

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-A-62-MA-2017

DATE OF DECISION: March 27, 2018

Lalita

...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.Abhishek Singla, Advocate for
Mr.Keshav Pratap Singh, Advocate for the
applicant.

DEEPAK SIBAL,J.

Through the instant application filed under Section 378(3) of the Code of Criminal Procedure, 1973 (for short-Cr.P.C.), the applicant seeks the grant of leave against the judgment dated 6.10.2016 passed by the Additional Sessions Judge (Exclusive Court), Bhiwani (for short-the trial Court), through which respondent No.2 was acquitted of the charges framed against him under Sections 376(1),

376(2)(N), 385 and 506 of the Indian Penal Code, 1860 (for short-the Code).

Briefly stated, the case of the prosecution is that on 9.7.2012, the prosecutrix was called by Guddi @ Kalo who had in turn been sent by Rekha to the house of Hemraj. When she reached there she was taken to the Chaubara by Guddi where Nitin and Rekha were already present. There she was made to take tea and after drinking the same, she became unconscious. When she regained senses, she found herself in naked condition and Nitin was sexually ravishing her. When she resisted, Nitin gagged her mouth and completed the physical act. She was threatened not to disclose anything to anyone because if she did so, her nude pictures clicked by him would be uploaded on the internet. Thereafter, she took admission in SDMM College, Hansi but Nitin after putting her in fear of uploading her nude pictures continued to commit rape upon her. He further used to compel her to talk with him on mobile phone. He also demanded money which she deposited in his account. On 18.2.2014, she got married but even thereafter Nitin continued to threaten and rape her.

On completion of investigation, final report under Section 173 Cr.P.C. was filed in the Court of Illaqa

Magistrate against respondent No.2 but since the subject matter of proceedings was triable by the Court of Sessions, the case was committed to the Court of Sessions from where it was marked to the trial Court, which on finding a prima facie case, charged respondent No.2 for offences punishable under Sections 376(1), 376(2)(N), 385 and 506 of the Code. When the accused pleaded not guilty, he was put on trial.

The trial Court, after sifting the evidence which has come on record, acquitted respondent No.2, giving him the benefit of doubt. It is such acquittal of respondent No.2 which is the subject matter of challenge in the present proceedings.

Learned counsel for the applicant, while reiterating the submissions made on behalf of the prosecution before the trial Court, submitted that respondent No.2 has wrongly been acquitted as there was overwhelming evidence on record clearly proving him to have committed the offences for which he was charged.

The submissions made by learned counsel for the applicant have been considered but the same do not warrant acceptance.

As per medical evidence, she was aged 21 years on the date of examination, i.e. on 21.9.2014, while as per statement under Section 164 Cr.P.C., she was 21 years of age on 21.9.2014. Meaning thereby, that the trial Court rightly held that she was major at the time of the alleged offence.

The version of the prosecutrix is that on 9.7.2012 on being called by Guddi and Rekha, she had gone to the house of Hemraj where on taking tea, she became unconscious and on regaining consciousness, she found respondent No.2 sexually ravishing her.

It is highly improbable that the prosecutrix was subjected to rape in the presence of Rekha who is sister of respondent No.2 and Guddi who is the wife of Hemraj as it is highly unlikely that respondent No.2 would commit any such offence in the presence of his sister.

The photographs which are alleged to have been the cause of blackmailing and the reason for continuous rape were neither produced nor proved by the prosecution.

As per the prosecutrix, she used to frequently speak to respondent No.2 and such conversations continued even after her marriage. She further admitted that she had concealed the mobile phone from her family and used to talk to respondent No.2 whenever she was alone at some lonely

place. It is highly improbable that she was subjected to rape for several years and for all this while she did not inform her parents, relatives, friends etc. about the same and thereafter to her husband after her marriage.

No medical evidence is found on the record which would prove that she was subjected to rape by respondent No.2.

From the above, it appears that the intimate relations between the prosecutrix and respondent No.2, if any, were consensual.

So far as offence under Section 385 IPC is concerned, the finding of the trial Court that respondent No.2 had never asked the prosecutrix to deposit any money in his account so as to create incriminating evidence against himself needs no interference. The offence under Section 385 IPC is not made out against respondent No.2 also for the reason that the currency notes which were allegedly recovered in this case were neither sealed nor any mark of identification was put on them.

In view of the above, no fault can be found in the impugned judgment acquitting respondent No.2 by giving him benefit of doubt.

Accordingly, the present application is found devoid of any merit and, therefore, dismissed.

Resultantly, leave to appeal is declined.

(T.P.S.MANN)
JUDGE

(DEEPAK SIBAL)
JUDGE

March 27, 2018
Kd

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