

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Criminal Appeal No.D-345-DB OF 2015 (O&M)

Date of Decision : April 09, 2015

Charanpreet Kaur

.....Appellant

VERSUS

State of Punjab and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE T.P.S.MANN
HON'BLE MRS. JUSTICE SNEH PRASHAR

Present : Mr. Vikas Sharma, Advocate

T.P.S. MANN, J.

The prosecutrix has filed the present appeal for challenging the judgment dated 12.1.2015 passed by the Additional Sessions Judge, Ludhiana whereby respondent-Sukhpreet Singh @ Vicky was acquitted of the charges under Sections 328, 376 and 506 IPC.

While lodging the FIR, the prosecutrix had stated that the accused, who was her husband's friend, used to visit her house. Some days back, he had come to her house when her son was not present there. The accused had brought bottle of cold drink and asked the prosecutrix to bring two glasses. The prosecutrix went to the prayer room of her house and when she returned, the accused offered her cold drink. After taking the cold drink, she became unconscious. When she regained consciousness, she noticed that she and the accused were in naked condition. When she protested, the accused threatened her that he had prepared her video in naked condition and would upload the same on the internet. The accused continued to stay

in her house. When her brother came to her house to leave her children, he inquired from her but due to fear, she could not disclose anything to her brother. Thereafter, she, alongwith her brother, went to the house of the accused and disclosed everything to the father of the accused, who called the accused on telephone and asked him to return home but he did not listen to his father nor left her house. Only when the prosecutrix called the police that the accused was taken away from her house. In order to save her reputation, she did not disclose anything to the police. The accused sent her video on mobile of her children and also uploaded the same on the internet. When the people called upon her, she felt insulted. Her husband also called her from Malaysia and stated that he did not want to keep her in his house.

Upon completion of the investigation and presentation of challan, the accused was charged for the aforementioned offence but he pleaded not guilty and claimed trial.

In support of its case, the prosecution examined the prosecutrix as PW1 and Dr. M.S. Bajwa as PW2. In her examination-in-chief, which was recorded in camera, she testified that she was married and mother of two sons. Her husband was residing at Malaysia. The accused was a very good friend of her husband and used to visit her house so as to enquire about her health. The accused had never committed rape with her. Noticing that the prosecutrix had resiled from her statement, the learned Additional Public Prosecutor requested the trial Court to declare her hostile. The request was allowed and the Additional Public Prosecutor was allowed to cross-

examine her. In her cross-examination by the Additional Public Prosecutor, the prosecutrix did not utter a single word about the involvement of the accused in the commission of the crime. She denied about the accused giving her soft drink as a result of which she had become unconscious or that on regaining consciousness she was found lying naked or the accused threatening her that he had prepared video which he would upload on the internet. She also denied that she had disclosed all the facts to the father of the accused. Of course, when her attention was drawn towards statement mark-A made to the police, she denied having made any such statement. According to her, the police had obtained her signatures on blank papers. She also denied making of statement Ex.PA under Section 164 Cr.P.C.

Since PW1, the prosecutrix, who was material witness, had not supported the case of the prosecution and the testimony of PW2 Dr. M.S. Bajwa was formal in nature and no improvement was likely to be made by examining the remaining witnesses, who were also formal in nature, the trial Court closed the evidence of prosecution by order. Further, as no incriminating evidence had appeared against the accused, even the recording of his statement under Section 313 Cr.P.C. was dispensed with. Finally, on account the fact that the prosecutrix had not supported the case of the prosecution, the trial Court came to the conclusion that due to lack of evidence against the accused to point out his guilt it had no other option but to hold that the prosecution had failed to connect the

accused with the commission of offence. Accordingly, he was acquitted of the charges against him.

Alongwith the appeal, an application (Criminal Misc. No.7056 of 2015) has been filed by the appellant under Section 386 read with Section 391 Cr.P.C. for issuance of direction to the trial Court to conduct re-trial by taking further and additional evidence keeping in view the peculiar facts and circumstances of the case. According to her, she could not speak the truth before the trial Court due to fear of the accused and his friends. Whenever she had been complaining to the police regarding the threats, she would be threatened by those police officials.

When the prosecutrix stepped into the witness box as PW1 for recording of her testimony, the proceedings were held in camera. Apart from the prosecutrix and the accused there must not have been any third person present during such proceedings who could have influenced her to make statement in a particular way, instead of supporting the prosecution. The prosecution was conducted by the Additional Public Prosecutor, who happened to be a woman officer. Even the trial Court was headed by a woman officer. The accused was present at the trial but he was in custody. In case there have been any sort of pressure exerted upon her for making statement in the manner in which it had been recorded by the trial Court, the prosecutrix could have immediately brought such fact to the notice of the Presiding Officer or in any case of the Additional Public Prosecutor. Instead, she denied the prosecution case in its entirety. In order to wriggle out of the statement Mark-A made to the police

during investigation, the prosecutrix stated that her signatures were obtained on blank papers. She even denied the contents of her statement Ex.PA which was recorded under Section 164 Cr.P.C. by testifying that she had given the said statement at the instance of the police. Moreover, the deposition of the prosecutrix as PW1 was recorded on 9.1.2015 whereas the impugned judgment of acquittal was passed subsequently i.e. on 12.1.2015. If the prosecutrix was under some sort of pressure on 9.1.2015, when she deposed before the trial Court as PW1, she could have very well appeared before the trial Court on the adjourned date i.e. 12.1.2015 and apprised the Presiding Officer about those developments. Nothing of that sort was done. Once the trial Court delivered the judgment of acquittal she has chosen to file the present appeal, apparently for reasons best known to her but not on account of not speaking truthfully when she testified before the trial Court on 9.1.2015. Under these circumstances, no case is made out for ordering re-trial of the accused. The miscellaneous application is, accordingly, dismissed.

Further, as no incriminating material had come on the record through the testimony of the prosecutrix, no interference is called for in the impugned judgment of acquittal.

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

(T.P.S. MANN)
JUDGE

(SNEH PRASHAR)
JUDGE

April 09, 2015
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