

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Criminal Appeal No. D-254-DB of 2015

Date of decision : August 04, 2015

Sandeep Kaur

.....Appellant

Versus

State of Punjab and another

....Respondents

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

Present: Mr. Sarju Puri, Advocate
for the appellant.

LISA GILL, J.

Present appeal has been preferred by the appellant - Sandeep Kaur challenging acquittal of respondent No. 2 – Vicky son of Jeet Singh by the learned Additional Sessions Judge, SBS Nagar vide judgment dated 25.11.2014 for the offences punishable under Sections 376 and 420 IPC.

FIR No. 153 dated 13.10.2013 was registered on the statement of the appellant - Sandeep Kaur to the effect that her husband had died about one year prior thereto. She had two children, a daughter aged about 7 years and a son about 6 years old.

She used to reside at Rahon with her husband and children. After the

death of her husband one Saroop Singh alongwith respondent - Vicky came to her house to pay condolence. Thereafter Vicky started visiting her house regularly and promised to marry her. They started living as husband and wife since the past seven months and developed physical relations as well. On their relations coming to light, parents of respondent - Vicky objected. She thereafter sold their house at Rahon and came to Alachaur and started residing there alongwith respondent - Vicky and her children. However, parents of respondent - Vicky again objected to their relationship. On directions of his parents and above said Saroop Singh, Vicky refused to marry her. He had extracted money from her and developed physical relations with her on the pretext of marrying her. Therefore, he had raped and cheated her. She prayed for legal action against him. On the basis of this statement, above said FIR was registered.

Charge was framed against respondent No. 2 for the offences punishable under Section 376, 420 IPC. Prosecution examined 11 witnesses to prove its case. Respondent No. 2 while denying incriminating evidence put to him pleaded innocence and false implication in this case. However, no evidence was led in defence.

Learned trial Court on considering the entire facts and circumstances as well as the evidence on record concluded that the prosecution had failed to prove its case beyond reasonable doubt against the accused thereby acquitting him of the charges against him.

Learned counsel for the appellant vehemently argues that

the learned trial Court has grossly erred in seeking corroboration of the statement of the prosecutrix. In such cases, conviction can be based on sole testimony of the prosecutrix and no corroboration is required as prosecutrix is a victim and her statement is not to be looked upon with suspicion. It is further submitted that respondent No. 2 held out false promise of marriage to her due to which she permitted him to live in her house. She was subjected to physical relations on account of false promise of marriage held out by him. Therefore, it cannot be said that there was any consent on the part of the prosecutrix. Evidence on record in fact corroborates the stand of the prosecutrix. It is, thus, prayed that acquittal of respondent No. 2 be set aside and he be convicted for the offences as charged and be punished accordingly.

We have heard learned counsel for the appellant and are unable to agree with the contentions raised by him. Learned counsel for the appellant is unable to point out any illegality, perversity or infirmity in the impugned judgment which would warrant interference by this Court. There is no doubt that conviction of the accused can be based on sole testimony of the prosecutrix in case the Court feels the testimony of the prosecutrix is trustworthy and inspires confidence. It is not always necessary to seek corroboration thereof. However, in case of any doubt it is always open to the Court to seek assurance from other attending circumstances and evidence in a given case. Reference can gainfully be made to a decision of the Hon'ble Supreme Court in Narender Kumar versus State (NCT of

Delhi) 2012 (7) SCC 171.

It is a matter of record that prosecutrix aged about 30 years had been married earlier and had two children aged 7 and 6 years. She is running a Beauty Parlour. Her husband had died about one year prior to the recording of her statement. Admittedly, prosecutrix and respondent No. 2 had been living together for about seven (7) months prior to lodging of the FIR. She herself has disclosed that she sold her house at village Rahon and shifted to Alachaur. At Alachaur also, she was residing alongwith respondent No. 2 and her children were addressing respondent No. 2 as their father. It is further not disputed that respondent No. 2 was aged about 21 years and is approximately 10 years younger to her. Learned trial Court has rightly held that there was infact a live-in relationship between the prosecutrix and the accused, which resulted in consented sexual relations between the two. Furthermore, there is no evidence to conclude that respondent No. 2 had ever held out any promise of marriage to her. There is no question of any misconception of fact due to which the prosecutrix gave her consent.

Reliance by learned counsel for the appellant on the statement of PW3 Shingara Singh that in a Panchayat respondent No. 2 did not marry the prosecutrix as per his promise is indeed futile. PW3 Shingara Singh has not supported the prosecution version. In the cross examination by the accused, he has specifically stated that respondent No. 2 never promised to marry the complainant neither any money was given to him in his presence and that he had made the entire statement as disclosed to him by the complainant. No reliance can be placed on the testimony of such

a witness whose credibility is clearly suspect.

Present is, thus, clearly a case of a relationship gone sour, which cannot be proved to be commission of rape upon the prosecutrix by respondent No. 2. Explanation 2 of Section 375 IPC defines consent as an unequivocal voluntary agreement when the woman by words, gestures or any form of verbal or non-verbal communication, communicates willingness to participate in a specific sexual act. Present case does not fall in any of the exceptions provided. There is not an iota of evidence to prove that her consent had been obtained by holding out a false promise of marriage by respondent No. 2 or under any misconception of fact. Prosecutrix is a lady over 30 years old having two children and running a Beauty Parlour. It is not as if she is an innocent illiterate person, who had been exploited. She was aware of the consequences of her actions. She even chose to continue with her relationship with respondent No. 2 after shifting from Rahon to Alachaur.

Similarly, there is no evidence on record to prove the allegations constituting an offence under Section 420 IPC. There is no evidence to show that she had ever handed over a sum of ₹20,000/- to respondent No. 2 or her earrings and a chain to him. At the outset such averments had not been made. In her supplementary statement, prosecutrix mentions this amount but she does not disclose any date of handing over the money. There is no mention of handing over the chain/necklace and earrings.

It is a settled position that there have to be strong, cogent and compelling reasons to set aside acquittal of the accused. Simply

because another view may be possible cannot be a ground for reversing a judgment of acquittal. Hon'ble Supreme Court in **Mahamad Khan Nathekhan versus State of Gujarat (2014) 14 SCC 589** while reiterating the basic principles has specifically held that in case of acquittal there is a double presumption of innocence in favour of the accused it stands reinforced, reaffirmed and strengthened by acquittal by the trial Court.

Keeping in view the facts and circumstances of this case as discussed above, we find no ground to interfere in the impugned judgment dated 25.11.2014.

Consequently, the appeal is dismissed.

(Hemant Gupta)
Judge

(Lisa Gill)
Judge

August 04, 2015
rts