile. During their cross-examination by the learned Additional Public Prosecutor, they did not state anything about commission of rape upon the prosecutrix by the accused. In view of the same, the

trial Court vide impugned judgment dated 8.3.2013 acquitted the accused of the charge framed against him after giving him the benefit of doubt. Hence, the present appeal.

In the appeal, it was pleaded by the appellant that on 8.3.2013, she alongwith her mother Sarabjit Kaur, was called in the Court. However, as the advocates were on strike, no advocate had appeared. Even the doors of the Court were closed. The Presiding Officer was also not in the Court. Only the advocate representing the accused and the Additional Public Prosecutrix were present. Both of them told her and her mother that the advocates were on strike on the call of the Bar Council and, therefore, the trial Court would not be taking up the matter. They were, however, asked to put their signatures on some papers in order to mark their presence. Their signatures were taken and both of them came back home hoping that on the next date, their statements would be recorded by the Court. However, after 2/3 days, the accused was seen celebrating in the village. He also came to the house of the prosecutrix and proclaimed that neither she nor her family members were able to do anything against him. The prosecutrix then learnt that the accused stood acquitted by the Court as on 8.3.2013, the statements of the prosecutrix and her mother Sarabjit Kaur were shown to be recorded, wherein they were declared hostile. However, the fact was that neither the prosecutrix nor her mother had deposed before the Court on 8.3.2013 as the matter had been adjourned due to strike of the

advocates throughout the State of Punjab and Haryana and the signatures of the prosecutrix and her mother were taken on blank papers in order to mark their presence.

After requisitioning the record from the trial Court and noticing that there were serious allegations against the judicial officer, who passed the impugned judgment, and a complaint had also been sent by the mother of the prosecutrix to the Administrative Judge of Sessions Division, Ludhiana as regards the procedure adopted by the trial Judge, a co-ordinate Bench of this Court vide order dated 21.10.2013 directed the Registrar (Vigilance) to submit a report as to the action, if any, taken on the complaint allegedly sent by the mother of the prosecutrix. Pursuant to the same, the report was submitted by the Registrar (Vigilance), which disclosed that various complaints submitted by the mother of the prosecutrix stood filed. Despite the same, the co-ordinate Bench directed the mother of the prosecutrix to file an affidavit regarding allegations made by the prosecutrix in para 11 of the grounds of appeal so as to process the matter further. On the adjourned date, an affidavit reflecting the allegations made in para 11 of the grounds of appeal was filed by the prosecutrix. The Court then directed the trial Judge to send her comments on the allegations levelled against her. Comments furnished by the trial Judge were duly received. At the same time, the Bench found it appropriate to call upon the Additional Public Prosecutor representing the State and Shri Karamveer Singh, Advocate representing the accused before the trial Court to file their respective affidavits as to

the proceedings taken on 8.3.2013 before the trial Court. Pursuant thereto, necessary affidavits were furnished. In the meantime, the prosecutrix/appellant filed Criminal Misc. No.15930 of 2014 praying therein that she be allowed to withdraw the averments made by her in para 11 of the grounds of appeal. Besides, she sought acceptance of unconditional apology tendered by her mother Sarabjit Kaur. The affidavit was taken on record but it was ordered that it shall be considered at the time of deciding the appeal. Notice was, accordingly, issued and both the respondents came to be duly served and represented before the Court.

Learned counsel for the parties have been heard and the impugned judgment perused.

Before proceeding further, it would be appropriate to refer to the comments of the trial Judge in regard to the allegations levelled by the appellant to the effect that the trial Judge was not sitting in the Court on 8.3.2013 on account of strike by the Advocates and, therefore, no evidence of the prosecution being recorded on that day. According to the trial Judge, she had held the Court on 8.3.2013 and recorded the evidence of seven prosecution witnesses, framed charge in one case and heard arguments in two IPC trials. Both those cases were disposed of on that very day itself. Furthermore, the allegations of the appellant that the Presiding Officer was not sitting in the Court on account of the strike, were false and against the record. According to the trial Judge, the evidence was recorded on her dictation and signatures of witnesses obtained after reading

and explaining the evidence to them in that case. It was denied that the signatures were obtained on blank papers for marking their presence. Similarly, Shri Bhagwan Dass Gupta, Additional Public Prosecutor as well as Shri Karamveer Singh, Advocate, representing the accused before the trial Court, have furnished their respective affidavits wherein also they denied the allegations levelled by the appellant and her mother Sarabjit Kaur in regard to the proceedings which had taken place before the trial Court on 8.3.2013. Alongwith his affidavit, Shri Karamveer Singh, Advocate appended the certificate issued by the District Bar Association that no strike was called by the District Bar Association on 8.3.2013 and the Courts worked in normal routine.

As mentioned above, the prosecutrix filed Criminal Misc. No.15930 of 2014 wherein she prayed that she may be allowed to withdraw the allegations made by her against the trial Judge as she had made those without knowing the consequences. The said application was duly supported by affidavit of Sarabjit Kaur, mother of the appellant. Even in the Court learned counsel representing the appellant has stated that the allegations levelled by the appellant against the trial Judge may be allowed to be withdrawn. This Court finds that the appellant had made wrong averments in the appeal that the trial Judge did not hold the Court on 8.3.2013 on account of Advocates having proceeded on strike and the signatures of the appellant and her mother having been obtained on blank papers for the limited purpose of marking their presence. Once the allegations

against the trial Judge are withdrawn, those against the Additional Public Prosecutrix and the defence counsel would not stand. Even otherwise, the Additional Public Prosecutor and the defence counsel have sworn in their affidavits that there was no strike of the Advocates on 8.3.2013 and the trial of the case proceeded wherein the prosecutrix and her mother were examined as PWs but they did not support the prosecution case. The net result would be that the appellant and her mother had appeared before the trial Court on 8.3.2013 and got recorded their respective testimonies of PW1 and PW2, respectively, wherein they did not support the case of the prosecution and were declared hostile.

Once there is no evidence available on the file to establish that the accused had committed rape upon the appellant, no fault can be found in the impugned judgment of acquittal passed by the trial Court.

The appeal is without any merit and, therefore, dismissed.

**(T.P.S. MANN)
JUDGE**

February 18, 2015
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**(SHEKHER DHAWAN)
JUDGE**