

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Criminal Misc. No.A-1398-MA of 2017

Date of Decision : September 08, 2017

Amita Sandhu

.....Applicant

Versus

State of Punjab and others

....Respondents

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

Present : Mr. Aman Dhir, Advocate
for the applicant.

T.P.S. MANN, J.

The prosecutrix has filed the present application under Section 378 of the Code of Criminal Procedure for challenging the judgment dated 12.1.2017 passed by learned Additional Sessions Judge, Jalandhar, whereby accused/respondents No.2 to 6 stood acquitted of the charges under Sections 366, 376, 376-D, 120-B IPC.

According to the prosecution, the applicant had passed BCA 1st Year exam and used to meet Sahil accused on the way to college. Later on, she started going to an academy for doing IELTS course where Sahil used to come and lure her to marry him. On 19.7.2012, he took her to Allahabad, where he physically tortured her and also obtained her signatures on some blank papers. On 19.7.2012, she had also taken cash worth Rs.50,000/- and jewellery weighing 60 grams

with her on the asking of Sahil. Sahil took her to different places. In the month of October, she, alongwith Sahil, started staying in the house situated at Topkhana Cantonment alongwith Prem Lata, mother of Sahil, Sagar, brother of Sahil, Pooja, sister-in-law of Sahil and Shilpa, sister of Sahil. The behaviour of Sahil and his family members towards her was not good. Whenever she talked about her marriage, Sahil would put off the matter. His family members started demanding money from her and when she refused, they would beat her. She was confined in a room and harassed for clothes and food. According to the prosecutrix, Shilpa and Pooja were already doing the work of prostitution and they started compelling her to join them in that work. When she denied, all the family members of Sahil started beating her. Sahil would have sexually intercourse with her without her consent. On 26.3.2013 at about 10.30 p.m., Sahil and his brother Sagar, while under intoxication came into her room, where Sahil raped her in the presence of his brother Sagar, who also prepared a video film, besides covering her face so that she could not cry. Sagar had also raped her and confined in a room without clothes. She remained without food uptill 30.3.2013. Again, Pooja and Shilpa asked her to do the work of prostitution or else they would force her to do so, besides displaying her video on the television. She informed her parents on telephone and requested them to rescue her from the accused.

After hearing learned counsel for the applicant and on going through the impugned judgment, this Court finds that it was the prosecutrix, who herself wanted to marry Sahil accused and for that

reason, she accompanied him to Allahabad with her own free will and developed physical relations with her own consent. As regards the allegations that she was raped by Sahil and Sagar accused, besides Sagar accused preparing her video clip, this Court finds that the said allegations does not inspire confidence. She admitted that where Sahil accused kept her it was a two room single storey house, which was inhabited by four more persons, i.e. the family members of Sahil accused. There could be no question of the prosecutrix being confined in one room in a naked condition and, that too, for five days. Even otherwise, it would be hard to believe that anyone could rape a woman when his mother, brother, sister and brother's wife were in the adjoining room during night time. Even the alleged video clip has not been produced by the prosecution to prove the incident of confinement for five days at Allahabad.

PW3 Harbilas, grand-father of the prosecutrix testified that a complaint was lodged by them on 19.7.2012 when the prosecutrix was found missing from the house. Another complaint was filed with the police after receiving phone call from the prosecutrix. As a result, the prosecutrix was got released by the police. However, neither the complaint dated 19.7.2012 nor dated 15.4.2013 has been produced on the record. Even no FIR or complaint had been lodged by the family members of the prosecutrix, who had got recovered or seen their daughter after about nine months. Though the prosecutrix was recovered by the police on 15.4.2013 yet it was only on 6.5.2013 that the matter was reported to the police. The delay of more than twenty

days in submitting the complaint before the police after the recovery of the prosecutrix on 15.4.2013 remains unexplained. The stand of the prosecutrix that she was under depression and stress and, therefore, could not report the matter to the police does not hold any water as her parents could have reported the matter soon after 15.4.2013 but they did not do so.

According to the prosecution, Sahil accused had abducted the prosecutrix on a false promise to marry her or commit sexual intercourse with her against her consent. She was taken by Sahil forcibly to Allahabad in a train. However, she deposed that she had travelled with Sahil accused in the general compartment of the train and inspite of there being lot of people around, she did not raise any alarm in order to invite attention of the co-passengers, ticket-collector or the police during the entire journey, which was of more than twenty four hours. It is also not understandable as to why she collected all her certificates, her passport and cash amount of Rs.50,000/-, besides gold ornaments from her house and, thereafter, left in the company of Sahil accused. She also testified that during her stay at Allahabad for about three months, she was never confined, maltreated or restrained by Sahil accused. Rather, the behaviour of Sahil accused remained good during their stay at Allahabad. She had also not moved any complaint to any authority though nothing prevented her from approaching the police or informing her parents or any neighbour. Inspite of that, she chose to stay with Sahil accused. She is major and well educated and

remained with the accused for a long time but made no effort to raise any protest or try to rescue herself.

In view of the above, no fault can be found with the learned trial Court in acquitting the accused/respondents of the charges against them.

The application is without any merit and, therefore dismissed. Leave to appeal is declined.

(T.P.S. MANN)
JUDGE

(MAHABIR SINGH SINDHU)
JUDGE

September 08, 2017
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Whether speaking/reasoned : YES/NO

Whether reportable : YES/NO