

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

CRM No.A-1970-MA of 2016 (O&M)

Date of decision: February 20, 2018

Sapna

...Applicant

Versus

State of Punjab and another

...Respondents

**CORAM: HON'BLE MR. JUSTICE A.B.CHAUDHARI
HON'BLE MR. JUSTICE INDERJIT SINGH**

Present: Mr.A.D.S.Jattana, Advocate
for the applicant.

INDERJIT SINGH, J.

Applicant-Sapna has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondents State of Punjab and Rahul Sharma, challenging the impugned judgment dated 04.08.2016 passed by learned Sessions Judge, SAS Nagar, Mohali, vide which the accused-respondent No.2 was acquitted.

It is mainly stated in the application that accompanying appeal is being filed which is likely to succeed on the grounds taken therein. It is, therefore, prayed that leave to appeal be granted.

From the record, we find that challan was presented against accused Rahul Sharma under Sections 376, 328 and 420 IPC. The brief facts of the case as noted down by learned trial Court, in the judgment are as under:-

“2. The background facts in nutshell are, as follows:

That, complainant/prosecutrix (name withheld) are two sisters and one brother. They are residing with their widow mother. About 8 months back, prosecutrix came in contact with Rahul Sharma, as Ravi Sharma, brother of the prosecutrix was friend of Rahul Sharma. Ravi Sharma, brother of the prosecutrix was working as sales boy at the shop of Kumar Fashion Designing at Panchkula. However, in pursuance of the pressure exerted by Rahul Sharma, the brother of the prosecutrix left the job and joined Rahul Sharma in sale and purchase and repair of mobile phones. On asking of Ravi Sharma, mother of the prosecutrix had spent Rs. 1 Lac for purchase of articles. Said Rahul Sharma had not spent even a single penny in the said business. After few months of the joining work, Rahul Sharma desired to stay at their house and he kept an evil eye upon the prosecutrix and her sister namely Pooja. The prosecutrix was instigated to marry him. Rahul Sharma also won over the confidence of the prosecutrix, but he was having evil eye upon the house and other valuable things of the prosecutrix. She was forced several intercourse, on the pretext of marriage and under compelling circumstances, the prosecutrix developed physical relations with Rahul Sharma. Few months ago, when the complainant had asked Rahul Sharma to marry her, then he expressed his money problem and he also stated that his mother will pay some money and in the meanwhile, the prosecutrix has to arrange money. Thereupon, the prosecutrix sold her gold jewellery to the amount of Rs. 60,000/- and also arranged Rs. 40,000/- in cash. On the other hand, Rahul Sharma had also obtained Rs. 50,000/- from the brother of the prosecutrix and given him blank cheque. In this way, Rahul Sharma had obtained Rs. 1,40,000/- from the prosecutrix, on the pretext that his mother will give him Rs. 1 Lac.

On 17.8.2014, Rahul Sharma took the prosecutrix to Sri Aadi Shakti Ved Pathshala, Mansa Devi market, Sector 4 Panchkula, for the performance of marriage. The prosecutrix was forced not to disclose regarding the said marriage to anybody, as he will won over the confidence of his sister and mother. At the time of marriage also, the prosecutrix was forced to bring Rs. 25,000/- as the Pujari will arrange everything. At the time of solemnization of marriage, the prosecutrix had given Rs. 25,000/- to Rahul Sharma. As per the directions of Rahul Sharma, the prosecutrix kept mum as she was threatened by stating that if the marriage comes to the knowledge of his mother and sister, they will not give him a single penny. In the meanwhile, the prosecutrix was forced to sell the house, as they have some property at Panchkula and they will stay there. Thereafter, Rahul Sharma had extended threats to the prosecutrix and his family members to kill them in case they reported the matter to the police.

3. Proceedings in the present case were initiated, on the basis of an application filed by the prosecutrix (name withheld), in pursuance of the orders of the Hon'ble High Court dated 20.11.2014, with the direction to the SSP to look into the complaint and take appropriate action, in accordance with law. During the course of investigation, statement of the prosecutrix u/s 164 Cr.P.C. was recorded. Statements of various witnesses were recorded. In pursuance of the bail order passed by the Additional Sessions Judge, SAS Nagar (Mohali), Rahul Sharma was associated in the investigation of the present case. His formal arrest was made."

After necessary investigation, challan was presented against the accused-respondent. Finding prima facie case, the accused was charge-sheeted under Sections 376, 328, 420 IPC to which he pleaded not guilty and claimed trial.

