



CRM-A-1883-2019

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Decided on:- 14.05.2024
CRM-A-1883-2019

M (name withheld)

....Appellant

Versus

State of Haryana and another

...Respondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL
HON'BLE MRS. JUSTICE AMARJOT BHATTI

Present:- Ms. Shuchi Sodhi, Advocate
Amicus Curiae for the appellant.

Mr. Deepak Grewal, DAG, Haryana.

Mr. Anil Kumar Saini, Advocate
for respondent No. 2.

AMARJOT BHATTI, J.

1. Appellant/Victim (name withheld and to be referred as "Victim 'M'" hereinafter) has filed present appeal against judgment of acquittal in favour of Sombir respondent No. 2, dated 22.10.2018 passed by learned Additional Sessions Judge (Exclusive Court), Jhajjar in Sessions Case bearing No. 210 of 2017, title "State Vs. Sombir".

2. Brief facts of the case are that on 25.08.2016, zero FIR No. 0002 was lodged under Section 376/406/506 of Indian Penal Code, 1860 (for short 'IPC') on the statement of complainant/victim 'M' at Police Station Baba Haridas Nagar, South-West, Delhi. Complainant/victim 'M' resident of House No. 139, 1st Nanak Piau, New Gopal Nagar,



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Najafgarh, South West, Delhi stated that she was married to Ashwani Kumar. Her husband was a drunkard man who used to beat her. She was working in R.S. Modern Public School, Jhajjar. In the year 2008, she came in contact with one person namely Sombir (respondent No. 2/accused) son of Manphool Singh Dagar. She did not know him but he knew her and they started talking on phone. After some time, Sombir took her to a hotel at Jhajjar where he maintained physical relations with her against her wishes and told her that they will get married. He told her to take divorce, so that they could live together. In the year 2014, she (complainant) filed a divorce case against her husband. During that period, accused Sombir maintained physical relations with her several times. In the month of May 2015, she came to know that accused got married with some other girl. In the year 2011, accused had borrowed 3.5 lakh rupees from her which she had withdrawn from her account. He again took 5 lakh rupees in year 2013 on the pretext of getting a job. He further took one lakh rupees to purchase a vehicle. He took away her gold jewellery weight seven tolas. Thereafter, she asked accused to return her money and gold several times but he refused. He threatened her and her children with dire consequences. Accused maintained physical relation by giving false allurements of marriage. The prosecutrix was medically examined at Rao Tula Ram Memorial Hospital, Jaffarpur, Delhi. She prayed for taking legal action against accused.

3. Since, the place of occurrence was in District Jhajjar, therefore, case was transferred vide letter dated 27.08.2016 addressed to Senior Superintendent of Police, Jhajjar, Haryana and concerned record



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i.e. statement of prosecutrix along with her medical record was sent to concerned SSP, District Jhajjar, Haryana for further investigation. Accordingly, formal FIR No. 92 dated 29.08.2016 under Section 376(2)(n), 406 and 506 of IPC, Police Station Women, Jhajjar was registered and investigation was set into motion. During investigation, statement of victim under Section 164 Cr.P.C. was recorded on 30.08.2016 by learned Illaqua Magistrate. Victim also produced photographs, C.D., Memory Card and her statement of account which were taken into police possession vide memo dated 19.09.2016. Scaled site plan was also prepared.

During further investigation, on 16.09.2016, accused Sombir appeared in police station along with order dated 09.09.2016 passed by learned Additional Sessions Judge, Jhajjar with direction to join investigation and accordingly, he was joined in investigation. He was formally arrested and medically examined on 25.11.2016 from General Hospital, Jhajjar. During interrogation, on 26.11.2016 accused suffered disclosure statement and in pursuance to that, he got recovered Swift car bearing Registration No. HR-12J-0504. Statements of witnesses were recorded. After completion of investigation, challan was presented in the Court of Illaqua Magistrate, Jhajjar against Sombir.

4. Accused was supplied complete set of copy of challan report as provided under Section 207 of Cr.P.C. Since the offence under Section 376(2)(n) of IPC is exclusively triable by the Court of Sessions, therefore, the learned Judicial Magistrate Ist Class, Jhajjar committed the case to the Court of learned District and Sessions Judge, Jhajjar for trial



vide commitment order dated 06.01.2017.

