

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Criminal Appeal No.D-1133-DB of 2015

Date of Decision : September 17, 2015

Nikki

.....Appellant

Versus

State of Haryana and others

....Respondents

CORAM : HON'BLE MR. JUSTICE T.P.S. MANN
HON'BLE MR. JUSTICE GURMIT RAM

Present : Mr. Balkar Singh, Advocate.

T.P.S. MANN, J.

Dharmender and Sanjay, residents of village Dhurana, District Sonipat, who are respondents No.2 and 3 herein, were tried for committing offences punishable under Sections 452, 376-D, 323 and 506 read with Section 34 IPC. Vide judgment dated 30.4.2015, the trial Court, after holding that the prosecution had failed to bring home the guilt of the accused beyond doubt, acquitted them of the charges framed against them. Aggrieved of the impugned judgment of acquittal, the prosecutrix has filed the present appeal.

Briefly stated, the prosecution case is that the prosecutrix was a house wife and her husband was doing private job and most of the time, she would remain all alone in the house. Criminal litigation was pending between her and accused Sanjay with regard to dishonour of a cheque. On 16.5.2014, Dharmender, who was friend of Sanjay,

came to her house and asked her to withdraw the case against Sanjay. She replied that her husband was not home and he should not have entered her house during night time. On seeing her alone, Dharmender tried to outrage her modesty. When she offered resistance, he slapped her. In the meanwhile, her husband returned home, who saved her from the clutches of Dharmender. When the neighbours were attracted on hearing the noise, Dharmender fled from the spot by jumping over the boundary wall. However, while fleeing, he threatened to kill her if she did not withdraw the case against Sanjay. She suspected that Sanjay might be accompanying Dharmender. On the basis of her written complaint, FIR No.180 dated 16.5.2014 under Sections 452, 354, 323 and 506 IPC was registered. During investigation of the case, the prosecutrix was produced before the Magistrate on 24.5.2014 and in her statement made under Section 164 Cr.P.C., she stated that on the night of 16.5.2014, Sanjay had also come to her house alongwith Dharmender and both of them had committed gang rape upon her. On the basis of her statement, offence under Section 376 read with Section 120-B IPC was added.

Having heard learned counsel for the appellant and on going through the impugned judgment, this Court finds that initially the version of the prosecution was that Dharmender had tried to outrage her modesty by entering her house when her husband was not there and at that time Sanjay might have accompanied Dharmender to her house. However, later on, she improved upon her version while making

statement under Section 164 Cr.P.C. that both Dharmender and Sanjay had entered her house and subjected her to forcible sexual intercourse. Her explanation that while lodging FIR she was under the threat of the accused, cannot be accepted. If she could level allegations of outraging her modesty at the hands of the accused, she could very well state about commission of offence of rape by the accused.

It was the case of the prosecutrix herself that she had filed complaint regarding dishonouring of a cheque and in that complaint Sanjay was arraigned as an accused. Possibility cannot be ruled out about the prosecutrix coming up with a false version so as to put pressure upon Sanjay to pay up the amount which he owed to the prosecutrix and in discharge of his liability he had issued a cheque which had been dishonoured leading to filing of the complaint by the prosecutrix.

The defence has been able to establish by leading evidence that the prosecutrix was a lady of mischievous nature and in the habit of lodging false cases in order to extract money. DW2 Maluk Singh testified that there was litigation between the prosecutrix and one Rajwanti of his village. In that case the prosecutrix pressurised him and Rajwanti for withdrawing the litigation and on refusal she lodged a case under Sections 376(g), 365, 328 and 506 IPC against him, Rajwanti and one Kala. After thorough investigation, the said case was found to be false and, accordingly, the FIR was cancelled and recommendation

was made for initiating action under Section 182 IPC against the prosecutrix. DW3 SI Zile Singh proved complaint Ex.DW3/A filed by the prosecutrix against Sanjay and one Maluk Singh, statements of Sanjay, Dharmender, Maluk Singh and the prosecutrix as Exs.DW3/B to Ex.DW3/E and report Ex.DW3/F prepared by him regarding false complaint of the prosecutrix.

In view of the above, no fault can be found with the impugned judgment of acquittal.

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

(T.P.S. MANN)
JUDGE

(GURMIT RAM)
JUDGE

September 17, 2015
satish