

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-37575-2017 &
CRA-D-932-DB-2015
Decided on : - 18.12.2017

Roshni Devi

... Applicant

Versus

Parbhat Kumar and another

... Respondents

CORAM: HON'BLE MR. JUSTICE T.P.S. MANN
HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present:- Mr. J.B.S. Gill, Advocate
for the applicant.

MAHABIR SINGH SINDHU, J.

Present application under Section 378(3) of the Code of Criminal Procedure (for short 'Cr.P.C') and the appeal have been filed by applicant for challenging the impugned judgment dated 16.03.2015, passed by the learned Additional Sessions Judge, SBS Nagar, vide which, respondent No.1 has been acquitted of the charges under Sections 406, 420 and 376 IPC.

2. Brief facts of the case are that the complainant-applicant made a complaint to the SSP, Nawanshahr against respondent No.1 to the effect that on 10.10.2009, SHO, HC Lakhwinder Singh, Parbhat Kumar-respondent No.1 torn her bounced cheques and his relatives got compromised the matter forcibly and stated that they would return money to her, but on 12.10.2009, they gave a copy of compromise and paid only

₹60,000/- (Rupees sixty thousand) instead of ₹3 lacs. It is further alleged that respondent No.1 used to commit sexual intercourse with the applicant forcibly and he remained with her in her house for about 6 ½ years under a threat and also taken an amount of ₹3 lacs from her. It is further alleged that respondent No.1 brought his wife Saroj Rani on three occasions at her house to take the money and both the husband and wife cheated her and she has thus requested to return her money and for taking the legal action.

3. An inquiry was conducted by S.P (HQ) and on the basis of above statement, an FIR No.110 dated 25.11.2009, under Section 406 IPC at Police Station Balachaur was registered, but later on offences punishable under Sections 376 and 420 IPC were also added.

4. Thereafter, usual investigation was conducted by the police and report under Section 173 Cr.P.C. was submitted against respondent No.2. The case was committed to the Court of Sessions by the learned Illaqa Magistrate, as offence under Section 376 IPC was triable by the Court of Session.

5. In order to prove the case of the prosecution, ten PWs were examined and documentary evidence was also brought on record. Thereafter, the entire incriminating material was put to accused-respondent No.1 under Section 313 Cr.P.C, which, he denied and claimed false implication on the behest of the present applicant.

6. In defence, accused-respondent No.1 examined Constable Parminder Singh (DW1), HC Amrik Singh (DW2), HC Tarsem Lal (DW3), Constable Bahadur Lal (DW4), ASI Raja Singh (DW5) and brought on record documentary evidence also.

Learned trial Court after taking into consideration the material

available on record and hearing both the sides, acquitted respondent No.1 while passing the impugned judgment dated 16.03.2015, as prosecution has failed to prove its case. Hence, the present application for seeking leave to appeal.

8. It is argued by learned counsel for the applicant-complainant that learned trial Court has committed a grave error of law while acquitting respondent No.1 as there is sufficient material available on record to prove the charges levelled against him and as such the present application deserves to be allowed and leave to appeal be granted.

9. Heard learned counsel for the applicant and perused the paper-book.

10. The prosecutrix had appeared as PW1 and repeated the version given in her initial statement. It has come in her testimony that she was 40 years of age at the time of alleged occurrence and was a mature lady having a married daughter, aged about 26 years of age. It has also come in evidence that prosecutrix and respondent No.1 both were living like husband and wife for the last 5½ years and engaged in sexual relationship with each other. Thus, it is a case of obvious consent, otherwise no lady will tolerate a man for five years having physical relations and that too in her own house. Moreover, the prosecutrix never disclosed to anyone that respondent No.1 is having physical relations against her wishes and she was not having even a slight objection what to talk of making any complaint to the police authorities. The prosecutrix was knowing well that respondent No.1 is serving in a police. Even there is no medical evidence to prove that there is any injury suffered by the prosecutrix at the hands of respondent No.1. The prosecutrix has gone to an extent by stating that respondent

No.1 used to stay with her for 15 days in a month in her house and they were spending on house expenditure and she used to even cook the food and washed his clothes. Thus, the allegations of the prosecutrix that the accused had committed an offence of rape against her wishes is not conceivable. It has also come on record that the prosecutrix is in the habit of making false complaints against other persons also and involved them in fictitious cases, which are clearly proved on record by documents (Ex.DA to Ex.DD). There is another document (Ex.DE), which reveals that HC Ranjit Singh had also illicit relations with the prosecutrix. There is one copy of FIR (Ex.DW1/A) against Pargan Singh, Meeto, Jeeto, under Section 420 IPC; FIR No.38 dated 11.04.2014 (Ex.DW1/A) against the prosecutrix; FIR (Ex.DW1/B) by the prosecutrix against Gurdev Singh; complaint (Ex.DJ) by prosecutrix against Constable Nishan Singh to the effect that they had established physical relations with her. Copy of inquiry report (Ex.DN) shows that neighbours had condemned the behaviour and conduct of prosecutrix; complaint (Ex.DT) against Subash Singh, Ravinder Singh and Mehar Singh; FIR (Ex.DY) against prosecutrix; FIR (Ex.DZ) against Pargan Singh, Meeto, Jeeto by the prosecutrix; and complaint (Ex.DZ/1) against Sarpanch Bahadur Singh. All these documents go a long way to substantiate that the prosecutrix is in the habit of levelling false allegations against everyone just to blackmail them. Therefore, the learned trial Court rightly came to a conclusion that offence punishable under Section 376 IPC is not at all proved against respondent No.1.

11. So far as offences punishable under Sections 406 and 420 IPC are concerned, there is no evidence on record to prove the entrustment of the amount as alleged by the prosecutrix in her complaint.

12. Moreover, PW2 Rashhpal Singh, had not supported the prosecution case. Similarly, PW6 Inspector Joginder Singh also admitted in his cross-examination that the prosecutrix had told him that a compromise was to the effect that respondent No.1 shall go on visiting her house as usual and a compromise (Ex.D1) was reduced into writing.

13. DW-8 Jagjit Singh Gill, has admitted in his cross-examination that during inquiry an agreement between prosecutrix and respondent No.1 was entered into at Police Station Balachaur and at that time ₹60,000/- were received by the prosecutrix on 10.10.2009 and there was a settlement of money between the parties and nothing was due.

14. In view of above, this Court does not find any merit in the present application as the offence under Section 376 IPC is very serious offence and learned trial Court has rightly adopted the approach while scrutinizing the material available on record and the same is, accordingly, dismissed. Leave to appeal is declined and appeal is also dismissed.

**(T.P.S. MANN)
JUDGE**

**(MAHABIR SINGH SINDHU)
JUDGE**

December 18, 2017
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Whether speaking/reasoned	:	Yes
Whether Reportable	:	No