

In the High Court of Punjab & Haryana at Chandigarh.

CRM-A-2053-MA-2016
Date of decision: 11.09.2017

Geeta Applicant.
vs.
State of Haryana and another Respondents.

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

Present: Mr. Deepak Girotra, Advocate for the applicant.

MAHABIR SINGH SINDHU, J.

Applicant-Geeta has filed the present application under Section 378 of the Code of Criminal Procedure, 1973 (for short "Cr.P.C.") for grant of leave to file an appeal against the impugned judgment dated 04.10.2016 passed by learned Additional Sessions Judge, Rohtak vide which respondent No.2-Bhuramal Ujania has been acquitted of the charge under Section 376 of Indian Penal Code (for short "IPC").

Brief facts of the case are that an FIR No. 317 dated 07.08.2014 was registered on the basis of a complaint made by applicant. After registration of FIR, the matter was investigated by the police and on completion of investigation, report under Section 173 Cr.P.C. was submitted against respondent No.2 in the Court of learned Illaqa Magistrate. Thereafter, vide order dated 12.09.2014, the case was committed to the Court of Sessions. Learned trial Court, vide order dated 24.02.2015 framed charge under Section 376 IPC to which respondent No.2 did not plead guilty and claimed trial.

Prosecution examined as many as 14 witnesses.

On the other hand, respondent No.2 did not lead any evidence except his statement under Section 313 Cr.P.C., wherein he pleaded his

innocence and false implication at the instance of the applicant.

Learned trial Court, after considering the entire material on record, came to the conclusion that charge framed against respondent No.2 was not proved beyond reasonable doubt and as such, acquitted him while passing the impugned judgment.

Hence the present application for leave to file appeal.

It is argued by learned counsel for the applicant that there is overwhelming evidence available on record in view of the fact that the applicant was totally helpless after the death of her husband. Respondent No.2 has not only committed the offence of rape rather he has prepared the Compact Disk (C.D.) to blackmail her. It is further argued that respondent No.2 is falsely claiming the recovery of money against the applicant.

Heard learned counsel for the applicant and perused the complete paper book.

Applicant-prosecutrix was examined as PW7 and she deposed that her husband was employed in Border Security Force (B.S.F.) and they were having two children i.e. one son and one daughter. Respondent No.2 was residing in their neighborhood and was in visiting terms with her husband. It is further stated that after the death of her husband, the accused used to come to her on the pretext of taking care of her children. Even, he gave an assurance to arrange a house for her and her children and to marry her. Believing the assurance of respondent No.2, she agreed to his proposal for physical relations and did sexual intercourse at Sampla. It is further stated that her brother-in-law-Satya Parkash (PW6) brought her as well as her children at their native place i.e. Sampla, District Rohtak but still respondent No.2 continued to visit Sampla and gave assurances to the

applicant to marry her and did sexual intercourse at Sampla. Consequently, respondent No.2 prepared her video film and recorded some conversation also. It is further stated that her signatures were obtained on blank stamp papers on the pretext that they would be engaged with each other. It is also stated that respondent No.2 started blackmailing her on the basis of that video film. Resultantly, the applicant reported the matter to the police. Respondent No.2 threatened the applicant and demanded money. It is also stated that she (applicant) gave Rs.50,000/- in three installments to respondent No.2, but he was not satisfied and again he demanded money from her, but she did not give that. Later on, respondent No.2 filed a case against the applicant in Jaipur Court. Thereafter, the applicant filed a complaint to the police. She also made a complaint to National Women Commission, Delhi as well as Haryana State Commission, Panchkula and higher police officers but no action was taken. Ultimately, on the basis of complaint (Ex.P42) dated 24.07.2014, the present case was registered and thereafter statement of applicant (Ex.P30) under Section 164 Cr.P.C. was recorded by the learned Judicial Magistrate 1st Class, Rohtak.

Dr. Sangeeta Arora (PW5), Medical Officer, General Hospital, Rohtak, deposed that on 08.08.2014, she medico-legally examined applicant and copy of MLR is on record as Ex. P8. FSL report is also exhibited as Ex. P6.

As per FSL report (Ex.P6) and medical examination, Dr. Sangeeta Arora (PW5) opined that “*possibility of sexual intercourse with prosecutrix could not be ruled out*” and the cross-examination of Dr. Sangeeta Arora (PW5) reads as under”-

“*At the time of recording history of the case, the patient herself told that Bhuramal had sexual assault with her*

several times with consent. I used word "assault" by mistake whereas the patient had told that above said person had committed sexual intercourse with her several times with her consent. At the time of her examination, the patient was having normal behavior. As per FSL report Ex. P6, no human semen was detected on the clothes of patient."

Dr. Sangeeta Arora (PW5) had also deposed in her cross-examination that applicant-prosecutrix was a consenting party.

Satya Parkash (PW6) was the brother-in-law of the applicant and during his cross-examination, he stated that *"I had seen on 23.10.2010 at Sampla that accused was doing wrong with my Bhabi. An altercation took place between me and the accused. I did not make any complaint to police regarding any altercation between me and the accused"*

Strangely, despite the aforesaid incident as stated by Satya Parkash (PW6) in his cross-examination, he did not prefer to make any complaint to the police regarding the occurrence; rather he remained silent. Even the complainant had lodged the present FIR only on 07.08.2014, i.e. after a period of almost 4 years of the alleged occurrence and she continued to have physical relations with respondent No.2 without any objection.

It is an admitted fact that respondent No.2 has filed a suit for recovery against applicant prior to the registration of the FIR and in which the applicant-prosecutrix has joined the proceedings. This fact had also been admitted by the applicant in her cross-examination that suit for recovery was pending against her at Jaipur Court at the instance of respondent No.2.

The learned trial Court had observed that the applicant-prosecutrix was well aware of the fact that respondent No.2 was a married man having children and there was nothing to show that respondent No.2

had obtained divorce from his wife. The applicant-prosecutrix also admitted the fact that she was on visiting terms with respondent No.2 at Jaipur and also attended the marriage of his daughter. Thus, the contention of the applicant that she became consenting party on the pretext of proposal of marriage by respondent No.2 is inconceivable and respondent No.2 cannot be blamed for the same. It has come on record that applicant-prosecutrix was a well-matured lady of approximately 40 years of age with two grown-up children and she was a consenting party for her physical relations with respondent No.2.

In view of the above, there is no merit in the application granting special leave to appeal. Therefore, the application stands dismissed and leave to appeal is declined.

(T.P.S. MANN)
JUDGE

(MAHABIR SINGH SINDHU)
JUDGE

11.09.2017.

smriti

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No