

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Sr. No.207

CRM-A No.836-MA of 2018

Date of decision : 4.4.2019

Sonia

..... Applicant

VERSUS

State of Haryana and others

..... Respondents

**CORAM: HON'BLE MRS. JUSTICE DAYA CHAUDHARY
HON'BLE MR. JUSTICE SUDHIR MITTAL**

Present: Mr. R.S. Randhawa, Advocate, for the applicant.

SUDHIR MITTAL, J.

The complainant has sought leave to appeal against judgment dated 8.1.2018, passed by Special Judge-cum-Addl. Sessions Judge, Rohtak, on account of the acquittal of the accused of offences under Sections 406 and 376 IPC.

The complainant got married with Sunil @ Sonu son of Umed Singh @ Pappu on 8.12.2015 in accordance with Hindu rites and ceremonies. Allegedly, adequate dowry was given at the time of marriage. In addition, a motor cycle and a sum of Rs.4 lacs in cash were also given. After about 20 days of the marriage, the family members of the husband started taunting her for not bringing adequate dowry. Her husband was indifferent to her and performed unnatural sex with her. He was also in an illicit relationship with another woman. Allegation of outraging of modesty was made against Umed Singh @ Pappu (father-in-law) and of rape was made against Manish (brother-in-law). A complaint dated 15.5.2016, was submitted before the police resulting in registration of an FIR under Sections 323, 354, 498-A, 406, 376, 377, 506, 34 IPC. Complainant's statement

under Section 164 Cr.P.C. was recorded on 25.5.2016, whereafter, Section 376 IPC, was added against accused Manish (brother-in-law).

Vide judgment under challenge, the trial Court convicted the accused persons under Sections 498, 323 read with Section 34 IPC. The accused-Manish was acquitted of the offence under Section 376 IPC and accused Umed Singh @ Pappu (father-in-law) was acquitted of the offence under Section 354 IPC. All the accused were acquitted of offences under Sections 406 and 506 IPC.

Learned counsel for the applicant presses his application for leave to appeal only qua offences under Sections 376 and 406 IPC. His submission is that the complainant while appearing as PW-2 specifically stated that Manish (brother-in-law) raped her. Dr. Patibha, who appeared as PW-10 has also opined that sexual assault cannot be ruled out and thus, the trial Court has committed an error in acquitting accused-Manish (brother-in-law) of the offence under Section 376 IPC. It has further been argued that the complainant appearing as PW-2, her brother appearing as PW-7 and her mother appearing as PW-12, have all stated that the istridhan was not returned despite demand and thus, judgment of acquittal recorded for the offence under Section 406 IPC, is also not sustainable in law.

The law regarding interference with a judgment of acquittal is well settled. Although, the appellate Court can re-appreciate and re-evaluate the entire evidence on record while examining the judgment of acquittal, it would not interfere with the same unless there are strong and compelling circumstances for doing so. The reason is that there is a presumption of innocence in favour of the accused, which is bolstered on recording a finding of acquittal. Thus, appellate Court would interfere with judgment of

acquittal only if material evidence has been overlooked, inadmissible evidence has been taken into consideration or if on appreciation of evidence it appears that a view has been taken, which could not be taken by any ordinary person.

While acquitting accused-Manish (brother-in-law), the trial Court has given cogent reasons. It has found on the basis of evidence on record that the allegation of rape appears to be doubtful. This is so because the complainant alleged that rape was committed in January, 2016, but the first complaint made to the police was dated 15.5.2016. The information of the incident was not even confided with her brother and mother. The brother and mother, while getting their statements recorded under Section 161 Cr.P.C. did not say anything regarding rape having been committed by accused-Manish (brother-in-law). Even the stand of the complainant has been found to be inconsistent. Based on the evidence on record, the trial Court has taken a possible view and there is no scope for interference therewith in this appeal.

Similarly, while acquitting the accused persons of the offence under Section 406 IPC, the trial Court has relied upon the law on the subject. It has held that neither the complainant nor her family members have deposed regarding which dowry articles were entrusted to which accused persons nor when the complainant ask for the return thereof. Thus, if there was no evidence of entrustment or demand of return, there can be no conviction for the offence of mis-appropriation. Learned counsel for the applicant has not been able to point out that the evidence on record in this

regard has been misread or that admissible evidence to prove the fact has been omitted to be read.

Accordingly, there is no scope for interference as prayed for by the applicant. The application seeking leave to appeal is accordingly, dismissed.

(DAYA CHAUDHARY)
JUDGE

(SUDHIR MITTAL)
JUDGE

4.4.2019

Ramandeep Singh

Whether speaking / reasoned

Yes / No

Whether Reportable

Yes/ No