

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CRM-A-359-MA of 2016 (O & M)
Date of decision : 21.4.2016**

Harvinder Kaur

.....Applicant

v.

State of Punjab and others

.....Respondents

**CORAM : HON'BLE MR. JUSTICE T.P.S. MANN
HON'BLE MR. JUSTICE RAMENDRA JAIN**

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporters?
3. Whether the judgment should be reported in the Digest?

Present : Mr. Naveen Sharma, Advocate
for the applicant

RAMENDRA JAIN, J.

CRM No. 6257 of 2016 :

Heard. Sufficient cause has been shown for condonation of delay in applying for leave to appeal. The application is, therefore, accepted. The delay of 408 days in applying for leave to appeal is condoned.

CRM-A-359-MA of 2016 :

The instant application under Section 378 (4) Cr.P.C. has been filed by the complainant against acquittal of respondents No.2 to 5 (private respondents) vide judgment dated 8.9.2014 passed by the Additional Sessions

Judge, Ludhiana.

Put pithily, the private respondents were booked and tried under Sections 376, 452, 354, 323 and 506 read with Section 34 IPC on the allegations that at about 2.00 p.m. on 13.4.2011, respondent No.2-Baba Harpal Singh @ Pali committed rape with the applicant against her wishes. He also threatened her with dire consequences. Thereafter, again on 9.5.2011, respondent No.2 by entering into the house of the applicant, tried to rape her by tearing her clothes, but her hue and cry attracted her brother Deepak on the spot, who saved her from his clutches. Respondent No.2 fled away from the spot. On being called by her brother-Deepak, her maternal aunt Manjit Kaur, maternal uncle Jaswant Singh and their son Rajinder Singh reached the house of the applicant. In the meanwhile, respondent No.2, his son Satnam Singh @ Mani-respondeont No.3 along with Rinku and Vicky came to her house with lathis and caused injuries on the right hand of her uncle Jaswant Singh, on the head of her maternal aunt Manjit Kaur as well as to her brothers Rajinder Singh and Deepak in her presence.

The prosecution in support of its case examined as many as ten witnesses. Statements of the private respondents under Section 313 Cr.P.C. were recorded putting entire incriminating evidence came on record against them, to which they denied and pleaded their innocence.

In defence, they examined DW1 Dr. Gurbinder Kaur and DW 2 Hardev Singh.

After going through the evidence led by the prosecution and hearing learned counsel for both the sides, the trial Court did not find itself convinced with the allegations of the prosecution against the private

respondents and accordingly, acquitted them vide impugned judgment dated 8.9.2014.

Learned counsel for the applicant contended that impugned judgment is based on surmises and conjectures. The prosecution has led sufficient evidence to prove the guilt of the private respondents and thus, their acquittal by the trial Court is bad in law.

We have given our thoughtful consideration to the above submissions and find the application meritless for the reasons to follow.

(i) The prosecutrix in her cross examination has admitted that her brother Deepak PW5 was married and living with his wife-Neetu in one of the rooms of their house consisting of only two rooms. However, presence of said Neetu, at the time of both the alleged occurrences is being concealed by Deepak PW5 as well as by the prosecutrix.

The first occurrence of rape had allegedly taken place on 13.4.2011. However, it is un-explained on the file that why the prosecutrix kept mum and did not disclose the same to her parents or even to her brother or his wife Neetu till 9.5.2011 i.e. for about 26 days.

(ii) Respondent No.2 was aged around 60 years at the time of the alleged occurrence. The prosecutrix was 28 years old, her date of birth being 10.3.1983. Accordingly, she was a mature and well built girl. Her mother and sister in law also used to remain at house. Hence, it is quite improbable that respondent No.2 could find opportunities twice to tease and rape the prosecutrix in her

own house.

Alleged initial rape upon the prosecutrix was committed in the small bathroom of their house having no door. Had she been not a consenting party to it, in that event, she could very well resist the unwanted act of respondent No.2 by coming out of the bathroom without any door.