5. Learned Additional Sessions Judge (Exclusive Court), Jhajjar, after hearing the arguments, framed charge-sheet against accused Sombir under Sections 376(2)(n), 406 and 506 of IPC, which was read over and explained to him in simple language to which he pleaded not guilty and claimed trial.

6. In order to prove the facts of the case, prosecution examined Rajender Prasad, Sub Inspector, Head Clerk as PW1, Complainant/victim 'M' as PW2, Ashok Kumar, Manager, Gauriyya Tourist Complex, Bahadurgarh as PW3, L/Ct. Mamta as PW4, Mother of victim 'M' as PW5, Dr. Anil Yadav, Senior Medical Officer, Rao Tula Ram Memorial Hospital, Jaffarpur, Delhi as PW6, Dr. Anurag, Medical Officer, Government Hospital, Jhajjar as PW7, ASI Reena as PW8, L/Ct. Rekha as PW9, Sunil Sharma, Additional Ahlmad as PW10, Ajeet Kumar, Ahlmad as PW11, Ms. Chavi Goel, Judicial Magistrate Ist Class, Jhajjar as PW12, SI Suman as PW13, ASI Ramchander as PW14, Ct. Mahipal as PW15, Shalini Singh as PW16, Inspector/SHO Seema Kumari as PW17, ASI Attar Singh as PW18, ASI Rajesh Kumar as PW19. Thereafter, learned Public Prosecutor for the State closed prosecution evidence.

7. Statement of accused was recorded under Section 313 Cr.P.C. While denying all incriminating evidence put to him, he pleaded innocence and false implication.

8. Accused closed his defence evidence without examining any witness.



9. After hearing arguments advanced by learned Public Prosecutor for the State and learned counsel representing the accused besides considering evidence on record, accused Sombir was acquitted of the charge framed against him vide impugned judgment of acquittal dated 22.10.2018.

10. Feeling aggrieved of this judgment of acquittal, appellant/victim 'M' has filed appeal alongwith application under Section 378(4) Code of Criminal Procedure seeking Special Leave to appeal.

11. Learned Amicus Curiae for the appellant argued that facts of the case and evidence on record were not correctly appreciated by learned Additional Sessions Judge (Exclusive Court), Jhajjar. Statement of victim 'M' recorded as PW2 was wrongly ignored. She was a married lady having two children. Her husband was a drunkard man who used to ill treat her and her children as a result she joined service in R.S. Model Public School, Jhajjar to earn her livelihood. The respondent No. 2/accused came in contact with prosecutrix in the year 2008 and by showing sympathy towards her, he started meeting her. In the year 2009, victim was allured to go to a hotel at Jhajjar where he established physical relations with her without her consent and when she protested, respondent No. 2/accused promised to marry her. He continuously maintained physical relations with her on the pretext of marriage. During this period, he managed to extract Rs. 9.5 lakhs from the appellant/victim 'M' and also took away her gold jewellery. Respondent No.2/accused compelled the appellant to take divorce from her husband,



as a result, she filed a divorce case in the year 2014. During this period, in the month of May 2015, she came to know that respondent No. 2/accused got married with some other girl. Appellant/victim 'M' asked respondent No. 2/accused to return her money to which he refused. He threatened victim and her children with dire consequences. The version put forward by her was confirmed by her mother examined as PW5. The statements of aforesaid witnesses remained consistent. Respondent No. 2/accused did not examine any witness in defence. Victim had placed on record her photographs with respondent No. 2/accused Ex.PW2/D to Ex.PW2/F. She has also placed on record CD and Memory Card regarding their conversation, which were taken into police possession. During investigation, police had taken into possession record of Gauriyya Tourist Resorts, Bahadurgarh where victim had stayed with respondent No. 2/accused on 02.12.2013. The said record is proved on file by examining Ashok Kumar, Manager, Gauriyya Tourist Complex, Bahadurgarh as PW3. There was no reason to disbelieve the testimony of appellant/victim 'M'. Despite convincing evidence on record, learned trial Court wrongly acquitted respondent No. 2/accused by giving him benefit of doubt. Respondent No. 2/accused has committed heinous crime. The judgment of acquittal is not on sound footing. It is submitted that judgment of acquittal dated 22.10.2018 passed by learned Additional Sessions Judge (Exclusive Court), Jhajjar may kindly be set aside by granting leave to appeal and respondent No. 2/accused be punished as per law by accepting the present appeal.



