

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Criminal Misc. A-744-MA of 2017

Date of Decision : October 06, 2017

Hardeep Kaur

....Applicant

VERSUS

State of Punjab and another

....Respondents

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

HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present : Mr. Rishav Jain, Advocate
for the applicant.

T.P.S. MANN, J.

The prosecutrix 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 3.8.2016 passed by the learned Sessions Judge, Sangrur whereby the accused, respondent No.2 herein, stood acquitted of the charge under Section 376(2)(n) IPC.

According to the prosecution, on 18.11.2012, when she was still unmarried, the accused who used to work as a driver on the truck of her father came to her house and offered her juice. Her parents were not in the house and had gone out. After taking juice, she felt dizzy and became unconscious. When she regained consciousness, she noticed that she was in the tralla which was being driven by the accused. She raised hue and cry. She also asked the accused as to where they were going but he did not reply. He took her to an unknown place and committed rape upon her for two

days. When she resisted the act of the accused, he gave her severe beatings, besides threatening to kill her. After two days, the accused dropped her at her house. He threatened her that if she disclosed about the incident to anyone he would kill her and her family members. On reaching her house, she apprised about the incident to her family members. However, her family members kept mum as they thought that in case she lodged FIR against the accused, the honour of their family would be affected. The prosecutrix, thereafter, got married. After some time of her marriage, the accused forcibly entered her matrimonial home. Her husband was not present there. The accused asked her for physical relations and in case she did not agree, he threatened to disclose about the incident of November, 2012 to her husband. He also threatened to kill her. When her husband returned home, the prosecutrix disclosed him all the facts. Her husband decided to take action against the accused. However, when the police did not take any action, the prosecutrix called help line No. 181 on 15.5.2014. On the following day, she alongwith her husband were called to Police Station, Bhawanigarh. However, the police connived with the accused and forced her to compromise the matter with him. The application submitted by the prosecutrix was, however, enquired into by the police. It surfaced during the enquiry that the accused and father of the prosecutrix jointly owned a truck which used to be driven by the accused. Due to partnership in the business, the accused used to come to the house of the prosecutrix where he developed physical relations with her consent. The

prosecutrix wanted to marry him but the accused refused to marry her as he already stood married. After some time, the truck was sold and the accused started working somewhere else. On 17.11.2012, the prosecutrix sent a message to the accused to take her alongwith him or else she would commit suicide. On 18.11.2012, the accused, out of fear, came to the house of the prosecutrix and took her alongwith him. He left her at the house of one Satnam Singh and his wife at Kartarpur Basti, Sangrur. He himself went to Pathankot with the truck. Wife of Satnam Singh counselled the prosecutrix and sent her back to her house. On 20.11.2012, the father of the prosecutrix took her alongwith him. It was also revealed during the enquiry that on the refusal of the accused to marry the prosecutrix, she demanded Rs.50,000/- and due to which, she lodged complaint against him.

It is also the case of the prosecution, that after obtaining the opinion of Deputy Attorney (Legal), Sangrur on the said enquiry report, prima facie offence under Section 376 IPC was found to have been made out. The prosecutrix was, thereafter, medically examined and produced before the Ilaqa Magistrate where her statement was recorded under Section 164 Cr.P.C. Upon completion of investigation and presentation of challan followed by commitment of the case, learned trial Court framed charge against the accused under Section 376(2)(n) IPC, to which he pleaded not guilty and claimed trial.

After hearing the arguments and on going through the

record, learned trial Court came to the conclusion that the prosecution had failed to bring home the guilt of the accused and, accordingly, acquitted him of the charge.

In order to prove the guilt of the accused, the prosecutrix, while appearing as PW1 deposed about the accused coming to her house and offering her a glass of juice mixed with some intoxicating substance and, accordingly, after consuming the same, she became unconscious. When she regained consciousness, she found herself in truck being driven by the accused. The accused, thereafter, committed forcible sexual intercourse with her on 18.11.2012 and she was, thereafter, left in front of her house at Sunam on 20.11.2012. In her cross-examination, she admitted that she was residing in the house with her parents, two sisters, two brothers and maternal uncle Satnam Singh. As there was seven family members in the house of the prosecutrix it was well nigh impossible for the accused to take her away under the influence of some intoxicant. Further, the accused was a married man having two children. At the same time, the prosecutrix was around 21/22 years of age and, thus, major at the time of the alleged occurrence. The incident in question was said to have taken place on 18.11.2012 and she returned home on 20.11.2012. More than 1½ years later the prosecutrix filed complaint with the police against the accused. In her statement Ex.PJ made before the Ilaqa Magistrate, she claimed that her parents had effected compromise with the accused.

Even if her parents had entered into a compromise, she could have

lodged a report with the police on her own. The prosecutrix was, thereafter, got married and a month and half later, she disclosed about the incident to her husband. However, even her husband did not lodge any report against the accused. He also did not step into the witness box to testify about the prosecutrix narrating him the incident of commission of rape by the accused upon her.

PW9 Sukhdev Singh Virk, SP (Headquarters), Patiala deposed about conducting enquiry regarding the complaint submitted by the prosecutrix. As per the enquiry, the prosecutrix was having an affair with the accused and she maintained physical relations with him. She also wanted to marry the accused but being already married, he refused to concede to her proposal.

On view of the above, no fault can be found with the impugned judgment passed by the learned trial Court whereby the accused/respondent No.2 stood acquitted of the charge under Section 376(2)(n) IPC.

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

(T.P.S. MANN)
JUDGE

(MAHABIR SINGH SINDHU)
JUDGE

October 06, 2017
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Whether speaking/reasoned : YES / NO

Whether reportable : YES / NO