

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA No. D- 1219-DB of 2014 (O&M)

Date of decision : 18.03.2015

Sunita Malhotra

.....Appellant

Versus

State of Punjab and others

....Respondents

**CORAM:- HON'BLE MR. JUSTICE HEMANT GUPTA
HON'BLE MRS. JUSTICE LISA GILL**

Present: Mr. Vishal Munjal, Advocate
for the appellant.

LISA GILL, J.

Complainant – appellant aggrieved by the acquittal of respondents No. 2 to 5 of the charge of the offence punishable under Sections 376, 120-B IPC vide judgment dated 27.05.2014 passed by learned Additional Sessions Judge, Ludhiana has preferred the instant appeal.

Brief facts are that FIR No. 215 dated 09.06.2008 was registered under Section 376 IPC on the statement of the complainant prosecutrix. She was married to Rajesh Malhotra on 26.05.1998. A son Abhinav Malhotra was born out of this wedlock. She came to know that her husband Rajesh Malhotra suffered from a medical condition 'psychosis disorder' on the very first day of her marriage when she came to her matrimonial home. He is under

continuous medical treatment under Dr. Manish of Bharat Nagar Chowk, Ludhiana. She came to know that he would remain mentally unwell through out his life but despite her husband's condition, she tried to lead her marital life peacefully. Few days after marriage, her father-in-law Nempal Malhotra – respondent No. 3 told her that her husband is a mentally retarded person but she would get full rights in the family if he would satisfy him mentally, physically and sexually. Similar demand was allegedly raised by her husband's brother Murli Malhotra – respondent No. 5. Appellant disclosed this fact to her mother, who told her to refuse such illegal demands. On her refusal, behaviour of all the family members changed. They maltreated her and compelled her to live separately. She started knitting and stitching for her living. Raj Kumar – respondent No. 2 used to visit their house to take away shawls and sweaters from their home and he used to pay labour charges. Father-in-law Nempal Malhotra – respondent No. 3, mother-in-law Usha Rani – respondent No. 4 and brother-in-law Murli Malhotra – respondent No. 5 conspired and devised a plan to throw her out of her matrimonial home. Pursuant to this plan, Raj Kumar – respondent No. 2 came to her house on 06.06.2008 at about 8.30 p.m. On inquiry as to why he had come so late, he replied that he had come to pay labour charges on which she opened the gate. Respondent – Raj Kumar entered her home and closed the door. He was drunk and holding a knife in his hand. He threatened her that in case she would shout or raise alarm, he would kill her son. He committed rape upon her despite stiff resistance put up by her. Her brother-in-law and father-in-law locked the door and

gathered people of the area by raising lot of noise. On opening the gate, they gave her severe beating. Despite her pleading that she was subjected to force, no one listened to her. They left Raj Kumar after beating him and she was thrown out of her matrimonial home. It is urged that due to the complainant not having cordial relations with members of her in-laws family, this was premeditated plan of her in-laws alongwith Raj Kumar Sharma.

On the basis of this statement, FIR was registered. Accused Raj Kumar was arrested. Challan/report under Section 173 Cr.P.C. was submitted qua respondent - Raj Kumar only. Charge was framed against him on 12.10.2009 for offence punishable under Section 376 IPC. Complainant – appellant (PW1) recorded her statement before the learned trial Court. Application under Section 319 Cr.P.C. was filed by the prosecution for summoning the additional accused i.e. respondents No. 3 to 5. They were summoned vide order dated 30.08.2010. Charges were framed against all the accused on 03.02.2011 for offences punishable under Sections 376 and 120B IPC.

Prosecution led evidence to prove its case. On closure of prosecution evidence, statements of the accused were recorded under Section 313 Cr.P.C. whereby they pleaded innocence and false implication in this case.

Respondent No. 2 - Raj Kumar put forth a specific case that the appellant was having an affair with him. She treated him as a husband and on the day of occurrence also she had called him on his mobile a number of times. She was in regular touch with him and

used to call him from other phone numbers as well. On 06.06.2008 both of them were caught red handed and he was falsely implicated by the appellant to save her dignity. Appellant's child was sleeping in the same room and there is no question of use of any force. He revealed that appellant and her mother visited her in-laws house on the next day for rehabilitating her but on refusal by the in-laws to allow her in the matrimonial home due to her bad character, he was falsely implicated alongwith the in-laws of the appellant. He further submitted that he had even signed the admission form of appellant's child as a father at "Greenland school". Appellant's husband was suffering from psychological problem for a number of years. Her husband being unfit, she developed relationship with Raj Kumar. He purchased CD player, sofa set, Gas Stove with four burners etc. as per her wish and demand.

Other accused i.e. in-laws of the appellant while pleading false implication stated that the appellant had been caught red handed with accused Raj Kumar on the intervening night of 06.06.2008. She has falsely implicated all of them only with a view to cover her misdeeds, immoral acts, illicit relations with Raj Kumar. It was stated that she had an oblique motive to blackmail them and extort money. After registration of the case, an inquiry was conducted by SP-II Sh. Gurmeet Singh Randhawa. After thorough investigation and after recording statements of the residents of the area, all allegations of the complainant were found to be false and they were declared innocent, as per inquiry report (Ex.D4). It was concluded that the appellant used to take undue advantage of the medical

condition of her husband.

In defence as many as eight witnesses were examined. Learned trial Court in the facts and circumstances of the case and on the basis of evidence on record acquitted all the accused of the charges framed against them.