12. On the other hand, learned counsel representing respondent No.2/accused pointed out that the facts of case and evidence on record were rightly appreciated by learned trial Court. There was no convincing evidence on record to show that respondent No. 2/accused allured prosecutrix in any manner or maintained physical relations with her with a promise of marriage. At the most, it was consensual relationship. There is no convincing evidence on record to show that respondent No.2/accused borrowed Rs. 3.5 lakhs in the year 2011 or he further took Rs. 5 lakhs in January 2013 or he again took Rs. 1 lakh to purchase a vehicle in August 2013. He never took jewellery of prosecutrix. The prosecutrix never filed any complaint prior to her statement recorded on 25.08.2016. All the allegations levelled against respondent No. 2/accused are false. Therefore, by appreciating the evidence on record, he was rightly acquitted of the charge framed against him. The appeal preferred by appellant/victim 'M' deserves dismissal.

State has not filed any appeal against the judgment of acquittal in favour of respondent No.2/accused.

13. We have heard arguments advanced by learned counsel for the parties and have gone through the record carefully with their able assistance.

In the case in hand, appellant/victim 'M' gave her statement to police on 25.08.2016 that she was doing job in R.S. Model School, Jhajjar and there she started receiving calls from accused/respondent No.2. She came in contact with respondent No.2 who used to sympathize with her. She was taken to a hotel in the year 2009 where he forcibly



raped her. On the objection raised by her, he assured to perform marriage with her. Prosecutrix claimed that she was under the influence of accused and used to act on his directions. They visited various places and also maintained physical relations. She further claimed to have given money and jewellery to accused from time to time. On the asking of accused, she filed divorce case against her husband. In May 2015, she came to know that accused perform marriage with some other girl. She asked accused to return her money and jewellery but he threatened her and her children. Ultimately, she appeared in Police Station Baba Haridas Nagar, South-West, Delhi where her statement was recorded which is Ex.PW2/A and zero FIR was registered under Section 376, 406 and 506 of IPC, which is Ex.PW14/A. Since the occurrence took place within the jurisdiction of District Jhajjar, proceedings of this case were transferred to SSP, District Jhajjar, Haryana vide letter dated 27.08.2016 Ex.PW1/B. Thereafter, present FIR No. 92 dated 29.08.2016 under Section 376, 406 and 506 of IPC, Police Station Women, Jhajjar was registered, which is Ex.PW17/A. During investigation, statement of victim 'M' was also recorded under Section 164 Cr.P.C. which is Ex.PW2/C. Accused was arrested on 25.11.2016. With these allegations challan was presented and accused was ultimately charge-sheeted under Section 376(2)(n), 406 and 506.

14. To prove the allegations, statement of appellant/victim 'M' examined as PW2 is a material piece of evidence. In her statement before learned trial Court, victim confirmed the allegations levelled by her as detailed in statement given before the police Ex.PW2/A as well as



the allegations which are detailed in statement given before Magistrate under Section 164 Cr.P.C. Ex.PW2/C. It is a settled principle that conviction in a rape case can be based on sole testimony of prosecutrix provided, her deposition is found to be trustworthy, unblemished, credible and of sterling quality. The version put forward by victim 'M' is to be weighed in the light of surrounding facts and circumstances of the case. It has come in statement of appellant/victim 'M' examined as PW2 that she got married to Ashwani r/o Village Rampura on 16.02.1996 and out of this wedlock, she was having two children. When the statement of victim 'M' was recorded on 22.12.2017, she has mentioned her age as 37 years, whereas, accused/respondent No.2 was about 26/27 years of age. The prosecutrix further admitted that she work in Jindal Public School and thereafter, she joined services in R.S. Model Public School and thereafter, shifted to Cambridge Senior Secondary School, Jhajjar. Therefore, prosecutrix was a working lady having independent source of income. During cross-examination, prosecutrix admitted that she lived in the matrimonial home in village Rampura with her husband till April 2014. The prosecutrix admittedly came in contact with Sombir respondent No.2/accused in the year 2008-09. She claimed that she was raped for the first time in February 2009 but she did not disclose this fact to her family or any other person nor she lodged any complaint. She further alleged that accused assured to perform marriage with her and thereafter, she started talking to accused on mobile phone and met him number of times and also maintained physical relations with him. The statement of prosecutrix as PW2 shows that their relationship continued



