

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Criminal Appeal No. D-1633-DB of 2014 (O&M)

Date of Decision : January 19, 2015

Damayanti

.....Appellant

VERSUS

State of Punjab and another

.....Respondents

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

Present : Mr. Parmod Chauhan, Advocate

T.P.S. MANN, J.

The prosecutrix has filed the present appeal for challenging the judgment dated 22.7.2014 passed by the Additional Sessions Judge, S.A.S. Nagar, Mohali, whereby respondent No.2 (hereinafter referred to as 'the accused') was acquitted of the charge under Section 376 IPC.

The case of the prosecution, in brief, is that the prosecutrix, who was aged 29 years and pursuing law course, boarded a bus on 25.3.2013 from Mohali to go to Kala Amb. After some time, the accused, who was sitting next to her, asked her as to what she was doing, to which she replied that she was pursuing degree in law. The accused disclosed his name and stated that he was posted in the Army. Both, the prosecutrix and the accused, then came back to Mohali and went to the house of cousin of the accused and stayed there for 4/5 hours. The accused told her that he had since learnt regarding her personal life and, therefore, offered to marry her.

During this period both of them came close to each other and had

physical relations. The prosecutrix kept on meeting the accused upto 28.3.2013 and having sexual relations with the accused as he had told her that he would marry her. On 29.3.2013, the accused left for Pathankot after telling the prosecutrix that he would return after a week. On 6.4.2013, the accused returned and promised the prosecutrix that he would marry her. Subsequent thereto, the prosecutrix contacted him on his mobile. He told her that he would not marry her. The prosecutrix pleaded that the accused had established physical relations with her by promising to marry her and, thereafter, went back on his promise. She appeared before ASI Kanwar Jaswinder Pal Singh on 10.4.2013 and made a statement on the above mentioned lines. On the basis of the same, FIR No. 83 dated 10.4.2013 was registered at Police Station Phase-I, Mohali under Section 376 IPC.

At the trial of the case, the prosecution examined the prosecutrix as PW2. The medical evidence was brought on record by way of the testimonies of PW3 Dr. Iqbal Krishan and PW3 Dr. Vineet Nagpal. PW4 Amit Kumar and PW5 Manoj Kumar, deposed about the mobile calls exchanged between the prosecutrix and the accused. The investigation part of the case was brought on the record by PW7 ASI Ramesh Kumar, PW8 ASI Kanwar Jaswinder Pal Singh and PW9 HC Lakhbir Singh. Besides, Ranvir Singh, Draftsman was examined as PW1.

The plea of the accused was of innocence and false implication.

The trial Court, after hearing learned counsel for the parties and going through the record of the case with their able assistance, while concluding that the prosecution had failed to bring home the guilt against the accused, acquitted him of the charge under Section 376 IPC.

Alongwith the appeal, the appellant has filed an application under Section 391 read with Section 482 Cr.P.C. for placing on record the SMS details and face-book profile, Annexures A-1 and A-2, respectively, as additional evidence.

Having heard learned counsel for the appellant and going through the impugned judgment, it is made out that admittedly the appellant was 29/30 years old at the time of the occurrence. The issue involved is as to whether the sexual intercourse committed by the accused with the prosecutrix was with or without her consent. The act of the prosecutrix in accompanying the accused to the house of his cousin and, thereafter, developing physical relations with him was clearly the product of her free will and volition. Even, thereafter, for 2/3 days, the prosecutrix kept on meeting the accused and establishing physical relations with him. The plea of the prosecutrix is that she had opened up to the accused on the promise made by him to marry her. It has appeared in the testimony of the prosecutrix that after 28.3.2013 and before 10.4.2013, the accused had been in constant touch with her friend Vishaka to whom he had been assuring that he would keep his promise of marrying the

prosecutrix. Said friend of the prosecutrix was, however, not cited as a witness. Thus, we have solitary testimony of the prosecutrix that the accused had been promising to marry her and for that reason she had consented to have sexual intercourse with her.

From a perusal of para 24 of the impugned judgment, it is apparent that the prosecutrix had submitted application Ex.D1 to the Station House Officer on 15.4.2013, wherein she averred that she had entered into settlement with the accused with her free consent and without there being any undue influence, coercion or pressure from any side and, therefore, she did not want to proceed with the matter against the accused. It was also stated in Ex.D1 that when she had lodged the FIR, she was not aware that the accused was married and having two years' old child. Similarly, she had also executed an affidavit Ex.D2 wherein also the factum of mutual compromise had been reiterated. Therefore, it cannot be said that the prosecutrix had consented to have sexual intercourse with the accused only on false promise made by him to marry her.

It is the case of the prosecutrix also that on 8.4.2013, the accused had physical relations with the prosecutrix. Two days later, the prosecutrix made the statement before the police against the accused of having sexual intercourse with her after making a false promise to marry her and on its basis the FIR was registered. It has appeared in the testimony of PW4 Dr. Vineet Nagpal that when she medico-legally examined the prosecutrix on

10.4.2013, she took swabs from her lower and upper vagina. In the report Ex.PW4/C, the Chemical Examiner mentioned that no spermatozoa was detected on those swabs. On the basis of the same, PW4 Dr. Vineet Nagpal opined that the possibility of recent sexual intercourse was ruled out but the possibility of the victim being habitual could not be ruled out.

The SMS details and face-book profile, which are sought to be brought on the record by the appellant as additional evidence by filing Criminal Misc. No.32484 of 2014 are not at all relevant for deciding the appeal. Moreover, these two documents were in existence when the prosecution was examining its evidence but were not brought on record. Only towards the fag end of the trial that the appellant filed the application under Section 311 Cr.P.C. to bring these two documents on record.

In view of the above, no case is made out for any interference in the findings arrived at by the trial Court while acquitting the accused.

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

(T.P.S. MANN)
JUDGE

(SHEKHER DHAWAN)
JUDGE

January 19, 2015
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