

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

CRM-A-1633-MA of 2016

DATE OF DECISION :- January 17, 2017

Sham Sunder

...Appellant

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR.JUSTICE M.JEYAPPAUL

HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present:- Mr. Deepak Girotra, Advocate for the appellant.

CRM No. 28425 of 2016

Heard.

There is a delay of 12 days in filing the appeal. For the reasons set out in the application, the delay is condoned and the application is allowed.

CRM-A-1633-MA of 2016

1. Aggrieved by the quantum of sentence imposed on accused Lucky for the offence under Section 376 of the Indian Penal Code and the wholesale acquittal of accused Rahul, Bitu @ Raju and Balwant Rai @ Bhau, the father of the prosecutrix has come forward with the present application invoking the provisions under Section 378(3) Cr.P.C. seeking

special leave to file an appeal.

2. It is the version of the prosecutrix who was examined as PW3 that on 29.12.2011, accused Lucky telephoned her and directed her to bring money from her house, wielding threat to her life. Thereafter, accused Lucky accosted her at katcha Beri Raod and on the point of knife, took money from her and took her to the house of her maternal grand mother Kailasho. His maternal uncle Raju and his brother Rahul and Goldy were also present. His grand mother Kailasho gave ₹15,000/- and asked him to elope with the prosecutrix. Thereafter, Lucky took her to his uncle Balwant's house. He also gave money to Lucky and asked him to run away. At the house of Balwant Rai, accused committed rape upon her.

3. The trial Court having adverted to the evidence on record arrived at a conclusion that it was only accused Lucky who had committed offences punishable under Sections 363, 366 and 376 of the Indian Penal Code. For the major offence under Section 376 of the Indian Penal Code, accused Lucky was sentenced to undergo 7 years' rigorous imprisonment and to pay a fine of ₹10,000/- and in default, to undergo simple imprisonment for three months. But accused Rahul, Bitu @ Raju and Balwant Rai @ Bhau were acquitted of all the charges.

4. Heard the submissions made by learned counsel appearing for the applicant.

5. It is the categoric version of the prosecutrix that accused Raju and Rahul were simply present in the house of Kailasho who gave money to the accused Lucky. In the absence of any other criminal implication, in our considered view, the presence of the above accused in the house of Kailasho

would not constitute any offence. Apart from the above statement of the prosecutrix there is virtually no evidence to bring home the charge to accused Rahul and Raju. The prosecutrix gave statement before the learned Judicial Magistrate under Section 164 Cr.P.C during the course of investigation. Never had she stated that accused Balwant Rai gave money to the accused Lucky to elope with the prosecutrix and that Lucky committed rape on the prosecutrix at the house of Balwant Rai. The marked departure made by the prosecutrix during the course of trial to the effect that Balwant Rai gave money to accused Lucky and he committed rape upon her at his house during the course of trial was rightly rejected by the trial Court as it was a rank improvement.

6. In our considered view, as rightly pointed by the trial Court, there is no legal evidence to implicate accused Rahul, Raju and Balwant Rai.

7. Coming to the sentence of 7 years imposed by the trial Court on accused Lucky for the major offence under Section 376 of the Indian Penal Code, we find that there had been a love affair between the accused Lucky and the prosecutrix who was 15 years old. The photographs Ex.D2 to D5 brought to light that accused Lucky and the prosecutrix had posed for the photographs in a very happy mood. The love letters Mark A and Mark B, reveal that the prosecutrix was in deep love with Lucky. Therefore, in the above facts and circumstances, in our considered view, sentence of 7 years rigorous imprisonment imposed by the trial Court on accused Lucky for the offence under Section 376 IPC cannot be termed as disproportionate.

8. For all these reasons, we find that there is no merit in the

application. Therefore, the special leave to appeal sought for by the applicant is declined and the application is accordingly dismissed.

(M. JEYAPPAUL)
JUDGE

(AUGUSTINE GEORGE MASI)
JUDGE

January 17, 2017
p.singh

Whether speaking/reasoned Yes/No

Whether Reportable Yes/No