

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Criminal Appeal No. D-1835-DB of 2014

Date of Decision : January 20, 2015

Parminder Kaur

.....Appellant

VERSUS

State of Haryana and another

.....Respondents

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

Present : Mr. P.L. Singla, Advocate.

T.P.S. MANN, J.

The appellant, who falls within the definition of 'victim' as contained in Section 2(wa) of the Code of Criminal Procedure, has filed the present appeal for challenging the judgment dated 7.10.2014 passed by the Additional Sessions Judge (Exclusive Court for Heinous Crimes against Women), Kurukshetra, vide which respondent No.2-Swapnil Narayan Jadhav, hereinafter referred to as 'the accused', was acquitted of the charge under Section 376 IPC.

The case of the prosecution is that the appellant married Anil Kundu, who, on 30.6.2006, suffered major injuries in a road accident. As a result, he became 100% disabled. Despite the same, the victim had been serving him, besides taking him to various places for medical treatment. While she had been looking after her husband, she became friendly with the accused, who was eight years younger to her. She started meeting him at her residence at Kurukshetra, who assured that

he would marry her. She started having physical relations with him. In April, 2013, she asked him for marrying but he avoided the matter. He used to harass her on phone but as and when they came across each other, he would ask her to have physical relations. Later on, he told her that he was getting married to some other girl from Pune, whom his parents had selected for him. Claiming that the accused had been sexually exploiting her, she submitted a written complaint, on the basis of which FIR No.34 dated 12.2.2014 under Section 376 IPC was registered against the accused at Police Station Kurukshetra University, Kurukshetra.

Having heard learned counsel for the appellant and going through the impugned judgment, we find that without divorcing her husband Anil Kundu, the appellant had started living with the accused, who was eight years younger to her and was unmarried. It was the appellant who had taken the initiative in becoming familiar with the accused and, thereafter, started having physical relations with him. She very well knew the consequences of her act in having physical relations with someone else other than her husband and, that too, without obtaining divorce from her husband. It is the case of the appellant herself that she was aged 35 year and working as Senior Technical Assistant in the Department of Pharmacy. She had an eight years' old daughter but instead of caring for her husband, who was bed ridden, she crossed the line and came close to the accused and wilfully developed physical relations with him. She even testified that the accused never committed intercourse with her against her will and wishes. At the same time, it was her case that for the three years, during which the accused had been making physical relations with her, he had been assuring that he would marry her. Further, the appellant

testified that her husband had been residing with her in the same house in which she developed physical relations with the accused. Till 2013, the appellant remained in touch with accused. At the same time, she was fully aware of the fact that her marriage was still subsisting.

In support of its case, the prosecution had examined PW4 Santosh and PW5 Dalip. Both of them were co-employees of the appellant and deposed about the relationship of the appellant with the accused. However, none of the family members of the appellant was asked to step into the witness box to corroborate the version of the appellant. Under these circumstances, it is difficult to hold that the appellant would not have permitted the accused to have physical relations with her without the promise given by him of marrying her.

In view of the above, no case is made out for any interference 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

(SHEKHER DHAWAN)
JUDGE

January 20, 2015
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