

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Criminal Appeal No.D-1174-DB of 2015

Date of Decision : October 08, 2015

Rekha Nair

.....Appellant

Versus

State of Haryana and another

....Respondents

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

Present : Mr. Yashpal Gupta, Advocate.

T.P.S. MANN, J.

The prosecutrix has filed the present appeal for challenging the judgment dated 9.2.2015 passed by learned Additional Sessions Judge, Gurgaon whereby respondent No.2-Pankaj Kumar, here-in-after referred to as 'the accused', stands acquitted of the charges under Sections 420, 467, 468, 471, 323, 376(2)(n) and 377 IPC.

Briefly put, the prosecution case is that on 15.2.2014, complaint dated 4.2.2014 was received in the office of the Deputy Commissioner of Police (West), Gurgaon after enquiry from the Women Cell (West) wherein the prosecutrix had levelled allegations of bigamy, physical assault, sexual abuse, cheating, forgery, dowry harassment, domestic violence, threats etc. against the accused, who

was her husband. She had stated in the said complaint that she was friendly with the accused for the last eight years, who got involved with her physically on the promise of marriage. He, however, did not keep his words and married another woman without informing her. He continued to exploit her physically, mentally and financially. When she learnt about his marriage and confronted him, he replied that his father had forced him to marry as he was likely to get lot of dowry and the woman, whom he had got married as well as her parents knew about their relationship. She also stated that the accused had told her that he would obtain divorce and marry her and, accordingly, continued abusing her physically and sexually. He even took money from her on the pretext of filing a divorce case but no such thing ever happened. She had moved a complaint to the police and the accused and his family members were called. The accused with his other wife, father, uncle and aunt visited her house on 24.11.2013. At that time, it was mutually agreed that the accused would marry her as per Islamic law and a writing to that effect was given to the police. The accused and his parents disclosed that as he has since obtained divorce, they can perform his marriage as per Arya Samaj rites. However, while getting married at Arya Samaj temple, he wrongly stated that he was not married. Further case of the prosecution is that it was mutually agreed between the prosecutrix and the accused that the latter would stay for one week with her and one week with the other woman. However, the other woman, namely, Poonam started

calling them at odd hours and had also called the accused continuously for two days and she did not allow her to spend a moment of peace with him. The father of the accused intervened and, accordingly, Poonam stopped making calls. However, the accused, his father and Poonam kept on pressurising the prosecutrix to bring money from her mother for purchasing BMW car. The mother of the prosecutrix was a widow and, therefore, not in a position to afford such a huge amount. The accused wanted her mother to transfer her house in his name and when she refused, he started abusing her mentally and physically. She kept on bearing the torture hoping that he would change. The prosecutrix further averred that the parents of the accused came to stay with her on 8.1.2014 and gave her lot of mental pain and agony by saying that the other woman had brought dowry worth lacs and she had not brought anything. The accused kept on abusing her physically. He had been pressurising her to call her friends to have group sex and when she refused, he abused her. She continued to bear the torture and when she asked the father of the accused in that regard, he again abused and demanded money. On 14.1.2014, the accused went to the other woman and was supposed to return on 21.1.2014. However, he did not come back. She talked to him couple of times on phone but he fought with her on the phone and refused to return.

Having heard learned counsel for the appellant and on going through the impugned judgment of acquittal, this Court finds

that at the time of her medical examination by PW5 Dr. Anshul Singh, the prosecutrix had given history of living with a partner for the last 8/9 years. In her cross-examination, she admitted that she knew about the accused marrying Poonam and siring a child from her. In one of the photographs brought on the record, the prosecutrix is seen holding the child of the accused in her lap. According to her, she had come to know the marriage of the accused with Poonam in the end of year 2012. However, she submitted her complaint only in the month of February, 2014. Under these circumstances, she cannot be heard saying that she was forced into sexual relationship on the promise of marriage. On the other hand, she had stated in her examination-in-chief that whenever she asked the accused to marry her he would say that his parents were against the proposal since they both were from different caste and different states.

The stand taken by the prosecutrix that the accused had taken money from her at different occasions is not substantiated by bringing on record any documentary evidence. On the other hand, she had admitted in her cross-examination that the accused was drawing more salary than her and it was she who had utilized his money once by using his credit card and on another occasion by transferring money to her account. The prosecution case taken as such indicates that the prosecutrix has been a consenting party all throughout. Even otherwise, when the prosecutrix and the accused got married in Arya Samaj temple, she knew about the earlier marriage of the accused.

Merely because the accused had mentioned his status as 'unmarried' in the affidavit furnished by him at the time of his marriage with the prosecutrix in Arya Samaj temple, Delhi, it would not amount to forgery as the accused had already disclosed to her about his marriage with Poonam. Even otherwise, the affidavits alleged to have been forged by the accused are not proved on record.

In view of the above, this Court is of the considered view that no case is made out for any interference in the impugned judgment of acquittal.

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

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

**(GURMIT RAM)
JUDGE**

October 08, 2015
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