

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Criminal Appeal No. D-725-DB of 2015

Date of Decision : July 14, 2015

Kavita

.....Appellant

VERSUS

Jitender and another

.....Respondents

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

Present : Mr. Sarfraj Hussain, Advocate.

T.P.S. MANN, J.

The prosecutrix has filed the present appeal for challenging the judgment dated 29.1.2015 passed by the Additional Sessions Judge, Gurgaon whereby respondent No.1-Jitender, hereinafter referred to as 'the accused', stands acquitted of the charges under Section 376(2)(f) and (n) and Section 506 IPC.

In nutshell, the prosecution case is that several days before she lodged the FIR, the complainant, who was 23 years of age and married to the younger brother of the accused developed sudden stomach pain when her husband was not in the house. The accused took her in car to a hospital. Thereafter, she was brought by the accused to his maternal uncle's house. After staying there for about half an hour, the accused insisted upon her to accompany him for returning to their village but she requested to stay in the

house of the maternal uncle as she had come there for the first time. The accused informed her that his wife was calling him and he was to return to the village. He insisted upon the prosecutrix to accompany him, to which she ultimately agreed. At around 10.00 p.m. when they were returning to their village, the accused took the car into a forest and stopped it by saying that there was some defect in the car. She got down from the car. The respondent assaulted her and had forcible intercourse with her. He even threatened to kill her if she disclosed about the incident to anyone. Due to fear, she kept mum. Several days thereafter, when she was cooking food in the kitchen and was all alone in the house, she was again sexually assaulted by the accused, despite her resistance. She informed her husband during the night when he came back but he did not believe her. On the next day, her father came there and took her along. There she confided in her mother about the incident. She, in turn, informed her father, brother and sister-in-law. She then submitted written complaint to the police on 23.9.2014, on the basis of which FIR No.465 was registered against the accused at Police Station Manesar, Gurgaon under Sections 376 and 506 IPC.

Having heard learned counsel for the appellant, this Court finds that in her complaint made to the police, the prosecutrix had not given the date of incident. Rather, she had claimed that several days back, the incident had taken place. However, before the trial Court she testified that the first incident took place on 3.7.2014 and after about 15 days of the same, she

was again ravished by the accused. Apparently, the complaint had been submitted by the prosecutrix after about two months and twenty days of the first incident. As such, the belated version cannot be relied upon, more so, when there was a property dispute between her husband and the accused as her father-in-law had executed a Will qua the house where he was living and the prosecutrix was not happy with the same. The husband of the prosecutrix, while testifying before the trial Court as DW2, stated that an altercation had taken place between his wife (the prosecutrix) and the wife of the accused on 20.7.2014 and, thereafter, he and his wife had shifted to a rented house. He also deposed that the prosecutrix was never taken to any doctor by the accused on 3.7.2014. He also stated that the father-in-law had come to the rented house and taken the prosecutrix with him and due to property dispute, the prosecutrix had got registered a false case.

Even the prosecutrix during her cross-examination had admitted that on 2.7.2014 she had dispute with the wife of the accused and she had gone to the Police Station in that regard. She also admitted that after this dispute her father-in-law separated her and her husband and, accordingly, they had shifted to the house of Manoj, where they stayed for about about 15/20 days. She further admitted that her father-in-law had prepared a Will under which he had given the house to the accused. On account of the dispute over Will, there ensued a fight between her husband and the accused on 14.9.2014. She even admitted the photograph Ex.D-1, which showed the accused to be in an injured condition.

There is no evidence on the record as to whether the prosecutrix was ever taken to a hospital at Rewari. ASI Savita, who was the Investigating Officer of the case, specifically admitted in her cross-examination that no investigation was ever conducted qua the treatment of the prosecutrix at Rewari.

In view of the above, no fault can be found with the impugned judgment passed by the trial Court whereby the accused respondent has been acquitted of the charges against him.

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

(T.P.S. MANN)
JUDGE

(MAHAVIR S. CHAUHAN)
JUDGE

July 14, 2015
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