In support of its case, prosecution examined PW-1 Dr.Dilbagh Singh, who medico-legally examined accused Rahul Sharma on 13.07.2015. PW-2 Ravi Sharma, brother of the prosecutrix, deposed that Rahul Sharma solemnized marriage with his sister, without their knowledge and consent, but however, he did not take his sister to his house, as his wife. He also deposed that, his sister had disclosed about the marriage after 7-8 days of the marriage. He further deposed that he alongwith his mother and Rattan Lal Verma had gone to the house of Rahul Sharma and met his family members, who were not ready to accept the marriage of Rahul Sharma with his sister. Rather, the mother of Rahul Sharma had proclaimed that she does not acknowledge this marriage. Even though, they had offered to accept the marriage by ceremony of Chuni to save the honour of both the families, but however, the mother of Rahul Sharma did not agree for the same. They refused to accept his sister as their daughter in law. PW-3 Rattan Lal Verma, who is the President of Ekta Vihar, Baltana, deposed that he was apprised

of the marriage of the prosecutrix and Rahul Sharma by Reena Sharma and Ravi Sharma, in the first week of August, 2014. He further deposed that, they had gone to the house of Rahul Sharma and met his parents and also asked for the ceremony of 'Chuni', so that the honour of both the families is saved, but however, they did not acknowledge the marriage. They refused to accept the prosecutrix as their daughter in law. PW-4 prosecutrix deposed that Rahul Sharma performed marriage with her on 17.08.2014 in Shri Aadi Shakti Ved Pathshala, Mansa Devi, Sector 4, Panchkula. She further deposed that she did not disclose about this marriage to her family members at the instance of Rahul Sharma. She further deposed that Rahul Sharma asked her to forget about the marriage, as it was a fake marriage. She further deposed that the efforts made for her rehabilitation, but the family members of Rahul Sharma refused to acknowledge their marriage. The prosecutrix also stated regarding the petition filed before this Court and issuance of directions vide Ex.PW1/A to take appropriate action, in accordance with law. She proved her application, which is Ex.PW1/B. She also deposed about the matter having enquired into and her statement recorded under Section 164 Cr.P.C., which is Ex.PW4/D. She also deposed that the accused had committed sexual intercourse with her by cheating, by performing a false marriage with her. The prosecution examined other witnesses i.e. PW-5 ASI Kuldeep Singh, PW-6 ASI Paramjit Singh, Investigating Officer, PW-7 Ashu Thakur, PW-8 Constable Amritpal Singh, PW-9 Dr.Harleen Kaur Lalli, who medico legally examined the prosecutrix and PW-10 L/C Dalbir Kaur.

In the statement under Section 313 Cr.P.C., accused denied all the incriminating evidence against him and pleaded his false implication.

He further pleaded that the victim had earlier filed a similar complaint against one Raj Kumar of Panchkula, and later on got compromised the matter after taking money from him. He also pleaded that in the petition, filed before this Court she did not mention any incident regarding rape while coming back from Delhi to Chandigarh, as he had never gone to Delhi with the victim, but in her statement under Section 161 and 164 Cr.P.C. she had made improvement by leveling such false allegations. The accused also pleaded that he and Ravi Sharma (brother of victim) were running business of mobiles together, but after suffering loss in the business, the family of victim started asking money from him and when he refused, they falsely implicated him in the present case. In defence, accused examined DW-1 Priya Vart, DW-2 Shakuntla, DW-3 Varinder Nain and DW-4 Rajinder Sharma.

Learned trial Court, after appreciating the evidence, acquitted the accused-respondent vide impugned judgment dated 04.08.2016.

Aggrieved from the above-said judgment, present appeal along with application for grant of leave to appeal has been filed.

We have heard learned counsel for the applicant and have gone through the record.

The perusal of the record shows that the findings given by learned trial Court are as per evidence and law. In no way, the findings can be held as perverse or against the evidence and law. Nothing has been pointed out as to which material evidence has been misread and which material evidence has not been considered by the Court below. Nothing has been pointed out as to how the findings are perverse or against the law and

what illegality has been committed by learned trial Court.

From the record, we find that as per prosecutrix herself, she had performed marriage with Rahul Sharma on 17.08.2014 at Aadi Shakti Ved Pathshala. The brother of the prosecutrix also stated so. The photographs have also been placed on the record. Even DW-4 Rajinder Sharma has also identified the accused and prosecutrix in the said photographs, which are regarding marriage of prosecutrix with the accused. The case of the prosecutrix is that now accused is saying that it was a false marriage.

Learned Sessions Judge, SAS Nagar, Mohali, held that from the material produced before the Court, taking place of marriage stands established. Therefore, the factum of marriage, as such, ipso facto, does not establish the rape charge. Learned trial Court also discussed the application Ex.PW1/B and found that prosecutrix has nowhere asserted the version of commission of rape while returning back from Delhi. The prosecutrix herself admitted regarding her relationship with accused on the pretext of marriage while accused was staying in her house. It is also asserted in this application Ex.PW1/B that under the compelling circumstances, the complainant developed physical relations with the accused but this assertion is vague too. No specific reasons have been given for the compelling circumstances. Close scrutiny of the evidence shows that it is case of consent and looks to be case of marriage between the prosecutrix and accused, to which the parents of the accused are not agreeing and the accused also now siding with his parents.

After scrutinizing the evidence and appreciating the evidence in right perspective, learned trial Court has correctly given the findings that prosecution has failed to establish the guilt of the accused beyond doubt.

In view of the above discussion, we find that the impugned

judgment dated 04.08.2016 passed by learned Sessions Judge, SAS Nagar, Mohali, is correct, as per law and evidence and does not require any interference from this Court. No ground is made out for grant of leave to appeal and therefore, the present application stands dismissed.

(A.B.CHAUDHARI)
JUDGE

(INDERJIT SINGH)
JUDGE

February 20, 2018
Vgulati

Whether speaking/reasoned	Yes
Whether reportable	No