

IN THE HIGH COURT OF PUNJAB & HARYANAAT
CHANDIGARH

CRM-A-1216-MA of 2017
Date of decision : 12.10.2018

Santosh Devi

.....Applicant

vs.

Ravi Kumar and another

.....Respondents

**Coram: Hon'ble Mr. Justice T.P.S. Mann
Hon'ble Mr. Justice H.S. Madaan**

Present: Mr. B.S. Sudan, Advocate for the applicant

H. S. Madaan, J.

Accused Ravi Kumar faced trial by the Additional Sessions Judge (Exclusive Court), Bhiwani, in case FIR No. 92 dated 5.10.2016, for offences under Sections 376, 389, 450, 506 IPC, registered with Police Station, Women Police, Bhiwani, which ended in his acquittal by the said Court, vide judgment dated 18.3.2017.

Feeling aggrieved by the said judgment, the complainant has approached this Court moving an application under Section 378(3) Cr.P.C. seeking grant of leave to appeal against the impugned judgment.

Briefly stated facts of the case are that on 5.10.2016, the prosecutrix went to Police Station, Women Police, Bhiwani and submitted a written complaint, alleging therein that her husband has been serving in Border Security Force, posted at Shillong; that the couple has two children; that the accused had been visiting her at her house and threatening her as well as her children besides having sexual intercourse with her without her consent, under the threat of killing her and her children; that he blackmailed the prosecutrix – complainant and extorted money from her to the tune of Rs.1,50,000 – 2,00,000/- and even removed her gold pendant; that he had been staying in her house for 4-5 days at a stretch; that on one occasion he threatened to set the house of the prosecutrix-complainant on fire by removing gas pipe from the cylinder in the kitchen, resulting in leakage of the gas and further held out threat of committing suicide. The complainant – prosecutrix somehow gathered courage and informed family members of the accused, but to no effect. Rather they abused her. Ultimately, she reported the matter to the police seeking taking of action against Ravi Kumar and his family members.

On the basis of such written complaint, formal FIR was registered. The investigation in the case started. The accused was arrested in this case and after completion of investigation

and other formalities, he was challaned.

On presentation of challan and after completion of necessary formalities, the case was committed to the Court of Sessions and assigned to the Court of Additional Sessions Judge (Exclusive Court), Bhiwani, who framed formal charge for offences under Sections 376 (2)(n), 389, 450, 506 IPC, against the accused, to which he pleaded not guilty and claimed trial.

During the course of prosecution evidence, the prosecution examined the following witnesses:-

- 1) PW-1 Dharmender, Draftsman; 2) PW-2 Laxmi Devi, Inspector; 3) PW-3 Meena, EHC, 4) PW-4 Prosecutrix;
- 5) PW-5 Anand; 6) PW-6 Brij Bala, Sub Inspector;
- 7) PW-7 Kumari Jyoti, JMJC/Duty Magistrate, Bhiwani;
- 8) PW-8 Dr. Vikas Rewaria, Medical Officer, General, Hospital, Bhiwani; 9) PW-9 Ms. Mukesh Chauhan, Advocate; 10) PW-10 Dr. Agya, Medical Officer, General Hospital, Bhiwani; 11) PW-11 Ramesh Kumar A.S.I. and
- 12) PW-12 Sunita A.S.I.

The statement of the accused was recorded under Section 313 Cr.P.C.

After hearing the arguments, the trial Court acquitted the accused of the charge framed against him.

