

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR.

:::

ORDER

:::

S.B. Crl. Leave to Appeal No.197/2013

State of Rajasthan

Vs.

Gopal & Anr.

Date of Order :: 31.1.2014

HON'BLE MR. JUSTICE SANDEEP MEHTA

Mr. Anil Joshi, P.P. for the State.

...

The instant leave to appeal is directed against the judgment dated 24.7.2013 passed by the learned Addl. Sessions Judge (Women Atrocity Act Cases), Jodhpur whereby the respondents were acquitted of the charges under Sections 366, 376, 376/109, 384 and 364 I.P.C.

Learned Public Prosecutor urges that the prosecutrix in her testimony has clearly alleged that the accused Sita administered her tea supplementing with some stupefying agent due to which she became unconscious. Thereafter both the accused took her to an unknown place where Gopal subjected her to forcible intercourse. Learned P.P. submits that no significant contradictions were noticed by the learned trial Judge in the testimony of the prosecutrix and yet the accused have been acquitted in this

case without any justification. He, therefore, urges that it is a fit case for grant of leave to appeal to the State of Rajasthan for filing an appeal against the acquittal of the accused.

I have heard learned Public Prosecutor and have perused the impugned judgment.

The learned trial Judge whilst acquitting the accused by the impugned judgment noticed the fact that the prosecutrix a married woman was allegedly abducted on 31.3.2010. The F.I.R. was filed six days later after she returned back. Her husband who was aware of the fact regarding the prosecutrix having been taken away by the accused did not choose to file any report. It was also noticed that the prosecutrix travelled with the accused to various places but did not make any objection at any point of time. They also boarded a bus which was full of other passengers yet no objection was raised by her. The learned trial Judge further noticed the fact that the prosecutrix admitted knowing the accused from before when she filed the F.I.R. and gave her statement under Section 164. After going through the findings recorded by the learned trial Judge in the impugned judgment, this Court is of the opinion that it is apparently a case where a major married woman on being disappointed and aggrieved by the cruelty committed on her by her husband (as admitted in her cross examination) went away with the accused of her own free

will and established consensual relations with him. The appreciation of evidence as conducted by the learned trial court is just and proper and the finding of acquittal as recorded in the impugned judgment cannot be said to be perverse, illegal or against the material available on record. Thus, there is no reason to grant leave to the State of Rajasthan to file an appeal against the impugned judgment.

Accordingly, the application for leave to appeal being devoid of any merit is rejected. The record be sent back.

(SANDEEP MEHTA), J.
/Sushil/