

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-26587-2016 in/and

CRA-D-1659-DB-2014

Decided on : 13.03.2018

Baljeet Kaur

..... Applicant

VERSUS

State of Haryana and another

..... Respondents

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

Present: Mr. Jagjit Singh, Advocate, for the applicant.

 Mr. Praveen Bhadu, Asstt. A.G., Haryana, for respondent No.1.

 Mr. Gurvinder S. Sidhu, Advocate, for respondent No.2.

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DEEPAK SIBAL, J.

Through the instant application filed under Section 378(4) of the Code of Criminal Procedure, 1973 (for short the “Cr.P.C”) the applicant seeks grant of special leave to appeal against judgment dated 05.09.2014, passed by the Additional Sessions Judge, Sirsa (for short “the trial Court”) through which respondent No.2 has been acquitted of the charge framed against him under Section 376(2)(a) of the Indian Penal Code, 1860 (for short the “IPC”).

Briefly stated, the case of the prosecution is that the prosecutrix who had already done her Master in Arts in the year 2009 and was pursuing a one year diploma course in computers had met respondent No.2, who after informing her that he was a Constable in the Haryana Police, developed friendly relations with her. Thereafter he proposed to marry her and relying

on such proposal, on being asked by respondent No.2 the prosecutrix spent several nights with him. Respondent No.2 continued to rape her at different places including a hotel in Chandigarh. Respondent No.2 also met the relatives of the prosecutrix including her mother where modalities of the marriage of the prosecutrix with respondent No.2 were discussed. However, the prosecutrix came to know that on 04.02.2013 respondent No.2 was getting marry to someone else. When she confronted him with such information that he is going to marry someone else and not her, respondent No.2 again assured to marry only her. In spite of the assurance, respondent No.2 married someone else, leading to the filing of a complaint by the prosecutrix to take action against respondent No.2 for having committing fraud upon her as also raping her after giving her assurance of marriage. On the basis of the prosecutrix's complaint a formal FIR was lodged the investigation of which found respondent No.2 guilty of offences under Section 376(2)(a) IPC. Accordingly, a report under Section 173 Cr.P.C. was filed before the competent Court and on finding a prima facie case against him, respondent No.2 was charged for the offence under Section 376 IPC to which he pleaded not guilty and therefore put on trial.

The trial Court after sifting the evidence which had come on record acquitted the respondent of the charges levelled against him as the trial Court was of the opinion that the prosecution had failed to prove its case to bring home the guilt of the respondent. It is such acquittal of the respondent which is the subject matter of challenge in the present proceedings.

Learned counsel for the applicant, while reiterating the

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submissions made on behalf of the prosecution before the trial Court, submitted that the trial Court erred in acquitting respondent No.2 of the charges levelled against him as there was overwhelming evidence on the record to prove his guilt and therefore, there was no reason in fact or in law with the trial Court to acquit him.

The submissions made by learned State counsel have been considered but the same do not warrant a favourable consideration.

The prosecutrix is an educated mature lady who admitted to have a love affair with respondent No.2 from the year 2009 till 2012 i.e. for a period of about four years. While deposing before the trial Court it was admitted by the prosecutrix that once a month she used to stay the night with respondent No.2 and such fact was not disclosed by her to her family members till the year 2012. For spending the night with respondent No.2 she used to tell her family members that she was staying with a female friend of her. It was further stated by the prosecutrix herself that though she belong to Sirsa she had come with respondent No.2 all the way to Chandigarh and stayed with him in a hotel.

In view of the above facts, it is not difficult for us to conclude that the prosecutrix entered into sexual relations with respondent No.2 with open eyes very well knowing the consequences thereof. Only after respondent No.2 decided to marry someone else has the prosecutrix chosen to initiate the present proceedings complaining of rape upon her by respondent No.2.

No conclusive evidence is found on the record to prove that respondent No.2 never intended to marry the prosecutrix.

It is further not come on record as to why after having relations with respondent No.2 for about four years respondent No.2 finally decided not to marry the prosecutrix but someone else.

Further, no conclusive evidence is found on the record which would lead us to the irresistible conclusion that promise, if any, made by respondent No.2 to marry the prosecutrix was made only with the intention of satisfying his sexual lust. As observed earlier, the prosecutrix being an educated mature woman very well knew the possibility that respondent No.2 may back out of his initial intentions shown by him to marry her after a prolong affair. She also would have known that all love affairs do not result in marriages. Even if talks of marriage were on between the parties, it would not bring the act of respondent No.2 within the definition of rape particularly in view of the observations made above with regard to the consent of the prosecutrix of entering into sexual relations with him. She took a calculated risk which unfortunately did not bear a fruit which she expected.

In view of the above, the present application is found devoid of any merit and therefore dismissed.

Leave to appeal is declined.

[T.P.S.MANN]
JUDGE

[DEEPAK SIBAL]
JUDGE

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