

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM A-1435-MA of 2018

Date of Decision : October 06, 2018

State of Haryana

.....Applicant

VERSUS

Gurdeep Singh

.....Respondent

**CORAM: HON'BLE MR. JUSTICE T.P.S. MANN
HON'BLE MR. JUSTICE FATEH DEEP SINGH**

Present : Mr. Praveen Bhadu, Asstt. A.G., Haryana.

T.P.S. MANN, J.

The State has filed the present application under Section 378(3) of the Code of Criminal Procedure, 1973 for grant of leave to appeal against the acquittal of the accused/respondent of the charge under Sections 376, 354-D, 506 and 384 of the Indian Penal Code, 1860 vide judgment dated 15.11.2017 passed by the learned Additional Sessions Judge (Exclusive Court for Heinous Crimes Against Women), Kurukshetra.

According to the prosecution, the prosecutrix had submitted written complaint against the accused/respondent and his parents Balkar Singh and Manjeet Kaur regarding the commission of rape, blackmailing and extortion. It was stated

that the accused/respondent had started talking with her on her mobile phone from his own mobile. He had recorded the conversation which was vulgar. He started blackmailing her and also threatening to inform her husband in case she did not act as per his wishes. It continued for about two months. One day, the accused/respondent asked her to meet him on the terrace of her house. When she went there, he committed rape upon her. The prosecutrix, thereafter, switched off her mobile phone but Manjeet Kaur, mother of Gurdeep Singh came to her house and told her that her son wanted to talk to her. Manjeet Kaur gave an old mobile phone to the prosecutrix for talking with the accused/respondent. The accused/respondent also took a gold chain weighing 15 grams from the prosecutrix besides demanding a sum of Rs.20,000/- in cash. After his demand was fulfilled, he demanded another sum of Rs. 5,000/- and also took three gold rings from her. He continued to extort money from her after threatening to blackmail her by making the recording public. The accused/respondent used to call her from different mobile numbers and even threatened to kill her husband and his family members in case she did not fulfill his demand. In order to avoid any such incident, she consumed 30 sleeping pills, which were given to her by the accused/respondent. When her condition deteriorated, she was taken to Sharma Hospital, Assandh on

3.6.2016. After recovering, she returned to her matrimonial home where she again consumed 100 sleeping pills. She was taken to Bansal Hospital, Shahabad on 13/14.6.2016. As she was unable to bear the atrocities of the accused/respondent, she moved written complaint to the police and, accordingly, FIR under Sections 354-D, 376, 506 read with Section 34 IPC was registered.

It is also the case of the prosecutrix that after the arrest of the accused/respondent, offence under Section 384 IPC was added to the FIR. On completion of investigation and presentation of challan, followed by commitment of the case, charge under Sections 376, 354-D, 506 and 384 IPC was framed against the accused/respondent to which he pleaded not guilty and claimed trial.

In support of its case, the prosecution had examined the prosecutrix as PW1, Dr. Abhilasha, Medical Officer as PW2, Constable-I Vijay Kumar as PW3, EASI Danpat Singh as PW4, SI Mukesh Kumar as PW5, HC Baldev Singh as PW6, HC Naresh Kumar as PW7, Munish Bindra, Nodal Officer, Bharti Airtel Limited as PW8, Dr. Bahadur Singh, Medical Officer as PW9, ASI Renu Bala as PW10 and SI Dalip Kaur as PW12.

When examined under Section 313 Cr.P.C., the accused/respondent denied the allegations levelled against him

by the prosecution and pleaded his innocence. In his defence, he examined Sukhwinder Singh as DW1, Gurvinder Singh as DW2 and Nasib Singh as DW3.

After hearing learned counsel for the parties and on perusing the record, learned trial Court disbelieved the prosecution case and acquitted the accused/respondent of the charge against him.

This Court has heard learned State counsel and perused the impugned judgment of acquittal.

It was the case of the prosecutrix herself that on two occasions she had taken sleeping pills out of frustration and was admitted in Bansal Hospital, Shahabad and Sharma Hospital, Assandh but she stated at the trial that she was admitted due to fever and headache. She stated that the person with whom she used to chat on the mobile phone had blackmailed her by saying that he had saved her pictures in his mobile and threatened to defame her. She also stated that in the last week of December, 2015, when she went to the terrace of her house, the accused/respondent was already standing there and when she requested him for deleting her pictures and chats, he behaved rudely with her followed by giving of slaps and, thereafter, committed rape upon her there. However, no such recording has been recovered from the mobile phone of the accused. The

chatting in question was carried out by the prosecutrix from the mobile belonging to her husband. Even said chatting could have been retrieved from her mobile phone. In cross-examination, she admitted that there was no obscene chat on her behalf and she used to chat in the normal manner as two girls would chat with each other. She also stated that her display picture was also simple and there was no obscenity in the same.

It is the case of the prosecutrix that the accused/respondent was previously known to her as he was residing opposite to her house. The mother of the prosecutrix, on the one hand, and elder sister of the accused/respondent were the mediators in the marriage of maternal cousin of the prosecutrix with the sister of the accused/respondent. In case the prosecutrix was not willing to talk with the accused, she could have stopped him from calling up or could have informed her mother or sister of the accused, who were also related to her family. As regards the commission of rape by the accused on the terrace of the house of the prosecutrix, there is nothing on record to show that she had resisted the attempt or raised any alarm.

It is not in dispute that the prosecutrix used to talk with the accused continuously for long hours and at times the calls would last upto six hours. It is difficult to believe that the prosecutrix would make such long conversation with the accused

under any threat. Rather, long conversation with the accused meant that it was her willing act.

According to the accused/respondent, he had an affair with the prosecutrix and when this fact came to the knowledge of the husband of the prosecutrix and her in-laws, the FIR was registered against him. In support of his stand, the accused/respondent relied upon the testimonies of DW1 Sukhwinder Singh, DW2 Gurvinder Singh and DW3 Nasib Singh. Those three persons lived in the same area as the accused and the victim. These witnesses, after deposing about the affair of the accused with the prosecutrix, stated that once the affair came to the knowledge of the family of the victim, several Panchayats were convened and the prosecutrix had been asked to stay away from the accused and the accused asked to discontinue his relationship with the prosecutrix but despite the same, the prosecutrix and the accused continued with their relationship. These witnesses also testified that the prosecutrix did not go along well with her husband. There is no material on the record that these witnesses had any ulterior motive to falsely depose against the prosecutrix.

From the above discussion, it is made out that the relationship of the prosecutrix with the accused was consensual. The prosecutrix fully understood the import of what she was

doing. Rather, she was a consenting party to the entire incident.

In view of the above, no case is made out for any interference in the impugned judgment of acquittal passed by the learned trial Court.

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

(T.P.S. MANN)
JUDGE

October 06, 2018
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(FATEH DEEP SINGH)
JUDGE

Whether speaking/reasoned.	:	Yes/No
Whether Reportable.	:	Yes/No