

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Criminal Misc. No.A-1704-MA of 2015

Date of Decision : January 15, 2016

State of Haryana

.....Applicant

Versus

Gurdeep and another

....Respondents

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

Present : Mr. Praveen Bhadu, Assistant Advocate General, Haryana.

T.P.S. MANN, J.

The State of Haryana has filed the present application under Section 378(3) of the Code of Criminal Procedure for grant of leave to appeal against the judgment dated 24.3.2015 passed by learned Additional Sessions Judge, Panipat to the extent of acquitting the respondents of the charges under Sections 120-B and 376 read with Section 34 IPC, Sections 376(2)(g) and 506 IPC and Section 6 of the Protection of Children from Sexual Offences Act, 2012.

The case of the prosecution is that accused Sujana Kaur, respondent No.2 herein, lodged an FIR regarding theft against the prosecutrix and when the father of the prosecutrix learnt about the theft case, he asked the prosecutrix to state the true facts. The prosecutrix narrated that Devender, husband of respondent No.2-

Sujan Kaur, used to commit rape on her while Sujan Kaur would guard the place from outside. That thing had been going on for 7/8 months. Accused Manjeet, Gurdeep and Devender had also been raping her in between at the house of Devender. They had threatened her that if she disclosed anything to anyone, she and her family members would be killed. Accused-Devender had taken her to HDFC Bank at Madlauda and gave her an ATM Card. She withdrew money from the account against the said card. Even, accused-Manjeet gave her an ATM Card and she withdrew money against the said card. However, the prosecutrix did not know as to whom the ATM Cards belonged. Devender, Manjeet and Gurdeep had been committing rape upon her by turns, whereas respondent No.2-Sujan Kaur used to guard the place from outside. Out of shame, she did not inform anyone about the incident. Respondent No.2-Sujan Kaur and Manjeet filed false case against her to save Devender. When the police came to her house time and again, her father apprised his wife and son about the facts. Accordingly, on the statement of Prem Singh, father of the prosecutrix, FIR was registered against the respondents, namely, Gurdeep and Sujan Kaur as well as against Manjeet and Devender.

Upon completion of the investigation, final report under Section 173 Cr.P.C. was submitted against Gurdeep whereas names of Sujan Kaur, Devender and Manjeet were put in column No.2. Later on, they were summoned under Section 319 Cr.P.C. as additional accused to face trial alongwith their co-accused Gurdeep.

The trial Court acquitted Gurdeep and Sujan Kaur of the charges against them. However, Devender was convicted under Section 376 IPC and sentenced to undergo imprisonment for seven years. Devender and Manjeet were also convicted under Section 6 of the Protection of Children from Sexual Offences Act, 2012 and sentenced to undergo imprisonment for ten years each. They were also convicted under Section 506 IPC and sentenced to undergo imprisonment for one year each. Substantive sentences of imprisonment were ordered to run concurrently.

Having heard learned State counsel and on going through the impugned judgment to the extent of acquitting Gurdeep and Sujan Kaur of the charges against them, this Court find that it was Sujan Kaur who had submitted complaint Ex.DC against the prosecutrix regarding theft which had taken place in her house on 8.11.2012. Under these circumstances, possibility of false implication of respondent Sujan Kaur at the behest of the prosecutrix and her father Prem Singh cannot be ruled out. Further, according to the prosecution, accused Sujan Kaur had called the prosecutrix to her

house in the month of July, 2012 and when she reached her house, she bolted the door from outside, whereafter, Devender committed rape upon her. Again in the month of September, 2012 accused-Sujan Kaur called her and at that time accused Manjeet and Devender committed rape upon her while Sujan Kaur guarded the door from outside. Once again, in the month of December, 2012 accused-Sujan Kaur called her whereafter, Manjeet and Devender raped her and at that time, Sujan Kaur bolted the door of the room and guarded the same. Undisputedly, accused-Sujan Kaur is the legally wedded wife of accused-Devender and she has two grown up children. The version of the prosecutrix that accused-Sujan Kaur called the prosecutrix in her house on various occasions, on the face of it appears to be highly improbable. No Hindu wife would allow her husband to commit rape upon the prosecutrix and at the same time stand as guard outside the room where the prosecutrix was subjected to rape. Instead, she would restrain her husband and could even go to the extent of lodging a report with the police against her own husband. Under these circumstances, it is difficult to hold that accused-Sujan Kaur had been privy to the crime. On the other hand, the act of filing of complaint Ex.DC by Sujan Kaur against the prosecutrix qua commission of theft by the prosecutrix gave her reason to falsely implicate Sujan Kaur.

As regards respondent No.1-Gurdeep, suffice it to say that while appearing before the trial Court as PW3, the prosecutrix did not

support the prosecution case qua his involvement in the crime.

It may not be out of place to mention here that Prem Singh, father of the prosecutrix, had challenged the acquittal of accused-Sujan Kaur of the charges against her by filing Criminal Appeal No.D-734-DB of 2015, which appeal has already been dismissed by this Court on October 16, 2015.

In view of the above, no case is made out for any interference in the impugned judgment passed by the trial Court to the extent of acquitting respondents Gurdeep and Sujan Kaur of the charges against him.

Resultantly, the application is dismissed. Leave to appeal is declined.

(T.P.S. MANN)
JUDGE

(RAMENDRA JAIN)
JUDGE

January 15, 2016
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