

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Criminal Misc. No.A-726-MA of 2013

Date of Decision : February 02, 2015

Narinder Kaur

.....Applicant

VERSUS

State of Punjab and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE T.P.S.MANN
HON'BLE MR. JUSTICE DR. SHEKHER DHAWAN

Present : Mr. Gagan Oberoi, Advocate
for the applicant.

T.P.S. MANN, J.

The present application under Section 378(4) Cr.P.C. has been filed by the complainant for grant of special leave to appeal against the judgment dated 19.2.2013 passed by the Additional Sessions Judge, Mansa, whereby the complaint filed by the applicant was dismissed and respondents No.2 and 3 (hereinafter referred to as 'the accused') were acquitted of the charges under Section 376 IPC and Section 376 read with Section 34 IPC.

In the complaint filed by her, the complainant had averred that she was a widow, aged about 42 years and working as a domestic help. On 16.4.2010 at about noon time, she was waiting at bus stand of Sardulgarh in order to go to Jagraon. In the meantime, a car, in which the accused were sitting, came there. She knew the accused already. Balwinder Singh accused

alighted from the car and went to purchase fruit from a cart. The complainant went to Jaswinder Singh accused and wished him, who wanted to know as to why she was waiting there. On her telling him that she was going to Jagraon, Jaswinder Singh asked her to accompany them as they were also going towards that side. She sat on the rear seat of the car. Balwinder Singh offered fruit to her. Noticing that there was smell of liquor in the car, she told them that she would take a bus but the accused did not listen to her. Jaswinder Singh started driving the car and when they crossed the minor canal, he turned the car on the canal embankment. After covering some distance, when the car was turned towards the field, Balwinder Singh came on the rear seat and sat by the side of the complainant. Jaswinder Singh got down and went away on the pretext of drinking water. Balwinder Singh started misbehaving with her. When she resisted, he showed her a pistol like thing. She became frightened. Balwinder Singh had sexual intercourse with her without her consent. Later on, he alighted from the car and went away after locking the same. Jaswinder Singh then came and also raped her. She was told that if she raised an alarm, she would be killed. She was, thereafter, dropped at Sardulewala road from where she boarded a bus and came back to Sardulgarh. She narrated the entire occurrence to Sewak Singh, who advised her to lodge a report with the police. Accordingly, she went to the Police Station and narrated the entire occurrence. She was asked to

come on the next day. When she went to Police Station, once again, the police refused to take any action. Left with no other option, she instituted a private criminal complaint.

Subsequent to recording of preliminary evidence, in which the complainant examined herself as CW1, Sewak Singh as CW2 and Dr. Ritu Mittal as CW3, both the accused were summoned. The presence of the accused was procured and the case subsequently committed to the Court of Sessions where they were charged for the aforementioned charges, to which they pleaded not guilty and claimed trial.

At the trial, the complainant examined herself as PW1, Dr. Ritu Mittal as PW2, ASI Sukhjinder Singh as PW3, HC Gurcharan Singh as PW4 and HC Jagtar Singh as PW5. The plea of the accused when examined under Section 313 Cr.P.C. was of innocence and false implication. They pleaded that the complaint was filed at the instance of Karamjit Singh and Narinder Singh against whom complaint under Section 138 of the Negotiable Instruments Act had been filed and so also recovery suit by Balwinder Singh accused against them which suit was, later on, decreed. The complaint was got filed by them from the complainant in order to put pressure upon the accused to withdraw the cases filed by the accused. In defence, the accused examined DW1 Surjit Singh, Nodal Officer, DW2 Anil Sharma, Ahlmad, DW3 Sunil Kumar and DW4 Sewak Singh.

The trial Court, after going through the evidence and perusing the evidence available on the record, dismissed the complaint and acquitted the accused of the charges against them.

Having heard learned counsel for the applicant and on perusing the impugned judgment, this Court finds that though in her complaint the complainant had stated that she already knew the accused yet while stepping into the witness box, she stated that before the incident she had never met them. On the other hand, her husband, who was a truck driver and had died about two years back, knew the accused. It cannot be believed that she would have sat in the car with the accused whom she had never met earlier. Furthermore, it was the case of the complainant, while appearing as PW1 before the trial Court, that after committing rape, Balwinder Singh left the car and sometime later, Jaswinder Singh also came to the back seat and subjected her to rape. She had not made any attempt to resist the attempt of the accused or to escape from the spot before Jaswinder Singh had come and sat in the car. The place of occurrence is also shown to be not far away from the main road. It cannot be believed that there was no one around in the nearby fields.

The case of the complainant was that she was dropped by the accused at Sardulewala. However, instead of going to the Police Station at Sardulewala, she chose to go to Sardulgarh bus stand where she met Sewak Singh to whom she narrated the

entire occurrence. She deposed that Sewak Singh was not known to her nor she knew as to what he had been doing. She could neither admit nor deny that Sewak Singh was a *Munshi* to a lawyer at Sardulgarh. Despite the same, she went to the Police Station all alone. From Police Station Sardulgarh, she went to her village which was at a distance of 30/40 kilometers. She did not bring the incident to the notice of the Panchayat or her parents. It is further the case of the complainant that she was medically examined by PW2 Dr. Ritu Mittal, who testified that there was no injury mark on her body.

In view of the above, this Court is of the considered view that the trial Court was justified in acquitting the accused of the charges against them. Therefore, no case is made out for any interference in the impugned judgment.

The application filed under Section 378(4) Cr.P.C. is without any merit and the same is, accordingly, dismissed. Special leave to appeal is declined.

(T.P.S. MANN)
JUDGE

(SHEKHER DHAWAN)
JUDGE

February 02, 2015
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