till May 2015 when she came to know about marriage of respondent No. 2/accused with another girl. She filed divorce petition against her husband in the year 2014 and thereafter, started living at Najafgarh. The prosecutrix has placed on record her photographs along with respondent No. 2/accused and her children which are Ex.PW2/D, Ex.PW2/E and Ex.PW2/F when they had gone to Shimla and Haridwar. The appellant/prosecutrix is a mature lady who was working in a school. She is mother of two children. She was mature enough to understand the consequences of her act and conduct. Rather she was having extra marital affair with accused/respondent No. 2. There is no question of promise to marry as she was already married having children and living in the matrimonial home. Gainful reference in this regard can be made to the judgments of Hon'ble Supreme Court of India in "**Prashant Bharti Versus State of NCT of Delhi**" 2013(3) SCC(Cri) 920 and "**Vinod Gupta Versus State of Madhya Pradesh & Another**" 2024(2) R.C.R. (Criminal) 175. Considering the aforesaid factual position, it is evident that relationship of appellant/prosecutrix with respondent No. 2/accused was consensual and this consent is not proved to have been given on the basis of any promise, false or otherwise by respondent No. 2. Consent as per Explanation 2 to Section 375 of IPC is defined as under :-

"Explanation 2. - Consent means an unequivocal voluntary agreement when the woman by words, gestures or any form of verbal or non-verbal communication, communicates willingness to participate in the specific sexual act:

Provided that a woman who does not physically resist to the act of penetration shall not by the reason only of that fact,



be regarded as consenting to the sexual activity.”

15. The prosecutrix levelled allegations against respondent No.2/accused for the first time when she gave her statement to police on 25.08.2016. She was medically examined at Rao Tula Ram Memorial Hospital, Jaffarpur, Delhi. Copy of her MLR is Ex.PW6/A, which is proved on record by examining Dr. Anil Yadav, Senior Medical Officer as PW6. She had refused to undergo internal gynecological examination. As per report of Forensic Science Laboratory (FSL) dated 13.02.2017 Ex.PX semen could not be detected on any of the exhibits tested in laboratory. Moreover, in the case in hand, dispute started between appellant/victim 'M' and respondent No. 2/accused in the year 2015 when she came to know about his marriage with some another girl. She was medically examined after a gap of more than one year. Therefore, medical record and report of FSL proved on file does not carry much importance.

16. It cannot be ignored that there is long delay in lodging the report to police. The relationship of appellant/victim 'M' with respondent No. 2/accused carried on, from the year 2008 till May 2015 and during this entire period, prosecutrix did not lodge any report against respondent No. 2/accused. It is admitted by prosecutrix that even after their breakup in May 2015, no complaint was filed and it is only after a period of more than one year thereafter that FIR was lodged. This fact too indicates that the relationship was consensual. Allegation that consent was obtained on the basis of a false promise to marry is not

proved in any manner from the evidence on record. Prosecution failed to



lead convincing evidence on record to prove the allegations under Section 406 IPC regarding entrustment and mis-appropriation of cash amount and gold jewellery. Bald statement of appellant/victim 'M' alone without any evidence to substantiate the same is not sufficient to prove the said allegation. There is no evidence to show that respondent No.2/accused threatened the appellant/victim 'M' or her children in any manner. Long silence on the part of appellant/victim 'M' is fatal to the prosecution case. Present is not a case where conviction can be based and founded upon the sole testimony of the appellant/victim.

Considering the facts of case and evidence on record, the conclusion arrived at regarding acquittal of respondent No. 2/accused vide judgment dated 22.10.2018 by the Court of learned Additional Sessions Judge (Exclusive Court), Jhajjar does not require any interference and same is accordingly upheld.

17. Appeal preferred by appellant/victim 'M' alongwith application seeking special leave to appeal is accordingly, dismissed.

18. Pending application(s) if any, also stands disposed of accordingly.

(AMARJOT BHATTI)
JUDGE

(LISA GILL)
JUDGE

14.05.2024
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Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No