It is appellant's contention that the learned trial Court has proceeded on the basis of presumptions to acquit the accused. It is proved on record that she was subjected to maltreatment at the hands of her in-laws and it is only a method they had devised to throw her out of her matrimonial home. She has given a consistent version throughout. Her husband was not produced as a witness to prove the allegations against the appellant. There is sufficient evidence on record to show commission of offences as alleged against the accused respondents. It is, thus, prayed that the impugned judgment of acquittal be set aside and the accused be convicted as charged and punished, accordingly.

On going through the facts and circumstances of the case, we do not find any ground to interfere with the well reasoned judgment dated 27.05.2014 rendered by the learned trial Court.

It is an admitted fact that the marriage of the appellant prosecutrix was solemnized with Rajesh Malhotra on 26.05.1998 i.e. nearly 20 years before the alleged occurrence. There is not a shred of evidence on record to show that any complaint or protest had been lodged by the appellant against her in-laws at any point of time prior to the occurrence. There is one child then aged about 8/9 years out of the wedlock with Rajesh Malhotra. She has admittedly been living

in her matrimonial home all these years. It is highly improbable and unnatural that in the light of serious allegations revealed by the appellant against her father-in-law and brother-in-law forcing/pressurizing her to develop physical relations with them, there was no protest registered at any quarter and furthermore she continued living there in these conditions. Baby Kumari (PW4) i.e. mother of the appellant has admitted that she never approached the in-laws of her daughter in this regard. It is admitted by the appellant herself that she never made any complaint regarding harassment meted out to her. The appellant has admitted to having cordial relations with the wife of the accused Murli Malhotra as well as her sister-in-law (husband's sister). She admits to having no grudge against her husband with whom she has very cordial relations. Rajesh is mentioned to be under treatment of Dr. Rajeev Gupta for psychotic illness for the period 2006-07. As per the evidence of Dr. Rajeev Gupta (PW6), who treated the appellant's husband during this period, Rajesh is capable of performing his daily routine activities even though he was under his treatment. Conduct of the appellant in the given circumstances is indeed unnatural, improbable and raises doubt on the veracity of the version put forth by her.

Another glaring aspect is the absence of injuries on the person of the appellant especially in view of her specific averment that she was beaten by the accused Raj Kumar and pushed against iron almirah and raped despite stiff resistance put up by her. Her clothes are not alleged to be torn neither they have been recovered.

Furthermore, it is revealed that her son aged about 8/9 years was

sleeping in the same room. It is not possible that the child would not have woken up in case such an act had been committed. Allegation that accused Raj Kumar had threatened her with a knife does not ring true. Firstly, no knife has been recovered from Raj Kumar and secondly, it is not the appellant's case that due to Raj Kumar being armed with knife she had not offered any resistance. Averment of the appellant that rape was committed on the night of 06.06.2008 and medical examination was conducted on 09.06.2008, therefore, injuries would not be reflected is misconceived and fallacious. As per Dr. Surinder Pal Kaur, no injuries were found on the body of the prosecutrix at the time of examination. Dr. Kaur has opined that there was no forcible rape or sexual assault committed upon the prosecutrix. No dispute regarding property was pending between the appellant and her in-laws. There was no occasion for them to throw her out of matrimonial home at this stage in the manner suggested.

It has been rightly concluded by the learned trial Court that there is nothing on record to show that the appellant had any business dealings with the accused Raj Kumar. She has not denied that on the date of occurrence, she had talked with the said accused about 10 or 15 times from her mobile No. 9878603707 by calling Raj Kumar on his mobile No. 9779212351. It is admitted by her in cross examination that the police reached the spot of occurrence within half an hour. A number of persons had collected from the neighbourhood. It is not understandable as to why she did not record her version there and then. It is not her case that the police did not take any action despite her revealing the facts. She has not denied that she

was taken to her in-laws on 07.06.2008 by her mother and sister but she was not allowed to enter. Raj Kumar accused has himself stepped into the witness box and disclosed that he was aware of intimate details of her life. Appellant admitted that accused Raj Kumar had arranged a loan for her family when her sister Anu delivered a child at Jalandhar. Raj Kumar had even visited the hospital to bless the new born child.

ASI Jaswinder Singh, Investigating Officer of the spot admits that statements of number of persons of the neighbourhood as well as Rajesh - appellant's husband were recorded. It was revealed that the appellant and Raj Kumar had friendly relations with each other.

There is no evidence on record to show that respondents No. 3 to 5 along with respondent No. 2 had connived with each other and proceeded in a premeditated and planned manner as alleged, with a motive to throw out the appellant from her matrimonial home.

Needless to say it is a strong hand which is required to deal with crime against women. At the same time, it is equally well settled that no one can be proceeded against in the absence of clear and cogent evidence pointing to the commission of offence. However, strong a suspicion may be, it cannot be acted upon to convict an accused. In the facts of this case, prosecution has miserably failed to bring home its case. Prosecution version is riddled with discrepancies. There is no corroboration of the version put forth by the appellant by the evidence on record. Learned counsel for the appellant is unable to point out any strong, substantial or compelling

reasons for setting aside the acquittal of respondents No. 2 to 5.

In view of the above, we find no infirmity, perversity or illegality in the impugned judgment of acquittal of the accused respondents.

Consequently, this appeal is dismissed and the impugned judgment dated 27.05.2014 passed by learned Additional Sessions Judge, Ludhiana is upheld.

(Hemant Gupta)
Judge

(Lisa Gill)
Judge

March 18, 2015
rts