

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-A-817-MA-2010

Date of Decision:- 03.02.2017

State of Haryana

....Applicant

Versus

Sonu Bansal

....Respondent

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. D.R. Singla, DAG, Haryana, for the applicant.

RITU BAHRI, J. (Oral)

The State of Haryana-applicant has filed the present application under Section 378(3) Cr.P.C. for seeking leave to appeal from the judgment dated 04.01.2010 whereby learned Additional Sessions Judge, Ambala, has acquitted accused Sonu Bansal.

Briefly, the prosecution case is that, on 27.10.2008, when police party were present near Galaxy Mall, Sector 7, Ambala City, in connection with patrolling duty, complainant Sapan Sharma wife of late Shri Kulwant Lal Sharma, Advocate, came there and stated that on 27.10.2008 at about 9.30 AM she and her son Manish left for her in-laws village Gazipur in District Patiala to meet their relatives, leaving behind her unmarried daughter. They both returned back around 12.30/1.00 in the afternoon but were surprised to find that house was locked, the keys, however, were found in the inverter box outside. She presumed that her

daughter might have gone out to the market to meet her friends and would

return back soon but when she did not hear anything from her till 6.30 PM, she became worried and started inquiring about her. Thereafter, she received a telephonic call and the caller told her that her daughter had been kidnapped. Consequently, she requested the policy authorities to trace the whereabouts of her missing daughter, to arrest the accused and initiate appropriate proceedings against him. On the basis of said complaint, case under Sections 366 and 372 IPC was registered and investigations were carried out. On 10.11.2008, daughter of complainant was recovered from the custody of Sonu, accused was arrested and rough site plan of the place of recovery was prepared. Both accused and prosecutrix were taken to hospital to get their medico-legally examination. Sealed parcels containing clothes of both prosecutrix and accused were handed over by Medical officer to the investigating officer, thereafter, prosecutrix was handed over to her parents and accused was produced before the Court. Thereafter, statement of prosecutrix was recorded under Section 164 Cr.P.C. by the learned Judicial Magistrate 1st Class, Ambala City.

After presentation of the challan, learned Magistrate committed the case to the Court of Sessions, vide order dated 19.01.2009.

Charge under Sections 366 and 376 IPC was framed against accused, vide order dated 21.01.2009, to which, he pleaded not guilty and claimed trial.

In order to prove the charges against the accused, the prosecution has examined total thirteen witnesses.

The trial Court, after taking into consideration the facts and all the contentions pertaining to appreciation of evidence, has acquitted the accused, by virtue of impugned judgment dated 04.01.2010, which in

substance is as under: -

“Smt. Sapna Sharma (mother of prosecutrix) while appearing in the witness box as PW2 deposed that her daughter was born on 11.08.1986, even prosecutrix in her statement recorded on oath in Court, mentioned her date of birth as 11.8.1986, meaning thereby that on the day the alleged incident occurred, prosecutrix was 22 years of age.

Let us now first of all carefully go through statement made on oath by prosecutrix to ascertain as to whether she of her own accord went alongwith the accused, or not. According to her, accused Sonu used to follow her even when she was studying B.Ed. In Yamuna Nagar, he always used to be on the look out of an opportunity to talk to her, she tried her best to avoid him though she was extremely bothered by this behaviour, but neither did she inform her mother nor any of her friends. After completing B.Ed., she returned back to Ambala and took admission in M.A. in DAV College, Ambala City, after some time, Sonu started calling her at Ambala as well and used to threaten her to talk to him or else, he would disclose their story to her family members. Further, according to her, a day before Diwali, i.e. on 27.10.2008, he called her up and directed her to come out of her house to meet him, when she objected, he threatened to forcibly barge inside the house. They both agreed to meet near Old Sessions Court, Ambala City, at about 10.00 AM, she reached the place and saw accused waiting in car, it was on his insistence that she agreed to sit in Himanshi Restaurant, but no sooner did she sit in the car, she was forced to have a cold drink, on consuming which, she became unconscious, when she came back to senses, she found herself to be lying on a cot at a secluded place and felt that accused had raped her, she was so terrified that she again fell unconscious, when she regained consciousness, a body in the room called up accused, who arrived about 10-15 minutes thereafter, when she asked him to drop her back to her house, he admitted that he had done something wrong, but forcibly made her to sign certain blank pieces of paper, she was made to sniff at something, after when she again fell unconscious, this time, when she regained consciousness, she found herself at railway station Jodhpur. As the story further goes, it was on insistence of accused that she married him and also, according to her, she was terrified as accused had threatened to kill her family members. After staying in Jodhpur for 5-6 days, they returned back to Ambala by train and while they were sitting in a park in Section 7, Ambala City, they were apprehended by police. Evidence adduced on the case file by prosecution clearly shows that the edifice of their story is that accused who had been bothering prosecutrix in the past, on 27.10.2008 threatened to kill her brother and also family members if she did not accompany him, reluctantly, she went to meet him. Apart from these threats, it has been further alleged that accused used to offer food and drinks laced with intoxicant, on consuming which, prosecutrix used to fall unconscious, and taking advantage of her being in this state, he sexually assaulted her several times. This story appears too good and convincing to be true. It appears very

