

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

**Criminal Misc. No. 32043 of 2016 and
Criminal Appeal No.D-1582-DB of 2014**
Date of Decision : September 04, 2017

Durga

....Applicant/appellant

Versus

State of Haryana and another

....Respondents

**CORAM : HON'BLE MR. JUSTICE T.P.S.MANN
HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU**

Present : Mr. M.S. Kathuria, Advocate
for the applicant/appellant.

T.P.S. MANN, J.

The prosecutrix is aggrieved of the judgment dated 9.9.2014 passed by learned Additional Sessions Judge, Faridabad, whereby accused Santosh, respondent No.2 herein, stood exonerated of the charge under Sections 342, 376, 450 and 506 IPC and Section 67 of the Information Technology Act and has, accordingly filed the aforementioned application under Section 378(3) Cr.P.C. and also the appeal.

According to the prosecution, on 14.3.2014, the prosecutrix, alongwith her husband, lodged a complaint with the police stating therein that on 28.6.2012, the accused, who was her cousin had come to her house and after entering her house as the door of her house was open, raped her. She tried to raise an alarm but was threatened by the

accused that he would kill her husband and the children. She further stated that the accused used to rape her time and again and had also dishonestly clicked her objectionable photographs. She did not disclose about the incident to anyone due to fear and shame. Moreover, the accused used to keep a revolver with him. She remained under depression and only after collecting courage she reported the matter to the police and prayed for taking action against the accused.

After hearing learned counsel for the applicant/appellant and on going through the record, this Court finds that the accused was related to the prosecutrix as her brother, being son of her Mausa (maternal uncle). Though the accused had been repeatedly subjecting her to forcible sexual intercourse since June, 2012 till March, 2014 but it was highly improbable and unnatural that she would have kept mum for such a long period of time without any valid reason. The prosecutrix has admitted during her cross-examination that Asha, who was her sister-in-law (Bhabhi) and the sister of the accused got registered a case under Sections 406 and 498-A IPC against her and her family members. Possibility cannot be ruled out of the prosecutrix getting a false case registered against the accused. Further, according to the prosecutrix, after 28.6.2012, she had not got repaired the latch of the door which had become loose and the door opening on being pushed. She also stated that the accused committed rape upon her 18/20 times. It is highly unbelievable that each time the accused committed rape upon her, her husband and her children would be there in the house. It was

her case that she used to run a beauty parlour and her timings were not the same every time. The accused would not have come to know about the presence of the prosecutrix in her house every time. Apparently, it was a case of consent, especially in view of the fact that at the time of her medico-legal examination, no mark of visible external injury was seen on her body. As regards the commission of offence under Section 67 of the Information Technology Act is concerned, no evidence has been brought on record by the prosecution to prove that the accused was using his face-book account in the name of Sam Verma. PW8 LC Indu Bala has deposed that the particulars of face-book account showed that they were in the names of Santra Devi and Mahesh Lal.

In view of the above, no case is made out for any interference in the impugned judgment of acquittal. The application is without any merit and, therefore, dismissed. Leave to appeal is declined. The appeal is also dismissed.

September 04, 2017 (T.P.S. MANN) (MAHABIR SINGH SINDHU)
JUDGE JUDGE
satish

Whether reasoned/speaking : YES / NO

Whether reportable : YES / NO