(iii) It is also quite strange that the prosecutrix did not raise any hue and cry at the time of her alleged first rape on 13.4.2011. Her version that respondent No.2 by gagging her mouth had made her unable to raise hue and cry does not seem to be truthful, because, a person aged 60 years cannot commit rape by gagging the mouth of a well built lady aged 28 years by one hand, more particularly, when her legs and another hand were not tied.

(iv) With regard to second rape on 9.5.2011, the prosecutrix had testified that respondent No.2 had torn her clothes, but due to her resistance, he could not succeed. The prosecutrix during such resistance must have received some injuries. However, PW10 Dr. Anantjit Kaur while medico legally examining her did not find any external mark of injury on her body. Moreover, her alleged torn clothes were not even handed over to the police, or to the doctor, nor were produced in the court to corroborate the prosecution story.

(iv) On 9.5.2011 due to resistance by the prosecutrix, respondent No.2 could not commit rape with her. However, as per Chemical Examiner's report Ex.PW1/C, spermatozoa was detected on her vaginal swab. The prosecutrix has miserably failed to explain as to

how and in what circumstances spermatozoa came present on her vaginal swab.

The mother and sister in law of the prosecutrix were the most material witnesses but they did not come forward to make their statements either before the Investigating Officer or the Court. Even father of the prosecutrix also did not come forward to make his statement. Maternal aunt Manjit Kaur and uncle Jaswant Singh as PW2 and PW3 respectively, did not utter even a single word about the attempt of rape upon the prosecutrix by respondent No.2 on 9.5.2011. They in unambiguous terms testified that PW5 Deepak had made a call to them that some quarrel has taken place whereupon, they reached the spot. Hence, the story put forth by the prosecution about rape of the prosecutrix is not trust worthy.

Respondent No.2 has claimed himself a mahant of the mazar situated in the neighbourhood of the prosecutrix. His stand is that the prosecutrix and her family members wanted to take offerings collected at the mazar despite his opposition. On 9.5.2011 respondent No.2 was beaten up by the prosecutrix and her relatives and resultantly, he was got admitted in Civil Hospital, Ludhaina by his brother in law Hardev Singh. For the above reasons the private respondents were falsely implicated as a counter blast.

(v) The deposition of the prosecutrix that there was no mazar in their neighbourhood is contrary to the admission of her brother Deepak that the said mazar was constructed by respondent No.2 and the same was still in existence at their house.

(vi) PW9 Dr. Gurbinder Kaur, who medico legally examined the prosecutrix, was re-examined by the private respondents as DW1. She testified that on 9.5.2011 while medico legally examining respondent No.2, has found six injuries on his person vide MLR Ex.DW1/A and pictorial diagram DW1/B. The injuries were fresh and were caused with blunt weapon. The prosecution has not been able to explain the said injuries on the persons of respondent No.2. The above fact strengthens the case of the private respondents that there was a dispute regarding distribution of money collected at the mazar and for that reason the prosecutrix and her family members caused injuries to respondent No.2 and they were falsely implicated in the present case.

Investigation was not conducted fairly rather was tainted. Respondent No.2 was medico legally examined in the Civil Hospital, Ludhiana at 11.30 A.M. whereas maternal aunt and her husband were medico legally examined after him i.e. around 12.30 p.m. but the Investigating Officer concealed the factum of medical of respondent No.2. Besides above, there are other major contradictions in the prosecution case which have rendered it doubtful.

Learned counsel for the applicant-complainant has miserably failed to put any dent in any of the findings of the trial Court. We have also gone through the impugned judgment and found no illegality or perversity in the same.

In view of the discussion above the instant application being

completely devoid of any merit is dismissed. Leave to appeal is declined.

(T.P.S. MANN)
JUDGE

(RAMENDRA JAIN)
JUDGE

21.4.2016
Ashwani