

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM A-2130-2019 (O&M)
Date of Decision:-10.12.2019

Sangeeta	vs.	... Appellant
State of Haryana and others		Respondents

Coram: Hon'ble Mr. Justice Jitendra Chauhan
Hon'ble Mrs. Justice Archana Puri

resent:- Mr. Farukh Abdullah, Advocate
for the applicant-appellant.

Mr. Vivek Saini, DAG, Haryana.

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Jitendra Chauhan,J.(Oral)

CRM 29449 of 2019

Heard.

For the reasons mentioned in the application, the delay of 8 days in filing the present application is condoned and the application is allowed.

CRM A-2130-2019

This is an application under Section 378(4) of Code of Criminal Procedure seeking leave to appeal against the judgment of acquittal dated 11.02.2019 passed by Additional Sessions Judge, Fast Track Court, Faridabad vide which respondent Nos. 2 and 3 were acquitted in the FIR No. 118 dated 20.08.2016, registered under Sections 376-D, 328, 120-B IPC police Station Women, Sector16-A, Faridabad.

The brief facts of the case as noticed in the impugned judgment passed by the learned trial Court in paragraph No. 2, are reproduced as under:-

“2. Brief facts of the case are that the prosecution was launched on the basis of statement dated 20.8.2016 (Ex.PC) of prosecutrix (name withheld in order to protect her identity) alleging therein that prosecutrix daughter of Surajbhan, wife of Salman, Thakur by caste, resident of Mohalla Khatriwara, Sikanderabad, P.S. Sikanderabad, District Bulandshahar, (UP) is presently residing as tenant in Gali No.27, Sanjay Colony, P.S. Mujessar, Faridabad. She was doing the work of sewing. They are three brothers and sisters. She is the eldest amongst them. Her parents have already expired. On 13.11.2015 at about 1.00 p.m. accused Ruksar administered her intoxicated tea and cold drink due to which she went under intoxication. She alleged that accused Salman had committed rape upon her at the house of accused Ruksar in Sector 25, Krishna Colony, Faridabad. When the prosecutrix regained consciousness and told the accused to get registered case against them then on 29.4.2016 accused Salman solemnized marriage with her in the presence of her mousi Guddi wife of Ganga Ram and friends of Salman namely Govind, Chhotu and Sunil in a photo studio situated at Gali No.2, Krishna Colony, Sector 25, Faridabad. Thereafter, accused Salman took the prosecutrix at his house in Krishna Colony, Gali No.2, Sector 25, Faridabad. There they stayed for four-five hours. Thereafter, parents of accused Salman started quarreling with them and thrown out from their home. Accused Salman took the prosecutrix in a rented premises situated at Jiwan Nagar, Part 2, Gonchhi, Faridabad where they lived together as husband and wife for five months. Thereafter, brother of Salman namely Arman and his younger brother took Salman with them and in this regard the prosecutrix made a police report in Police Post Sanjay Colony, Faridabad. A compromise was effected in that complainant and accused Salman assured the prosecutrix to get a court marriage with her in two days. The prosecutrix alleged that after that accused Salman did not return back to her. She sought action against accused Salman and his sister Ruksar. She alleged that accused Salman used to commit rape upon her on the assurance of marriage with her. On the basis of said statement formal FIR was registered. Investigation was carried out. The prosecutrix was got medicolegally examined. Her statement under Section 164 Cr.P.C. was recorded by learned Magistrate. Accused Ruksar was arrested on 3.1.2017 and accused Salman was taken into custody from the court on 18.4.2017 who was also got medicolegally examined. Both the accused suffered their

respective disclosure statements. Scaled site plan of the place of occurrence was also got prepared. Statements of the witnesses as required under Section 161 Cr.P.C. were recorded. After completion of necessary investigation, final report u/s 173 Cr.P.C. was filed by Inspector/SHO Sushil, P.S. Women Sector 16A, Faridabad.”

After investigation, challan was presented in the Court. Charges under Sections 376, 328 and 120-B IPC were framed against the accused, to which the accused pleaded not guilty and claimed trial.

In order to prove its case, the prosecution had examined PW1/ASI Sarwan Kumar, PW2/Constable Sunaina, PW3/prosecutrix herself, PW4/Lady Constable Monika, PW5/Guddi, PW6/Dr. Manjri Gupta, PW7/SI Veenu, PW8/SI Raj Kumari, PW9/Inspector Savita, PW10/Constable Anju, PW11/Sushil Inspector, PW12/Lady Constable Darshan, and closed its evidence.

The statements of the accused were recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing in the prosecution evidence were put to the accused, to which they denied and pleaded false implication.

In defence, the accused examined DW1 Rama Shankar, DW2 B.S. Viridi, Advocate, DW3 Krishna, DW4 Sunil, DW5 Raju alias Chotu, DW6 Avinash Sharma, Clerk and DW7 Ganga Ram.

Thus, the present appeal has been filed by the complainant.

It is contended by the learned counsel for the appellant that the accused Nos. 2 and 3 misused the appellant physically and committed rape upon her a number of times.

We have heard the learned counsel for the appellant and have gone through the case file carefully.

It emerges from the record that the learned trial Court had acquitted respondent Nos. 2 and 3 on the ground that the prosecutrix remained in the company of the accused for a long period of 5 months. The age of the prosecutrix has been proved to be 24 years. As per the stand of the prosecutrix she submitted herself to the act of sexual intercourse only on the promise made by the accused that he would marry her. However, the record reveals that prior to the incident in question, yet another incident had happened on 13.11.2015, the information of which was never given by the prosecutrix to the police. Meaning thereby, she had no grouse with regard to the incident, which had happened on 13.11.2015. It has also come in the evidence that the prosecutrix and the accused married on 29.04.2016 in a Photo Studio in the presence of the witnesses. Thereafter, she remained in the company of the accused/respondents for a period of 4-5 months and they stayed together. The prosecutrix claims that during this period she was being raped by the accused. However, we are not inclined to accept the argument of the learned counsel for the appellant as the conduct of the prosecutrix reveals in an unambiguous manner that she was major and remained a consented party throughout.

It is a settled law as has been held in *C. Antony Vs. K.G. Raghavan Nair, 2002(4) R.C.R. (Criminal) 750* that even if a second view on appreciation of evidence is possible, the Court will not interfere in the acquittal of the accused. In the cases of acquittal, there is double presumption of innocence; and secondly, the accused having secured an acquittal, the Court will not interfere until it is shown conclusively that the inference of guilt is irresistible.

There is no perversity or illegality in the impugned judgment passed by the learned trial Court. The evidence and material on record have been correctly appreciated and there is no scope for interference in the findings returned by the learned trial Court.

In view of the above, the leave to appeal is hereby declined.

Dismissed.

(JITENDRA CHAUHAN)
JUDGE

(ARCHANA PURI)
JUDGE

10.12.2019
manoj

Whether speaking/reasoned
Whether Reportable:

Yes/No
Yes/No