

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM No.5842 of 2016 in/and
CRA-D-664-DB-2015
DATE OF DECISION: February 19, 2016

Mithlesh

...Applicant/Appellant

versus

State of Haryana and another

...Respondents

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

Present: Mr. Kanisth Ganeriwala, Advocate for the appellant

RAMENDRA JAIN, J.

By way of the present application under Section 378(3) Cr.P.C., the applicant seeks leave to appeal against the judgment of acquittal dated 30.01.2015 passed by the Additional Sessions Judge, Gurgaon.

Briefly stated, on 21.06.2014, the applicant/prosecutrix lodged a complaint to the police that she had met respondent No.2 at the marriage of her aunt and the latter had called her to Gurgaon on the pretext of getting a job. She further alleged that respondent No.2 was friend of her maternal uncle which was the reason of her showing faith in him.

Respondent No.2 took her to his room on the pretext of getting some important papers, where she was offered cold drink mixed with sedative. She became unconscious. The respondent No.2 ravished her. When she threatened to lodge an FIR, respondent No.2 started threatening that he had prepared a Compact Disk and would show it to her family members and upload the same on internet. Under this threat, respondent No.2 used to blackmail the prosecutrix and ravish her at Gurgaon. The respondent No.2 had also obtained passwords of her facebook and gmail accounts and would use the same to send her obscene material.

On the basis of complaint, a case for commission of offences punishable under Section 376, 328 and 506 IPC and Section 66D of the Information Technology Act, 2000 was registered. Investigation was carried out by SI-Smt.Parmila, who got the prosecutrix medico legally examined and got recorded her statement under Section 164 Cr.P.C. The further investigation was carried out by Inspector/SHO Anil Kumar. Respondent No.2 was arrested on 23.6.2014. During investigation, respondent No.2 got recovered his laptop, pen drive and mobile phone which were taken into police possession and were sent to Forensic Science Laboratory, Chandigarh for retrieving the data. On completion of investigation, respondent No.2 was challaned to face trial. He was charge-sheeted under

Sections 376(2)(n), 328 & 506 IPC and Sections 66D & 66E of the Information & Technology Act, 2000, to which he pleaded not guilty and claimed trial.

The prosecution examined as many as 12 witnesses. Statement of respondent No.2 was recorded under Section 313(1)(b) Cr.P.C. He claimed love affair with the appellant for the last two and a half years and that she used to meet him by making false excuses. Respondent No.2 further claimed that he had proposed the applicant for marriage, but her family members turned down his proposal as they were looking for government servant and Panchayat was also convened in this regard. It was further claimed that he never committed any wrong with the applicant and that the brother of the applicant had scolded her and falsely implicated him in the present case. Respondent No.2, in his defence, examined a forensic expert as DW1.

After discussing the evidence in detail, the trial court found that the prosecution has failed to connect the accused even remotely with the commission of alleged crime and thus, acquitted him of the charges framed against him.

We have heard learned counsel for the applicant/appellant and examined the record of the case.

Learned counsel for the applicant argued that there is sufficient material on record which proves the guilt of

respondent No.2 beyond a reasonable shadow of doubt. It was argued that obscene material was retrieved from the mobile phone and laptop of respondent no.2 which he used to upload on internet. Learned counsel further argued that the trial court has wrongly acquitted respondent No.2 on the assumption that there was consent between the applicant and respondent No.2, but the evidence suggests otherwise. It is, thus, argued that the findings recorded by the trial court are based on conjectures and surmises which deserve to be reversed.

We have given thoughtful consideration to the arguments advanced by learned counsel for the applicant and are of the view that the application/appeal deserves to be dismissed for the reasons to follow.

PW9-SI-Smt. Parmila initially revealed that no details of messages of whatsapp were given along with the complaint. However, subsequently she admitted that some pages containing messages were available on the police file. Another Investigating Officer i.e. PW12-Anil Kumar in his cross-examination, admitted that there was conversation between the applicant and the respondent No.2 in the late night hours. He further deposed that no details of facebook account was provided by the applicant to the police. The applicant failed to show any obscene material which was allegedly sent to her by respondent No.2. The FSL report, Ex.PV proves that none of the

obscene images/video files recovered from the laptop and pendrive of respondent No.2 related to applicant.

It is also important to note that the applicant was a mature female of 24 years. She herself was maintaining physical relations with respondent No.2 and never lodged any complaint for a period of about one and a half years. It does not inspire confidence that she would have suffered harassment to the alleged extent and would keep mum for such a long period without disclosing the alleged tale of her harassment even to her parents. She intimated the alleged sexual harassment to her father just two days before the registration of FIR. Defence taken by respondent No.2 gets corroboration from the statement of PW10 Dr. Sarita Rani, Medical Officer, who medico legally examined the applicant that there were no signs of injury on the person of the applicant. Her hymen was ruptured and old healed.

It also looks improbable that applicant who was pursuing her MBA from Maharishi Dayanand University, Rohtak, would go all the way to Gurgaon to give interview for a job and that too, on the asking of a person, who had only met her once in a marriage.

It is also not the case of the prosecution that applicant comes from a poor family. It has come in evidence that she hails from a well off family. Then what prompted her to

go for a job at Gurgaon while pursuing her MBA studies at Maharishi Dayanand University at Rohtak is beyond comprehension.

Moreover, no evidence of respondent No.2 having misused her facebook and gmail accounts has come on record. Even the report of Forensic Expert (DW1), which is placed on record as Ex.DC, reveals that the conversation and chat record proves the fact that it was a case of love affair between the parties.

In view of the aforesaid discussion, application under Section 378(3) Cr.P.C. is dismissed, leave to appeal against the judgment of acquittal is declined and, consequently, the appeal is dismissed.

(T.P.S.MANN)
JUDGE

(RAMENDRA JAIN)
JUDGE

February 19, 2016
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