

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRA-D-86-DB of 2015
Date of Decision: 24.02.2016

Jyoti Bala

....Appellant

Versus

State of Punjab and another

...Respondents

**CORAM: HON'BLE MR. JUSTICE T.P.S. MANN
HON'BLE MR. JUSTICE HARI PAL VERMA**

Present: Mr. Pankaj Mehta, Advocate, for the appellant.

T.P.S. Mann, J.

The prosecutrix has filed the present appeal for challenging the judgment dated 12.02.2014 passed by the learned Additional Sessions Judge, Jalandhar, whereby respondent No.2-Ashok Kumar Chuchra (hereinafter referred to as 'the accused'), stood acquitted of the charges under Sections 376 and 420 IPC.

The case of the prosecution, in nut-shell, is that the complainant's father had already expired and her mother was residing at Canada. After taking divorce from her husband, she was residing in village Haripur Khalsa, Tehsil Phillaur, District Jalandhar. In response to the

advertisement issued by her in Punjab Kesari dated 06.03.2011 for her re-marriage, the accused talked to her on phone on 08.03.2011. He met her in Gill Chowk, Ludhiana, to finalise the proposal by telling her that his wife had expired in the year 2009. He further told her that he had three daughters and one son, who were married and residing with their families. She also told the accused about her divorce, who stated that he would come to Ludhiana for taking final decision regarding marriage. A week before 29.03.2011, the accused met her at Ludhiana and it was agreed that the marriage would be performed at Yamuna Nagar on 08.04.2011 and, thereafter, they would take up residence at Naraingarh. On 29.03.2011 at 4.30/5.00 p.m., the accused called her at Ludhiana and after taking her to Krishna Jewellers, gave order for making gold ornaments. He also purchased clothes from the market. After purchasing those articles, the accused told her that he was tired and after taking rest in her house at village Haripur Khalsa, he would return to Haryana in his car. The accused further told her before going to Phillaur that he would reach her house at about 10.30 p.m. After taking rest for some time, when she asked the accused about his departure, he told her that he would go to Haryana only in the morning. During the night of 29.03.2011, the accused made physical relations with her on the pretext that after some days, they

were going to be married. He also told her that under all circumstances, he would solemnize marriage with her. On 30.03.2011 at about 4.00 a.m., he left for Haryana. On 07.04.2011 at about 10.00 p.m., he called her and told that while coming to Phillaur to take her and her son, his car went out of order near Doraha. He reached her house after 3/4 hours. He also told her that though his son was not agreeing for their marriage, yet he would marry her on 08.04.2011. On that pretext, he again made physical relations with her. The accused told her that her son was his son and he would get him admitted at Yamuna Nagar. Believing the accused that he was going to marry her, she got her son relieved from the school on 07.04.2011. On 08.04.2011 at about 10.00 a.m., the accused along with the complainant and her son reached the bus stand at Ludhiana in order to board a bus for Yamuna Nagar and to solemnize marriage with him. The accused after making them stand at the bus stand at Ludhiana, went to find out as to from which counter the bus would go to Yamuna Nagar, but neither did he return nor he made any call. He also did not perform marriage with her. Accordingly, she pleaded for taking action against him.

At the trial of the case, the prosecution examined the prosecutrix as PW1, ASI Sukhwinder Singh as PW2,

Amrik Singh, Superintendent of Police as PW3, Dr. Param Pal Singh as PW4 and Dr. Neelam as PW5.

When examined under Section 313 Cr.P.C., the accused pleaded his innocence and false implication. According to him, he never promised to marry the prosecutrix as she neither produced nor showed him her decree of divorce. She also did not disclose to him that she had been married twice earlier, which marriages ended in divorce and she also did not produce any copies of the judgments. She was compelling him to settle at Ludhiana and insisting to be paid Rs.20,000/- per month as maintenance. She was harassing him. She had filed false complaint. He had never developed physical relations with her. He was unable to meet her demand and as such did not agree for proposal of marriage.

In his defence, the accused examined DW1-Des Raj and DW2-Inderpal.

After hearing learned counsel for the parties and on going through the record, the trial Court came to the conclusion that the prosecution had not been able to prove its case against the accused beyond reasonable shadow of doubt. Accordingly, the trial Court acquitted him of the charges against him.

Having heard learned counsel for the appellant and on going through the impugned judgment of acquittal as well as the trial Court record, this Court finds that though the prosecutrix claimed that the accused had physical relations with her on 29.03.2011, 30.03.2011 and finally on 07.04.2011, but it was only on 21.04.2011 that she submitted the application to the police on the basis of which FIR came to be registered against the accused at Police Station, Phillaur, Jalandhar. No explanation has been brought on record as to why the prosecutrix did not report the matter to the police at the earliest. Further, though the prosecutrix admitted that she was twice married earlier and had taken divorce from her second husband, yet she failed to place on record the decree of divorce qua her second marriage. Even otherwise, it has come on the record that she had received a sum of Rs.1,70,000/- from her second husband. Even regarding the alleged physical relations of the accused with her, the prosecutrix had stated that she was ready to compromise the matter for a monetary consideration of Rs.1,50,000/-. It appears that the prosecutrix is in the habit of extracting money from innocent persons.

It is the case of the prosecutrix that the accused had physical relations with her for the last time on 07.04.2011. However, when she was medico-legally

examined by PW5-Dr. Neelam on 05.11.2011, vaginal swabs were taken and sent for chemical examination. After receipt of the report Ex.PK of the Chemical Examiner, the said Doctor opined that the possibility of contact could not be ruled out since spermatozoa were detected on the vaginal swabs. The life of spermatozoa can at the most be of 3 to 4 days. If the spermatozoa were found even on 05.11.2011, the only inference which can be drawn is that a couple of days before her medico legal examination on 05.11.2011, she had physical relations with someone else.

In view of the above, no fault can be found with the impugned judgment passed by the learned trial Court while acquitting the accused of the charges under Sections 376 and 420 IPC.

The appeal is without any merit and resultantly dismissed.

[T.P.S. MANN]
JUDGE

[HARI PAL VERMA]
JUDGE

24.02.2016
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