

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-A-879 of 2019
Date of Decision: 09.7.2019

RekhaApplicant

Vs.

State of Haryana and anotherRespondents

**CORAM: HON'BLE MR. JUSTICE AJAY TEWARI
HON'BLE MR. JUSTICE HARNARESH SINGH GILL**

Present: - Mr. G.S.Goria, Advocate
for the applicant.

HARNARESH SINGH GILL, J.

The applicant has filed the present application under Section 378(4) Cr.P.C. for grant of leave to appeal against the judgment dated 20.2.2019 passed by the learned Additional Sessions Judge, Faridabad vide which accused/respondent No. 2-Vinod has been acquitted of the charges under Sections 120-B/376/494/506 of the Indian Penal Code, 1860 ('IPC' for short) and Section 3 of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 ('Act' for short) in FIR No. 80 dated 24.2.2017, registered at Police Station Kotwali, Faridabad.

As per the prosecution story, the above said FIR was registered on the complaint of complainant/prosecutrix stating therein that one Pankaj was running an office of Consultancy at Nehru Ground where she had gone for employment with her bio-data, in which her mobile number was mentioned. Said Pankaj called her for employment time and again and later on expressed his desire to marry her and on the pretext of marriage, he had

committed rape upon the applicant and also prepared obscene video which was not in her knowledge. Later, respondent No. 2-Vinod, started following her on Facebook and Whatsapp and had asked her to meet him. On her refusal, respondent No. 2-Vinod started contacting her on Whatsapp and told her that he had the knowledge about her relationship with Pankaj and that he had purchased the obscene C.D. from Pankaj for a sum of Rs. 10.00 lacs, which was in his possession and also threatened her to spoil her reputation by uploading her video on the internet. Respondent No. 2-Vinod performed marriage with the applicant on 13.2.2017 in Arya Samaj Temple, New Delhi. However, at the time of marriage he had already been married and having children. Respondent No. 2 was harassing the applicant on telephone and he also told her family members that he had performed marriage with the applicant and wanted to take her back. On coming to know about the whole story, the parents of the applicant filed a complaint against respondent No. 2. Accordingly, the present FIR was registered.

After completion of investigation and necessary formalities, challan was presented against the accused-respondent No. 2.

Vide order dated 18.9.2017, charge was framed against the accused-respondent No. 2 under Sections 120-B/376/494/506 IPC and Section 3 of the Act to which he pleaded not guilty and claimed trial.

In order to prove its case, the prosecution had examined as many as 10 witnesses.

PW-1 Roshan Lal, Advocate, Tees Hazari Court, Delhi, Oath Commissioner deposed that declaration of marriage affidavit (Mark-A) of Vinod Kumar-respondent No. 2 and marriage affidavit of applicant (Mark-B) had been attested by him.

Applicant-prosecutrix stepped into the witness box as PW-3 and stated that on the pretext of marriage, Pankaj had committed rape upon her and prepared a C.D. Thereafter, after about three years, the applicant came in contact with Vinod Sharma-respondent No. 2, who was friend of Pankaj. She further deposed that at later stage, Vinod-respondent No. 2 had started threatening her to defame her. On 7.9.2016, Vinod called her telephonically behind Rose Garden, NIT, Faridabad and raped her in his car SX4 colour silver and also told her that he had purchased her obscene video from Pankaj for Rs. 10.00 lacs. Thereafter on 13.2.2017, Vinod solemnized marriage with her in Delhi and again committed rape upon her.

Similarly PW-4 Mahesh Parshad, father of the applicant, deposed that Vinod-respondent No. 2 had threatened him on mobile phone and addressed him by name of his caste and had also committed rape upon his daughter.

Along with other witnesses, the prosecution had also examined PW-10 Dr. Manish Dayal, who had medico legally examined Vinod Kumar Sharma after obtaining his consent, Ex. PW-10/A and during examination, Vinod Kumar was found capable of performing sexual intercourse. He proved the MLR as Ex. PW-10/B.

Learned counsel for the applicant has argued that the applicant had been subjected to cruelty at the hands of Pankaj who later on handed over the obscene video to Vinod-respondent No. 2, who had committed rape upon the applicant time and again. It is further argued that Vinod-respondent No. 2 solemnized marriage with the applicant on 13.2.2017 and when the applicant came to know that respondent No. 2 was 35 years old and had already been married and having children from that marriage, she

told all these facts to her parents and later on, the FIR in question was registered.

We have heard learned counsel for the applicant but do not find any merit in the present application seeking leave to appeal.

In the present case, the applicant has levelled allegations of rape against respondent No. 2 before marriage and after marriage which was solemnized between the two on 13.2.2017. It is a case in which ACP Pooja Dabla PW-9 admitted in her cross-examination that during investigation, accused-respondent No. 2 was found innocent as the prosecutrix had voluntarily married him and that she was more than 18 years of age at the time of marriage. The said witness further deposed that accused Vinod Kumar was challaned on re-investigation on the complaint of the applicant-complainant which shows that the police challaned respondent No.2-Vinod Kumar under the pressure of the applicant. The applicant in her cross-examination stated that she had visited at least on 25 occasions regarding the enquiry of the status of her case. It is a case in which marriage was performed. Therefore, Section 376 IPC is not attracted. Thus, after considering the above facts, the trial Court has rightly acquitted respondent No. 2-accused of the charges framed against him.

While granting the leave applied for, this Court is to bear in mind that in case of acquittal there is a double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the Fundamental principles of criminal jurisprudence that every person is presumed to be innocent unless he is proved to be guilty by a competent Court of law. Secondly, the accused having secured acquittal, the presumption of his innocence is certainly not weakened but re-inforced, re-

affirmed and strengthened by the trial Court. When two reasonable conclusions are possible on the basis of evidence on record, the appellate Court should not disturb the finding of acquittal recorded by the trial Court.

Learned counsel appearing for the applicant could not point out any material illegality or perversity in the impugned judgment of acquittal. Nothing has been shown as to the misreading and misinterpretation of the evidence by the learned trial Court, while passing the impugned judgment.

Consequently, the application seeking leave to appeal is dismissed. Leave to appeal is declined.

(AJAY TEWARI)
JUDGE

(HARNARESH SINGH GILL)
JUDGE

July 09, 2019
Gurpreet

Whether speaking /reasoned : Yes
Whether Reportable : Yes