strange that a young educated woman of 22 years of age who had been bothered by behaviour of accused even in the past, agreed to meet him all alone in a restaurant, sat in his car, did not think it appropriate to inform her mother or brother, she immediately fell unconscious, when she regained consciousness, she felt as if accused had raped her. In her examination-in-chief she deposed that the place where she was raped for the first time, was an uninhabited house and was located in a secluded locality, whereas, during her cross-examination, she clarified that there were homes a little distance away from place of incident. When she regained consciousness, admittedly, as per her own version, accused was not at home, some other young boy met her, who called up accused, and 10-15 minutes thereafter, accused returned. It is not clear as to whether during this period, she made any effort to run away or even raise an alarm, apart from this, the identification details of the boy who was said to have been present in the house on 27.10.2008, have not been brought on the file. Further according to her, she became fully conscious when she reached Jodhpur railway station, it sounds strange to common sense that a young woman in an unconscious condition was made to undergo train journey from Ambala to Jodhpur and no one noticed her, nor once did she wake up or ask for help from any one in the train. Even when she regained consciousness at made no efforts to inform the police authorities or cry for help. Moreover, according to her own statement, she and accused stayed in Jodhpur for four-five days either in a hotel room or in Dharamshala, from where also, no efforts were made to call up her mother or to ask for any help from other persons in the hotel or Dharamshala. Every time, when she was questioned in her cross-examination, she came up with a patent reply that she remained in a semi-conscious condition. The story does not end here, during her stay at Jodhpur, admittedly, she and accused got married in a Arya Samaj Temple, the ceremony was performed by a Priest, at that point in time, several other people, according to her, were also present in the Temple, a little before the marriage ceremony was performed, she and accused visited District Courts at Jodhpur where some documents were got signed from her, though forcibly, District Courts, as we all know, is a place buzzing with activity and extremely is crowded, even there, she did not raise any alarm neither shared her sad tale with anyone, she did ask for any help when she was made to sign certain papers, neither did she think it appropriate to inform the Priest or other persons who were present in the Temple that the marriage was being performed against her will, quite astonishingly, as per her own version, she stayed with accused from 27th October, 2008 to 10th November, 2008, during this period, she also had telephonic conversations with relatives of accused, I fail to understand if she was conscious enough to talk to his relatives on telephone, why did she make no effort to talk to her mother or inform the police. Equally astonishing is the fact that she and accused returned back to Ambala by train and reached there at about 10.00 in the morning of 10.11.2008, while her return journey also, she did not seek help from any of the passengers. Once she reached Ambala, she did not got

straightway to her parents' house, on the contrary, she was found sitting in a park in Sector 7, Ambala City from where the two of them were apprehended by the police. Sequence of events that have been highlighted in preceding paragraphs, clearly leads to an irresistible conclusion that she of her own accord and out of free will accompanied accused Sonu who was previously known to her and was indeed a consenting party to the entire episode.

9. The inescapable and all confirming conclusion that can be drawn from the above discussion, is that prosecution has not been able to connect accused with commission of offence, who is accordingly acquitted of charges leveled against him. The accused, who is in custody, be released immediately, if not required in any other case.”

After hearing the learned counsel for the appellant, going through the judgment of acquittal, this Court is of the considered view that the appellant-State has miserably failed to produce any cogent evidence on record to prove the charges against the accused. Therefore, no interference is warranted in the impugned judgment dated 04.01.2010, passed by the Additional Sessions Judge, Ambala. Such judgment, containing valid reasons, cannot possibly be interfered with by this Court, in exercise of limited jurisdiction of this Court under Section 378(3) Cr.P.C., unless and until, the same is illegal, perverse and without jurisdiction. Since, no such patent illegality or legal infirmity has been pointed out by the learned counsel for the applicant-State, so, the impugned judgment deserves to be and is hereby maintained in the obtaining circumstances of the case.

In the light of aforesaid reasons, as there is no merit, therefore, the instant petition to leave to appeal is hereby dismissed as such.

February 03, 2017
naresh.k

(RITU BAHRI)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	No