

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Criminal Misc. No.A-982-MA of 2017

Date of Decision : August 24, 2017

Savita Rani @ Laddo

....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. Sumer Singh Brar, 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, 1973 seeking grant of leave to appeal against the judgment dated 17.12.2016 passed by Additional Sessions Judge, Ludhiana whereby the accused, namely, Sunny Baba alias Ashwani Kumar, respondent No.2 herein, stood acquitted of the charges under Sections 376(2)(n) and 417 IPC.

According to the prosecution, the prosecutrix had three children, i.e. two sons and one daughter. The accused, namely, Sunny Baba alias Ashwani Kumar used to visit her house. Her husband would object to the visit of the accused to his house. On that account, there remained dispute between her and her husband. Ultimately, her husband divorced her. Thereafter, the accused promised to marry her and started

residing in her house. Whenever she asked about her marriage, he used to put off the matter saying that he did not have any money. He stated that he would sit on the seat of Peer Baba and perform marriage with her whenever he would have sufficient money. For the last four years he had sexual relations with her. He used to commit sexual intercourse with her on the pretext of marriage. On 17.1.2014, someone told her that the accused was getting married. She enquired from the accused that he had promised to marry her and how could he marry someone else. The accused disconnected the phone and stopped coming to her house. She went to his house in his search but he was not found present there. Then she learnt that he was getting married on 27.1.2014 at Nalagarh and the Barat was proceeding. On that day, she, alongwith her sister-in-law/Bhabhi Ashu and Banti, son of her sister-in-law, besides Kamal and Sonu reached Nalagarh and came to know about the accused performing marriage with a girl belonging to village Khera at Nalagarh. Many villagers had gathered in the village and were awaiting for the arrival of the Barat. On noticing the preparation of marriage, she went to Police Station, Nalagarh to lodge report against the accused who on the pretext of marrying her, had lived with her for a period of four years and had committed rape upon her. Accordingly, she sought legal action against him.

This Court has heard learned counsel for the applicant and also perused the impugned judgment of acquittal.

It was the case of the prosecution that the accused was a friend of her husband and used to visit her house. He also used to instigate her husband against her and, accordingly, her husband would quarrel with her even on small issues. She had obtained a Panchayati

divorce. Thereafter, the accused started visiting her house and established physical relations with her on the pretext of marrying her. However, in her cross-examination, she stated that she had married Aslam Khan about 16 years back and prior to that marriage, she got married to Varinder Kumar. At that time, she was 16 years of age. She further deposed that there was no document regarding the divorce from her previous husband Varinder Kumar. She also stated that before her marriage with Varinder Kumar, she stood married to Aslam Khan, Rajan Kumar, Afzal Khan and Eid Mohammad. She also admitted that she has 3 children. Apparently, she had not obtained divorce from her previous husband/husbands. From the evidence it could be inferred that she belonged to the age group of 35 and 40 years, whereas the accused was 28 years old. Therefore, there could not have been any inducement on the part of the accused to have physical relations with her on assurance of marriage.

As per the prosecution, the prosecutrix, alongwith her Bhabhi Ashu and her son Banti, besides Kamal and Sonu left for Nalagarh to restrain the accused from performing marriage with another girl. None of them was either joined in the investigation or examined in the Court. PW4 Preeto, PW5 Nachhatar Singh and PW9 Balbir Singh also did not support the prosecution case and were declared hostile. PW7 Laddi deposed in his cross-examination that the accused issued post-dated cheque against loan obtained by him from Laddi Finance Company of which he was one of the partners. He also deposed that whenever the accused and the prosecutrix visited him, they represented themselves as husband and wife. In her cross-examination, the prosecutrix stated that she owned a Wagon-R car which she had sold in order to purchase an Alto car. She also owned a

Nano car, besides having Activa and a motorcycle. He also stated that she did not know how to drive two wheeler as well as the Activa or the car nor she held any driving licence. Plea taken by the accused that he was employed as a driver by the prosecutrix finds support from the aforesaid version of the prosecutrix as well as from the testimonies of PW11 Suman Kumari, who testified in her cross-examination that the prosecutrix did not know driving and the accused used to drive the vehicle of the prosecutrix. Under these circumstances, the false implication of the accused by the prosecutrix cannot be ruled out.

This Court finds that the evidence led by the prosecution has been rightly appreciated by the learned trial Court to come to the conclusion that accused has been falsely implicated in the case. No case is made out for taking a view different than the one taken by the learned trial Court.

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

(T.P.S. MANN)
JUDGE

August 24, 2017
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(MAHABIR SINGH SINDHU)
JUDGE

Whether speaking/reasoned : YES / NO

Whether reportable : YES / NO