

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CRA-D-384-DB-2014 (O&M)
Date of Decision: 04.12.2015**

A _____

.....Appellant

Vs.

State of Punjab and another

.....Respondents

**CORAM: HON'BLE MR. JUSTICE S.S. SARON
HON'BLE MR. JUSTICE AMOL RATTAN SINGH**

Present: Mr. Vikas Bali, Advocate,
for the applicant-appellant.

S.S. Saron.J.

CRM No. 7692-2014

Heard.

For the reasons, mentioned in the criminal miscellaneous application, delay of 27 days in filing the appeal is condoned.

CRM stands disposed of, accordingly.

CRA-D-384-DB-2014

This appeal has been filed by the prosecutrix-appellant against the judgment dated 28.11.2013 and order of sentence dated 29.11.2013, passed by learned Additional Sessions Judge, Ludhiana, whereby Paramjit Singh (respondent No. 2) has been acquitted of the offence punishable under Section 376 read with Section 511 of the Indian Penal Code, 1860 (for short--'IPC'). He has, however, been convicted of the offence punishable under Section 354 IPC. For the said offence under Section 354 IPC, he has been sentenced to

undergo rigorous imprisonment for two years, besides, pay a fine of Rs. 10,000/- and in default of payment of fine, to undergo simple imprisonment for six months.

The appellant-prosecutrix prays that her appeal be accepted with costs and Paramjit Singh (respondent No. 2) be convicted and punished of all the charges framed against him; i.e. he be convicted and sentenced for the offence under Section 376 read with Section 511 IPC and the sentence of two years awarded for the offence under Section 354 IPC being inadequate, be enhanced.

During the course of hearing, it is accepted by learned counsel for the appellant that the sentence that has been imposed upon Paramjit Singh (respondent No. 2) for the offence under Section 354 IPC is not to be enhanced on an appeal filed by the 'victim' in terms of the proviso to Section 372 of the Code of Criminal Procedure, 1973 (for short -- 'Cr.PC'). The said proviso gives a right to a 'victim' to file an appeal against an order passed by the Court acquitting the accused or convicting him for a lesser offence or imposing inadequate compensation. It does not provide for an appeal against inadequate sentence.

In the circumstances, learned counsel does not press the prayer for enhancement of sentence that has been imposed in respect of the offence under Section 354 IPC. He, however, submits that Paramjit Singh (respondent No. 2) has wrongly been acquitted of the offence punishable under Section 376 read with Section 511 IPC for which he is liable to be convicted and sentenced.

We have given our thoughtful consideration to the matter.

The FIR in the case has been registered on the statement of the appellant/complainant made before ASI Manjit Singh on 08.01.2012. The complainant alleged that about 15 days earlier to the incident that had occurred on 07.01.2012 she and her husband had taken a house at Bhai Randhir Singh Nagar, Ludhiana on rent from Paramjit Singh (respondent No. 2). The appellant was alone at her house on 07.01.2012 at about 4:30 p.m. Her husband had gone out for work. Paramjit Singh (respondent No. 2) used to visit their house daily. On the said day and time, Paramjit Singh (respondent No. 2) straightaway entered the last room of the house of the complainant/appellant. On seeing her alone in the house, he bolted the room from inside and started troubling her. He offered to give the complainant Rs. 50,000/- and also get the house registered in her name. The appellant protested and he (respondent No. 2) tried to pull the string of her 'salwar', on which she raised an alarm and assaulted him with a 'Thapi' on his head. According to the appellant, Paramjit Singh (respondent No. 2) tried to commit rape upon her. People gathered at the spot and her husband also came there. The people took Paramjit Singh (respondent No. 2) to the hospital for treatment.

On the statement of the complainant offences under Sections 354 and 376 IPC were found to be made out for which the FIR was registered.

The learned trial Court after considering the evidence and material on record, concluded that as per the version of the

prosecutrix with regard to the act of Paramamjit Singh (respondent No. 2) for attempting to commit rape upon her that it had come on record that respondent No. 2 entered the room of the appellant and touched her entire body. He proposed to marry her; besides, allured her by offering Rs. 50,000/- and also transfer the house in her name. When the appellant refused and tried to run, respondent No. 2 pulled and broke the string of her 'salwar'. This according to the learned trial Court showed that when respondent No. 2 had entered the room of the prosecutrix, he had no intention to commit rape on her and that he entered her room so as to molest her and propose marriage. In this back drop, it was held that it could be safely concluded that the allegation regarding attempt to commit rape on the prosecutrix and that he had touched her body and broke the string of her 'salwar' did not fall in the definition of attempt to rape. In fact at that particular time he had no intention to commit rape upon her.

The facts and circumstances of the case indeed show that the act and conduct of Paramjit Singh (respondent No. 2) when he entered the room of the prosecutrix was to molest her, besides, allure her but at that particular time he had no intention to commit rape upon her. For the act of molestation, respondent No. 2, as already noticed, has been convicted and sentenced.

As regards the attempt to commit rape by respondent No. 2 on the person of the prosecutrix/appellant evidently there is nothing on record to show that he had made preparations to commit rape or the intention to commit it.

In Abhaynand Mishra vs. State of Bihar, AIR 1961 SC

1698 it was held by the Supreme Court that a person commits the offence of 'attempt to commit a particular offence' when (i) he intends to commit that particular offence and (ii) he, having made preparations and with the intention to commit the offence, does an act towards its commission, such an act need not be the penultimate act towards the commission of that offence but must be an act during the course of committing that offence.

This Court in Abdul Rehman vs. The State, 1959 (51)

PLR 53 held that in every crime there is, firstly, an intention to commit, secondly, preparation to commit, and thirdly, an attempt to commit. If the third stage, that is attempt, is successful, the crime is complete. If the attempt fails the crime is not complete but the law, if it so provides, punishes the person attempting the act. No offence would be said to have been committed if the matter has gone beyond an intention or even preparation to commit the crime. It is only when the act has reached the third stage, that is, an attempt to commit the crime is made, that an offence is said to have been committed. Attempt, it was held, is the direct movement towards the commission, after preparation are made. The question whether a certain act is merely one of preparations or one committed in the course of an attempt is a question of fact, depending upon the circumstances of each case.

In the present case evidently there is no material to show that respondent No. 2 had made any preparation to commit the

offence of rape or he had the intention to do so.

In the circumstances, the view that has been taken by the learned trial Court is a possible view and merely because another view can be taken, would not be a ground to dislodge the findings and conclusion that have been reached at by the learned trial Court.

There is no merit in the appeal and the same is accordingly dismissed summarily in terms of Section 384 Cr.P.C. However, nothing stated herein, shall in any manner, be construed as an expression of opinion on the merits of the appeal filed by Paramjit Singh (respondent No. 2) against his conviction for the offence under Section 354 IPC, which is to be considered independently on the basis of evidence and material on record.

(S.S. SARON)
JUDGE

(AMOL RATTAN SINGH)
JUDGE

December 04, 2015
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Note:- Whether to be referred to the reporter: Yes/No