

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRA-D-675-DB-2015 (O&M)
DATE OF DECISION: January 21, 2016

Manpreet Kaur

...Appellant

versus

State of Punjab and another

...Respondents

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

Present: Mr. A.S. Gagrha, Advocate for the appellant

RAMENDRA JAIN, J.

The appellant, by way of the present appeal, has challenged the impugned judgment dated 16.12.2014 passed by learned Additional Sessions Judge, SAS Nagar (Mohali), acquitting respondent No.2 under Sections 323 and 376 IPC.

In a nutshell, on 24.4.2014, the appellant made a statement before ASI Paramjit Kaur that she had two children born from her earlier marriage with Gurpreet Singh which ended in divorce. Around seven years ago, she used to go to PGI for treatment of her mother-in-law, where respondent No.2

met her. Both of them started meeting each other. Her husband was working abroad. On return of her husband, she asked respondent No.2 to not to harass her, but he did not stop. Consequently, there used to remain tension in the house of the complainant. Respondent No.2 had been assuring the appellant that he was employed as Home Guard. In case, she would marry him, he would keep her in government accommodation as his wife. However, he failed to keep his aforesaid promise. He also maltreated and gave beatings to her. Respondent No.2 was also maintaining illicit relations. At around 5.15 P.M. on 23.04.2014, respondent No.2 entered the house of the appellant and forcibly took her inside the room and gave her beatings in the presence of her sister Karamjit Kaur. Appellant raised alarm. Respondent No.2 bolted the door from inside and committed sexual intercourse with her against her wishes. He also gave tooth-bites and scratches on her body. On the intervention of her sister, respondent No.2 fled away from the spot.

On the basis of aforesaid statement of the prosecutrix, the FIR was registered. She was medico legally examined. Statements of the relevant witnesses were recorded. Respondent No.2 was arrested. On completion of investigation, final report under Section 173 Cr.P.C. was presented by the Police before the Area Magistrate.

The prosecution in order to prove its case, examined as many as 11 witnesses. Statement of respondent No.2 under Section 313 Cr.P.C. was recorded putting the entire incriminating evidence brought on record against him to which he denied and pleaded his false implication.

Learned counsel for the appellant has argued that the impugned judgment of the trial Court is based on surmises and conjectures. Respondent No.2 has been acquitted without appreciation of evidence. The ocular version has been duly corroborated by medical evidence, but despite that respondent No.2 has been wrongly acquitted placing reliance on the defence version.

After giving our thoughtful consideration to the submissions made by learned counsel for the appellant, we find the present appeal completely devoid of any merits for the reasons to follow.

- (i) From the testimony of appellant, PW2, it is evident that she came in contact with respondent No.2 around seven years back from the date of alleged incident i.e. 23.04.2014. In her cross-examination she has categorically admitted that she used to have sexual intercourse with respondent No.2 freely. Even on 23.04.2014. Respondent No.2 had sexual intercourse with her consent. She had no grudge

against respondent No.2. There was no forceful sexual intercourse with her. She also admitted in her cross-examination that they had sexual intercourse voluntarily with each other's consent.

- (ii) In the statement under Section 164 Cr.P.C., Ex.PW2/B, before the Magistrate, the appellant deposed that she was under depression on account of coming to know by her son about her relations with respondent No.2. Respondent No.2 was on visiting terms for the last many years, meaning thereby, whatever was done by respondent No.2 with the appellant was with her consent.
- (iii) The appellant in her statement categorically admitted that she knew that respondent No.2 was a married person. She even identified the marriage photographs, Ex.DX/5 and Ex.DX/6 of respondent No.2. She also identified her face in the same at points 'A' and 'B'. She admitted that she wanted to marry respondent No.2. Thus, it is proved beyond shadow of doubt that appellant was always a consenting party, whenever respondent No.2 had committed sexual intercourse with her.
- (iv) The defence taken by respondent No.2 in his statement under Section 313 Cr.P.C. seems to be

quite probable and genuine that he had committed sexual intercourse with appellant on 23.04.2014 with her consent. However, problems arose when son of the appellant came all of a sudden and saw them in objectionable position. After that she started quarrelling with respondent No.2 and falsely implicated him in this case.

- (v) Appellant as PW2 has admitted that earlier she had moved a complaint, Ex.DX against one Amit Garg to SSP, SAS Nagar (Mohali), who too also made a complaint Ex.DX/1 against her. She also admitted that finally by submitting her affidavit Ex.DX/2, the matter was comprised with said Amit Garg. Her complaint was also filed by the Economic Offences Wing, Phase-VI, Mohali, as also that of the said Amit Garg after conducting enquiry. She also admitted that she had also filed a complaint against respondent No.2 which was later on withdrawn. The above conduct of the appellant shows that she is habitual of making false complaints and then to enter into compromise.
- (vi) No external or internal mark of injury on the person of prosecutrix was found which also shows that she was a consenting party.

No other point has been urged.

In view of the aforesaid discussion, we find no merit in the appeal. Accordingly, it is dismissed.

CRM No.14555 of 2015:

Since the main appeal has already been dismissed on merits, the application for additional evidence filed by the appellant is also dismissed.

(T.P.S.MANN)
JUDGE

(RAMENDRA JAIN)
JUDGE

January 21, 2016
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