

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRM-30541-2016 IN/AND
CRM-A-1770-MA-2016

Date of Decision: 17.5.2017

State of Haryana

....Appellant.

Versus

Sukhbir

...Respondent.

**CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.
HON'BLE MR. JUSTICE HARINDER SINGH SIDHU.**

PRESENT: Mr. Ashok Chaudhary, Additional Advocate General, Punjab.

AJAY KUMAR MITTAL, J.

CRM-30541-2016

For the reasons stated in the application which is supported by an affidavit, the delay of 142 days in filing the application for grant of leave to appeal is condoned.

CRM stands disposed of accordingly.

CRM-A-1770-MA of 2016

1. The present application has been filed under Section 378(3) of the Code of Criminal Procedure, 1973 (in short “the Code”) for grant of leave to appeal against the judgment of acquittal dated 28.1.2016 passed by the Additional Sessions Judge, Bhiwani.

2. Briefly stated, the facts necessary for adjudication of the instant application as narrated therein may be noticed. An FIR No. 459 dated

8.6.2014, under Sections 376(2)(f) and 506 of the Indian Penal Code, 1860

(IPC) was registered at Police Station Badhra, District Bhiwani against the respondent on the allegations that on 8.6.2014 at about 7.00 AM, the respondent, Rambir, Bhagwan Devi, Nirmala Devi by laying the prosecutrix in the street, caused her the injuries and when she tried to run to save herself then by stopping her way, she had been given the threatening. The said persons had forcibly taken the possession of her land and house. Upon the application of the prosecutrix, a case under Sections 323, 341, 447, 506 read with Section 34 IPC was got registered. On getting the doctor's opinion on 9.6.2016, the statement of the prosecutrix was recorded. On 12.6.2014, the prosecutrix came to Police Station and alleged that she had been raped. She was medico legally examined and the matter was investigated. Thereafter, Section 376(2)(f) IPC was added. The statement of prosecutrix was got recorded under Section 164 of the Code. The respondent was arrested on 28.6.2014 and his disclosure statement was recorded. The case was further investigated and the offences under Sections 323, 341, 447 read with Section 34 of IPC were deleted. On completion of the investigation, the challan under Section 173 of the Code was presented in the trial Court.

3. Since the offence under Section 376(2)(f) of the IPC was exclusively triable by the Court of Session, the case was committed to the Court of Sessions by the trial Magistrate vide order dated 31.7.2014.

4. Charges against the respondent were framed for the offence under Section 376(2)(f) and 506 of the IPC by the Additional Sessions Judge, Bhiwani on 4.9.2014 to which he pleaded not guilty and claimed trial.

5. After charges were framed, the prosecution examined as many as 12 prosecution witnesses and tendered various documents including the

record of FSL as Ex.P23 in support of its case.

6. When examined under Section 313 of the Code, the respondent denied the prosecution allegations and pleaded innocence. He stated that he had been falsely implicated in the rape case only to settle the civil dispute which is pending in the Civil Court. In defence, the respondent examined Hawa Singh as DW1.

7. The trial Court on appreciation of the evidence led by the prosecution and the respondent, acquitted the respondent of the charges framed against him vide judgment dated 28.1.2016. Hence, the instant application for grant of leave to appeal.

8. After hearing learned State counsel and perusing the judgment of acquittal, we do not find any merit in the application for grant of leave to appeal.

9. The trial Court had recorded that the allegations levelled by the prosecutrix in her complaint Ex.P1 as well as her statement, Ex.P8 recorded after a period of about eight days of the alleged occurrence under Section 164 of the Code before the Magistrate, are altogether different. She had not levelled the allegations of rape in her first version before the police. The allegations of rape are serious and grave and the prosecutrix usually level such allegations against the accused at the first instance and not after a gap of eight days. As per the application, Ex.P1, moved by the prosecutrix, the civil disputes are also pending between the parties regarding property. The prosecution had not examined any other witness to corroborate the version of the prosecutrix regarding the beatings given to her in the street or committing the wrong act with her by the accused. PW3 Dr. Rashmi Mehta, Medical Officer, General Hospital, Bhiwani who medico legally examined

the prosecutrix had also opined that no fresh injury was found on the person of the prosecutrix at the time of her examination. DW1 Hawa Singh examined by the defence had stated that the prosecutrix had filed a false case against the respondent to grab the property from Rambir and Sukhbir (the respondent) and in this regard, he and his wife had given a complaint, Ex.D1 in the Court. He further stated that if the rape had been committed with the prosecutrix, she would have informed about it to the police on the same day, i.e. 8.6.2014 and not on 12.6.2014. Civil litigation is pending between the prosecutrix and the respondent. The trial Court had further held that the medical evidence did not corroborate the case of the sexual intercourse or rape with the prosecutrix. There are material discrepancies in the evidence of the prosecutrix which did not inspire confidence.

10. In view of the above discussion, this Court is of the opinion that the trial Court while appreciating the entire evidence in its proper perspective, had rightly held that the prosecution had failed to prove its case against the accused-respondent beyond any reasonable doubt. Thus, no case is made out for any interference in the impugned judgment.

11. Accordingly, the application for leave to appeal being devoid of any merit is hereby dismissed.

(AJAY KUMAR MITTAL)
JUDGE

May 17, 2017
gbs

(HARINDER SINGH SIDHU)
JUDGE

Whether Speaking/Reasoned

Yes

Whether Reportable

Yes