The trial Court while returning the verdict of not guilty,

in light of the facts and circumstances of the case, as well as evidence available on the record, has observed that :-

- i) Inconsistency in the stand taken by the prosecutrix at various places on different occasions.
- ii) Deputy Superintendent of Police, Bhiwani, on probe finding the allegations levelled by the prosecutrix-complainant to be baseless.
- iii) The prosecutrix-complainant submitting a letter to the police regarding innocence of the accused, which was admitted by her in her cross examination, while appearing as PW-4 during the trial of this case;
- iv) The prosecutrix-complainant admitting in her cross examination that she had moved second application against the accused on 8.8.2016 and except on that date, she had neither made any complaint to the police nor contacted it regarding this case.
- v) Version of the prosecutrix-complainant lacking material details and necessary particulars.
- vi) The prosecutrix-complainant being unable to tell the reason for accused black mailing her.
- vii) It being an admitted fact that prosecutrix and accused were well acquainted with each other, rather were having friendly relations, before the matter was

reported to the police.

viii)The accused had got married on 9.7.2016 and thereafter the prosecutrix attempted to implicate the accused in this case accusing him of giving beatings to her and her children, as well as accusing him of committing rape upon her forcibly. The complaint submitted by the prosecutrix Exhibit D-1 was found to be outcome of grudge, which the prosecutrix was nursing on account of the accused having left her for performing marriage with some other girl on 9.7.2016.

ix)The Investigating Agency coming to the conclusion that accused was on visiting terms with the prosecutrix and he used to meet her in her house with her consent. However, family of the prosecutrix was not happy with this relationship and opposed the same but the prosecutrix and the accused did not listen to anybody and continued their relationship.

x) The allegations in complaint Exhibit D-1 having been found to be without any truth; the police report Exhibit D-9 attested by SHO, Women Police Station, Bhiwani, with Deputy Superintendent of Police, Bhiwani, informed in that regard finding the allegations in the

complaint made by the prosecutrix to be baseless and that no cognizable offence was disclosed against the accused. Resultantly, complaint Exhibit D-1 was filed by the police on 9.9.2016.

xi)The second complaint submitted by the complainant Exhibit PW-4/A forming basis of the FIR, being exact reproduction of complaint Exhibit D-1 and there being lack of material justifying coming to the conclusion that Ravi Kumar was involved in the commission of crime against the prosecutrix on the same set of allegations, more particularly, when whole of the village had stated in unison before ASI Indrawati, about a month earlier that prosecutrix and accused were close to each other and were out of control of their families.

xii)The prosecution story being highly improbable.

xiii)There being solitary statement of prosecutrix on the point of occurrence of multiple rape without there being any corroboration thereto. Rather PW-5 Anand stating in his cross examination that accused never entered in the house of the prosecutrix nor threatened her in his presence at any point of time.

xiv)Non-examination of Sunda Ram, a material witness

giving a jolt to the prosecution story. Facts and circumstances of the case showing that Sunda Ram and PW-5 Anand, were neither present at the spot nor attracted there, on hearing the alleged alarm of the prosecutrix, but were later on introduced to give a natural tinge to the story.

xv)The version of the prosecutrix that her obscene recordings were made by the accused and on the basis of the same he committed rape upon her by blackmailing her, was not substantiated and was rather improbable.

xvi)It is not believable that accused could have dared to commit such act with the main gate of the house lying open.

xvii)The medical evidence not corroborating the ocular evidence, since Dr. Agya PW-10, who had medically examined the prosecutrix did not observe any injury on her private parts or on any other part of her body, which might have suggested that the prosecutrix had offered resistance when she was allegedly raped by the accused. Complete absence of any injury or scratch on the person of the prosecutrix suggestive of the fact that the intercourse, if any was not forcible,

rather, with consent of the prosecutrix and the prosecutrix coming out to be a consenting party, in having physical relations with the accused.

- xviii)Un-explained delay in lodging report with the police.
- xix)With regard to charge under Section 389 IPC, there being no other evidence available except statement of the complainant-prosecutrix.

In view of the above, the judgment passed by the trial Court is well reasoned one, based upon proper appraisal and appreciation of evidence and correct interpretation of law. There is no illegality or infirmity in the said judgment.

We do not see any reason to grant leave to file appeal against the accused. The request in that regard is rejected and leave to appeal is declined.

(T.P.S. Mann)

Judge

(H.S. Madaan)

Judge

12.10.2018

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