

CRM-14551-2016 in/and
CRA-D-1378-DB-2015

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IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRM-14551-2016 in/and
CRA-D-1378-DB-2015

Date of decision: 17.05.2016

Kiran Kaur

..... Appellant

Versus

State of Punjab and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE T.P.S. MANN
HON'BLE MR. JUSTICE RAMENDRA JAIN

1. *Whether Reporters of the local papers may be allowed to see the judgment?*
2. *To be referred to the Reporters or not?*
3. *Whether the judgment should be reported in the digest?*

PRESENT: Mr. G.S. Sidhu, Advocate
for the applicant-appellant.

RAMENDRA JAIN, J.

CRM-14551-2016

Heard.

Sufficient cause has been shown for restoration of the appeal which was dismissed for non-prosecution by this Court on 11.04.2016. The application is, therefore, allowed and the appeal is ordered to be restored to its original number.

CRA-D-1378-DB-2015

Respondents No. 2 to 6 (hereinafter referred to as 'the private respondents') were booked and tried under Sections 376 and 313 read

with Section 120-B of the Indian Penal Code (IPC), on the allegations that respondent No. 2-Rajinder Singh @ Babbu, sexually exploited the appellant for a sufficient long time by showing her green pastures and giving assurance to marry her and on her becoming pregnant got aborted her pregnancy with the aid of respondents No. 3 to 6.

2. On appraisal of evidence, the learned trial Court did not find itself convinced with the prosecution story and resultantly, acquitted the private respondents vide impugned judgment dated 04.08.2015.

3. Being un-satisfied, the appellant has filed the present appeal.

4. Learned counsel for the appellant contended that the impugned judgment is based on surmises and conjectures. The Court below has failed to appreciate that respondent No. 2 committed rape upon the appellant for about two years under allurement and false promise of marrying her. Even he got aborted the pregnancy of the appellant. Medical evidence has fully corroborated the deposition of appellant and thus, there was no scope of acquittal of any of the private respondents.

5. After giving our thoughtful consideration to the submissions made by learned counsel for the appellant, we find no merit in the instant appeal for the reasons to follow.

- (i) Admittedly, the appellant was major at the relevant time. Her stand as PW-1 is that respondent No. 2 had raped her under promise to marry her. However, she did not disclose this fact in her initial complaint Ex. PA. She is even silent about the date and month, when came into contact with respondent No. 2 and

developed intimacy with him. Her complaint Ex. PA is also silent about the time, date and place when respondent No. 2 had clicked her photographs and committed rape upon her under threat. In view of the above, all the allegations levelled by the appellant against respondent No. 2 are vague.

(ii) The complicity of respondents No. 3 to 6 was not shown by the appellant in her complaint Ex. PA as culprits of her abortion in connivance with respondent No. 2. Rather, she simply mentioned that respondent No. 2 got conducted her abortion through some doctor to whom she can identify by face. What kind of assistance was rendered by respondents No. 3 to 6 during the alleged abortion of the appellant was also not disclosed in complaint Ex. PA. Even as PW-1, she did not divulge any details about the specific role of respondents No. 3 to 6. She simply testified that respondents No. 3 to 6 present in the Court had aborted her child forcibly. No date, time or place was disclosed by her about her alleged abortion which has rendered the prosecution case doubtful.

(iii) The alleged photographs of the appellant taken by respondent No. 2 did not ever see the light of the day as the same were never produced in the Court. The appellant in her cross-examination admitted that father

of respondent No. 2 refused to perform their marriage.

From her above admission, it is evident that respondent No. 2 never made any false promise to marry the appellant rather his father became obstacle in their marriage.

- (iv) It is pertinent to mention here that earlier to the present complaint Ex. PA, the appellant had also filed an application Ex. DE before the police mentioning that she was having friendship with respondent No. 2 and he had exceeded the limits of their friendship. However, no details of exceeding the limits by him were given in the said complaint. Pursuant to the said application, the police had prepared report Ex. DF. According to the same, the appellant had made an attempt to effect compromise with respondent No. 2 and finally refused to accept service of her summons by stating that she was no more interested to pursue her application. The above conduct of the appellant shows that though she initiated criminal action against respondent No. 2, but finally chosen, not to pursue the same.

- (v) The appellant in her statement under Section 164 Cr.P.C. stated that she had conceived twice from the loins of respondent No. 2, contrary to her complaint Ex. PA as well as deposition as PW-1, according to

which she had conceived only once.

(vi) In her statement under Section 164 Cr.P.C. recorded on 21.01.2013 after registration of the present case, the appellant has expressed her desire to marry and start her matrimonial life with respondent No. 2, despite having knowledge of his marriage with some other lady having taken place on 29.10.2012. Her above desire speaks volumes about her intention that there was a consensual affair in between the appellant and respondent No. 2 since last two years prior to registration of present case, because according to PW-4 Dr. Deepika Jindal, the history of sexual assault given by the appellant was since two years and half month.

(vii) The FSL report Ex. PH has completely demolished the case of the prosecution, because according to it, spermatozoa was found on the vaginal swabs of the appellant. On the basis of said report, PW-4 Dr. Deepika Jindal, gave her opinion Ex. PI about possibility of intercourse with the appellant within 3/5 days could not be ruled out. If the aforesaid FSL report Ex. PH is read in conjunction with the MLR of the appellant, in that eventuality, rape was committed upon the appellant during the pendency of her complaint Ex. PA which is not her case, more

particularly, when she herself had admitted that she was not having any access to respondent No. 2 after his engagement on 07.08.2011.

(viii) Admittedly, at the time of submitting final report under Section 173 Cr.P.C., another complaint filed by the mother of respondent No. 2 was pending for enquiry before the police, on the basis of which supplementary challan was presented while deleting the offence under Section 376 IPC. Thus, the medical evidence led by the prosecution in the instant case corroborating the version of the appellant is of no avail. There is no evidence on the file regarding abortion of the appellant. No instrument for termination of pregnancy was got recovered from respondents No. 3 to 6 during investigation.

(ix) The appellant had also admitted to have written letters Ex. D-1 to D-3 to respondent No. 2. A perusal of these letters shows that the appellant had expressed her love and affection towards respondent No. 2 which proves her wishful desire to develop relations with him and even to establish her matrimonial life with him. From the entire prosecution story, the only irresistible conclusion which can be drawn is that it was a consensual affair in between the appellant and respondent No. 2 without any threat or force.

6. Learned counsel for the appellant has not been able to put any dent in any of the above findings of the learned trial Court. We have also gone through the impugned judgment and found no illegality or perversity in the same.

7. In view of the above discussion, the instant appeal being completely devoid of any merit is dismissed.

**(T.P.S. MANN)
JUDGE**

**(RAMENDRA JAIN)
JUDGE**

May 17, 2016

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