

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-A-1552-MA of 2014

DATE OF DECISION: February 2, 2016

Santosh

...Applicant

versus

Sita Ram and others

...Respondents

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

Present: Mr.R.S.Mamli, Advocate for the applicant.

RAMENDRA JAIN, J.

The present application under Section 378(4) CrPC has been moved seeking leave to appeal against the judgment of acquittal dated 4.9.2014 passed by the Additional Sessions Judge (Exclusive Court for Heinous Crimes against Women) Kurukshetra.

The facts, in short, which are necessary are that the applicant filed a complaint under Sections 376,365,342,379, 465,467,468,471,506,452,120-B,34 IPC before the learned

Judicial Magistrate Ist Class, Kurukhsetra on the allegation that respondent No.1 Sita Ram used to pass derogatory remarks to her that her husband was neither a good person nor capable of keeping her happy. Respondent No.1 allured that if she would accompany him, he will keep her happy. The relatives of respondent No.1 also tried to pressurize her to marry him. However, she refused to marry on the ground that she was already married having two children. In the night of 1.9.2011, all the respondents entered into the house of the applicant and kidnapped her. They also stole her gold necklace and ₹9,000/-. They took her to the house of respondent No.4 and respondent No.3, who are none else, but sister and brother-in-law of respondent No.1. The applicant was illegally detained there for fifteen days. During this period, respondent No.1 used to rape her without her consent. He also gave her beatings. The respondents took the applicant to village Rawal Khera where respondent Nos.1 and 3 committed rape upon her under threat to kill her husband and children. They also took her to Hisar and got her signatures on blank papers and further handed over the same to Advocate. The respondents also filed a divorce petition against her husband Satbir Singh, though the applicant never appeared in the Court for filing the same. The husband of the applicant approached the respondents on 3.2.2012 and requested them to release her, whereupon, the respondents again took her signatures as well as of her husband on separate

blank papers, stamp papers and set her free. They threatened them with dire consequences.

On scanning the preliminary evidence, the Area Magistrate ordered for summoning of the respondent Nos.1 to 3 under Sections 376,365,379,506,120-B IPC, whereas, respondent No.4 was ordered to be summoned under Sections 365,379, 506 and 120-B IPC.

On commitment of case to the Court of Sessions, the trial Court on finding a prima facie case, charge sheeted the respondents for the commission of offence under Sections 120-B, 365,379 and 506 IPC. That apart, respondent Nos.1 to 3 were charge sheeted under Section 376 IPC vide order dated 26.2.2014 to which they pleaded not guilty and claimed trial.

The trial Court on appreciation of evidence, acquitted the respondents vide judgment dated 4.9.2014.

Learned counsel for the applicant contended that the impugned judgment is based on surmises and conjectures. It was well proved on the record that respondent No.1 used to pass derogatory remarks to the applicant. He allured that if she would accompany him, he will keep her happy. The relatives of respondent No.1 also tried to pressurize her to marry him. Finally, it was proved beyond any shadow of doubt that on 1.9.2011, all the respondents by entering the house of the applicant kidnapped her and thereafter respondent Nos.1 to 3 raped her against her wishes as and when found an opportunity.

PW1 Gurmail Singh and PW2 complainant Santosh have fully

corroborated the prosecution version, but the trial Court erred in not appreciating their depositions.

After giving our thoughtful consideration to the submissions of learned counsel for the applicant, we find that the present appeal is devoid of any merit for the reasons to follow:

Undisputedly, the applicant is a married woman of 45 years of age having two children. The alleged incident of kidnapping took place on 1.9.2011. After a lapse of more than nine months, the criminal complaint was filed by the applicant on 15.6.2012. The effect of delay in filing the criminal complaint without any plausible explanation made the prosecution story doubtful.

So far as the allegations of kidnapping and rape are concerned, the evidence available on record was scanned by the trial Court. The same for treating the prosecution version to be doubtful are summarised as under:

- (a) The evidence of kidnapping of applicant was found to be not credible on the following points:
 - (i) PW2-Santosh has deposed that when the respondents were kidnapping her, she cried for help and nobody came for her help. Contrary to it, PW1 Gurmail Singh deposed that he had seen four men and one woman while kidnapping the applicant and he tried to save her, but they threatened that they will shoot him and thus,

due to fear he returned and informed about her kidnapping after about half an hour to her husband, who was passing in front of his shop. Hence, the above major contradictions has completely falsified the case of the applicant.

(ii) PW3-Satbir, husband of the applicant, deposed that he did not receive any summon from the Hisar Court regarding divorce proceedings initiated by his wife, whereas, his wife (applicant) as PW2 deposed that on receipt of summons, her husband came to know about her confinement by respondent Sita Ram. This contraction demolishes the case of prosecution.

(b) The evidence of rape of applicant was found to be not credible on the following points:

(i) PW2-Santosh deposed that she was initially raped by respondent No.1 Sita Ram and then by respondent No.3 Mohinder. It is an admission on her part that family members of respondent No.1 Sita Ram were also residing in the same house, but despite that she did not complain to anyone of them. Moreover, her husband did not utter even a single word regarding rape with his wife. In the entirety of aforesaid evidence, the prosecution story is doubtful.

(ii) Documents annexed with the divorce petition, Ex.D1, under Section 13 of the Hindu Marriage Act filed by the applicant indicate that she was residing with respondent No.1 Sita Ram at Hisar with her own free will and the matter was patched up with the intervention of Panchayat. Affidavit Ex.D5 of PW3 Satbir (her husband) evinces that he had compromised with his wife. He took a conscious decision after taking into account the immoral activities of his wife that she was living with respondent No.1 Sita Ram for such a long time, despite the fact she was having full opportunity to leave him. Reaching the conclusion by the trial Court that the long stay of the applicant with respondent No.1 itself shows that she was a consenting and willing party to the acts of the respondents is quite logical and, thus, needs no interference.

(iii) No medical evidence is available to corroborate the allegations of the applicant which also demolishes the case of the prosecution.

In view of the aforesaid discussion, we find no merit in the present application. Accordingly, the prayer seeking leave to appeal against the judgment of acquittal dated 4.9.2014

passed by the Additional Sessions Judge (Exclusive Court for heinous crimes against women) Kurukshetra is declined.

(T.P.S.MANN)
JUDGE

(RAMENDRA JAIN)
JUDGE

February 02,2016
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