

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Criminal Appeal No.D-468-DB of 2015
Date of Decision : July 10, 2015

Sunita

....Appellant

VERSUS

State of Haryana and another

...Respondents

CORAM : HON'BLE MR. JUSTICE T.P.S. MANN
HON'BLE MR. JUSTICE MAHAVIR S. CHAUHAN

Present : Mr. Sanjiv Sheoran, Advocate
for the appellant.

T.P.S. MANN, J.

The prosecutrix has filed the present appeal for challenging the judgment dated 16.1.2015 passed by learned Additional Sessions Judge, Gurgaon whereby accused Sunil, respondent No.2, herein, stands acquitted of the charges under Sections 376(2)(n) and 406 IPC.

The case of the prosecution, in nutshell, is that on 18.4.2014, the prosecutrix lodged a complaint with the police stating therein that she was forty years of age and having six children. Her husband had died in the year 2003 and after his death, she got acquainted with the accused, who offered to marry her. She accepted his offer and the accused had been living with her in her house for the last three and half years on the pretext of marrying her and had been sexually ravishing her. In the said period, he stole her WagonR, two

motorcycles and cash amounting to Rs. Six lacs. He had taken money from her on the pretext of getting a plot in Panipat. Neither he purchased the plot nor returned the amount. He had taken the vehicles on the pretext of plying them but kept the same with him. He left her house on 21.12.2013 and stopped responding to the phone calls made by her. On the basis of the allegations levelled by the prosecutrix, FIR No.182 dated 18.4.2014 under Sections 376 and 406 IPC was registered against the accused at Police Station Kherki Daula, Gurgaon.

Having heard learned counsel for the appellant and on going through the impugned judgment, this Court finds that the appellant was earlier married to one Bharat Singh Soni and from his loins, she had given birth to six children. Said Bharat Singh Soni died in the year 2003. After about seven years of his death, she met the accused, who offered to marry her. He resided with the appellant for about three and half years and having sexual relations with her. It was also her case during her cross-examination that four, out of her five daughters, were already married. Further, when the accused committed rape upon her for the first time in June, 2010, she had informed her sister but did not lodge any complaint with the police. It was also her case that the accused had ravished her on several occasions but still she did not make any complaint. She admitted that WagonR car was in the name of the accused though, according to her, it was she who had given money for its purchase.

From the material which has come on the record, it stands established that the appellant, who was forty years and during the period, the accused had been making sexual relations with her she did not report the matter to the police. According to her, the accused had promised to marry her. Her explanation appears to be only an after thought as she had been willingly maintaining physical relations with the accused and such like relationship between two consenting adults cannot be termed as rape.

The trial Court has referred to various judgments delivered by the Apex Court, viz. Kaini Rajan Vs. State of Kerala, 2013(4) RCR (Criminal) 365, Deelip Singh alias Dilip Kumar Vs. State of Bihar, 2004 (4) RCR (Criminal) 972, K.P. Thimmappa Gowda Vs. State of Karnataka, 2011(4) SCALE 224 and Pardeep Kumar Vs. State of Bihar, 2007(4) RCR (Criminal) 51 and of the Delhi High Court in Rohit Chauhan, Vs. State of NCT of Delhi, 2014(1) RCR (Criminal) 1030, to hold that there is a demarcation between rape and consensual sex and in cases where such controversies are involved, the Court must very cautiously examine the intentions of both the individuals involved and to check, if even the girl on the other hand is genuine or had malafide motive.

Learned counsel for the appellant has referred to recent judgment of the Apex Court in State of U.P. Vs. Naushad, 2014(1) RCR (Criminal) 173, wherein it was held that the accused, who had been

having consensual sex with the prosecutrix for two years on false compromise of marriage commits the offence under Section 376 IPC. However, the said judgment is not strictly applicable to the facts and circumstances of the case as in the said case, the prosecutrix was a young immature girl of the age of fifteen years, who could not have known the consequences of the act of the accused. On the other hand, in the present case, the prosecutrix is a woman of forty years and already having six children from her first husband, who had died and subsequently, she got acquainted with the accused who offered to marry her and on that pretext was alleged to be sexually ravishing 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 devoid of any merit and, therefore, dismissed.

(T.P.S. MANN)
JUDGE

July 10, 2015
satish

(MAHAVIR S. CHAUHAN)
JUDGE