

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-A-1762-MA-2016

Decided on: 13.11.2017

Sunita Devi

.....Applicant

vs.

Lalit Kumar and another

....Respondents

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

Present: Mr. Vivek K. Thakur, Advocate,
for the applicant.

MAHABIR SINGH SINDHU, J.

The applicant-prosecutrix has filed the present application under Section 378(3) of the Code of Criminal Procedure, for short 'Cr.P.C.' for seeking leave to appeal against the judgment dated 25.04.2016 vide which respondent No.1-Lalit Kumar has been acquitted by Learned Additional Sessions Judge, Exclusive Court, Amritsar for short 'Trial Court' of the charges under Sections 376 and 506 of Indian Penal Code, for short 'IPC'.

2. The brief facts of the case are that a complaint (Ex.P-1) was made by prosecutrix alleging that she was married with Ashwani Kumar and blessed with a son namely, Vasu Bhardwaj. In the year 2003, her husband started a Saloon at Ranjit Avenue, Amritsar and they were residing on the upper floor of the said Saloon. It is further alleged that her husband died in the year 2011 and thereafter she started the ladies Saloon. In the year 2012, she engaged respondent No.1 on monthly salary of Rs.4,000/- to assist her for running the Saloon for gents section and she was working for ladies Saloon on upper floor. About one and a half year, prior to the date of

occurrence, when she was alone in her house at Chand Avenue, then Lalit Kumar-respondent No.1 forcibly established physical relations with her without there being any consent and threatened to kill her alongwith her child, if she disclosed the same to anyone. Thus, respondent No.1 forcibly kept on maintaining the physical relations without her consent and also got prepared a blue film for blackmailing and extracting money. One day, she narrated the entire episode to her mother Sada Devi and ultimately the complaint was made to the police.

On the basis of the above allegations, an FIR No.160 dated 27.09.2015 under Sections 376/506 IPC was registered at Police Station, Sadar, Amritsar which was investigated by the police and report under Section 173 Cr.P.C. was submitted. Thereafter, the case was committed to the Ld. Sessions Court and prima facie it was found that offences under Sections 376 and 506 IPC were made out against respondent No.1 and, thus, he was charge sheeted under the said offences, but he denied the charges and claimed trial.

3. In order to prove the prosecution case, ten witnesses were examined and other documentary evidence was brought on record and entire incriminating material was put to respondent No.1 under Section 313 Cr.P.C., but he denied the same being false and claimed innocence. The accused/respondent No.1 did not lead any evidence in his defence.

4. Learned Trial Court after taking into consideration the entire material available on record, acquitted respondent No.1 of the charges by granting him benefit of doubt.

5. Hence, the present application for leave to appeal.

6. Learned counsel for the applicant has argued that the impugned judgment is based on surmises and conjectures and Ld. Trial Court has not

taken into consideration the material available on record which clearly proved the charges against respondent No.1 and thus, the acquittal is not legally sustainable.

7. Heard Ld. counsel for the applicant and perused the paper book, but this Court does not find any merit in the submissions.

PW-2 Prosecutrix, reiterated the version mentioned in the complaint and referred above in para No. 2. She further stated that respondent No.1 was performing his duties properly and gained the trust of the prosecutrix. She shifted her residence to Chand Avenue and respondent No.1 started coming to her house and used to behave in a very cordial manner with her mother and brothers also. She further deposed that he started staying in her house in the presence of her mother and other family members on the pretext that he got late from Saloon and it was not safe for him to go on the motorcycle to the area where he was residing and usually there were incidents of robbery. She further deposed that it was in the winter days of the year 2014, when he showed her a video clip in which she was taking bath and was shocked to know as to how he had prepared the video clip in her house. Respondent No.1 threatened to put the video on the website as well as to send the same to her brothers. Thus, respondent No.1 started blackmailing her even after taking money and also gave beatings and made physical relations forcibly.

She has also deposed that respondent No.1 was torturing her mentally as well as physically and in the month of September 2015, when her mother and brother came to Amritsar from Delhi and she was very much disturbed and then the entire episode was narrated to her mother and that resulted for prosecution of respondent No.1.

8. PW-1, Sudha Devi mother of the prosecutrix deposed that her daughter disclosed her the entire version and she deposed in the same terms as PW-2.

9. PW-6 Nisha Bhagat, Medical Officer conducted medico-legal examination of prosecutrix on 28.09.2015 and she found no mark(s) of external injury on her body and also produced MLR (Ex.P-6/A). However, she opined that as per clinical examination, possibility of sexual intercourse cannot be ruled out.

There is nothing on record to prove the alleged video clip prepared by respondent No.1. Neither such video clip was ever taken into possession during investigation; nor produced in the trial Court. Therefore, there is no question of any blackmailing by respondent No.1 and the allegation of prosecutrix is without any substance. As per MLR (Ex.P-6/A), there is no injury on the body of the prosecutrix. Still further, there is no evidence of any forcible physical relations during one and a half year. Prosecutrix did not report the matter to anyone including the police despite the fact that she is not a household lady, rather running a Saloon.

As per the allegations of the prosecutrix herself, respondent No.1 had been maintaining the physical relations with her for the last one and a half year. Although the threat is attributed to respondent No.1, but nobody stopped her from reporting the matter to the police and the explanation for delay in initiating the criminal case on account of social inhibition is not satisfactory. She was a mature lady of more than 35 years of age having a child of about 12 years of age and respondent No.1 is 10 years younger to her. Thus, it has been rightly observed by Ld. Trial Court that there are lot of people, who visit her Saloon and she did not disclose to anyone, rather respondent No.1 was continuously working with her during this period and assisting her in running the Saloon.

10. In view of the facts and circumstances of the present case, it is unbelievable that in such a scenario, respondent No.1 would have been allowed to work as an employee, who is physically exploiting the prosecutrix; rather the physical relations, if any, were consensual.

Ld. Trial Court rightly observed that the statement of prosecutrix is not reliable and trust worthy and this Court is in fully agreement of the same.

11. Even before this Court, Ld. counsel for the applicant did not dispute the fact that there is no such video clip or CD on record as alleged by the prosecutrix.

12. In view of the above, no ground is made out to grant leave to file the appeal against acquittal of the accused. Consequently, the application under Section 378(3) Cr.P.C. for leave to file the appeal against the judgment of acquittal dated 25.04.2016 passed by Ld. Trial Court is hereby dismissed. Leave to appeal is declined.

(T.P.S. MANN)
JUDGE

(MAHABIR SINGH SINDHU)
JUDGE

13.11.2017

Dinesh

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No