

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

Criminal Misc. No.A-1155-MA of 2017

Date of Decision : August 10, 2017

Neelam

.....Applicant

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. Deepak Girotra, Advocate
for the applicant.

T.P.S. MANN, J.

The prosecutrix, who was admittedly major at the time of the occurrence, has filed the present application under Section 378(3) Cr.P.C. seeking permission for leave to appeal against the judgment dated 20.01.2017 passed by learned Additional Sessions Judge, Rohtak whereby accused Naresh, respondent No.2 herein, stands acquitted of the charges under Sections 366, 323 and 376 IPC.

According to the prosecution, on 9.1.2015 a telephone call was received at Police Station, Meham from PGIMS, Rohtak regarding admission of the prosecutrix as a case of poison. On receipt of information, SI Anup Singh, alongwith other police officials, reached the said hospital and after collecting medical ruqa, case property, etc. and obtaining the opinion of the doctor regarding the fitness of the prosecutrix to make the statement, learnt about rape having been committed upon her after administering her some

poisonous substance. Accordingly, SI Anup Singh informed Inspector Garima, Incharge, Women Cell, Rohtak, who sent L/SI Hawa Kaur to the hospital. SI Hawa Kaur contacted Ms. Ranjana Rapria, Advocate, who told that she was at Chandigarh at that time. Accordingly, she recorded the statement of the prosecutrix to the effect that she was studying in J.B.T. 1st year. On that day, i.e. 9.1.2015. at about 9.30 a.m., she was going to Meham for her studies on foot. On the way, the accused accosted her, who after abusing and beating her forcibly made her to accompany him on his motorcycle. He took her to Meham bus stand where on the backside of the bushes he forcibly committed rape upon her. When she told that she would reveal about the incident to the family members, he forcibly administered some poisonous substance to her and fled from the spot. On hearing her cries, a man came there and asked about the matter. She revealed everything to him, who telephonically informed her family members. Her family members came there and got her admitted in General Hospital, Meham from where she was referred to PGIMS, Rohtak.

Having heard learned counsel for the applicant and on going through the impugned judgment of acquittal, this Court finds that though in her first statement made before the police the prosecutrix had alleged that the accused forcibly committed rape upon her yet while in the witness box as PW8, she stated that the accused forcibly took her on his motorcycle and attempted to commit rape upon her in the bushes on the backside of the bus stand. Thus, she did not implicate the accused for committing rape upon her. PW1 Dr. Kulgaurav, who had medico-legally examined the prosecutrix stated in his cross-examination that the patient was brought by her brother

Praveen. At that time, she was conscious and oriented. She had given history of ingestion of some unknown substance at a private school in Meham at about 1.00 p.m. She did not give any history of sexual assault. The prosecutrix was not examined at General Hospital, Meham. It has come in the evidence that thereafter she was medico-legally examined from a Board of Doctors headed by PW5 Dr. Roopa Malik, who gave opinion on the basis of findings of the Board that there was nothing to suggest forcible intercourse on the prosecutrix.

In her testimony the prosecutrix stated that the accused administered her some substance with tube and fled away from the spot. However, her brother Praveen, who got her admitted in the hospital gave the history of ingestion of some unknown substance in a private school in Meham at about 1.00 p.m. on that very day. If she had been administered poison at bus stand, she would have revealed that to the doctor. Further, FSL report Ex.PA reveals that no common poison/drug was found in the gastric lavage and blood of the prosecutrix nor any such substance found in the plastic tube.

According to the prosecution, the accused had forcibly made her to sit on his motorcycle from her way to her college and he then took her to Bus Stand, Meham. In her cross-examination, she stated that she did not raise any alarm at that time, especially when vehicles were plying on the road and number of persons were also present there. In case, the accused had pressurized her to sit on his motorcycle she could scream and save herself but she did not do so. She also stated that she did not do so. In her cross-examination, she also stated that she did not have any mobile at that

time and someone had called her father on his mobile. No effort was made by the prosecution to examine such a person.

According to the prosecutrix, the accused attempted to commit rape upon her in the bushes of Bus Stand, Meham. However, SI Hawa Kaur in her cross-examination stated that there were no bushes at all at the place of occurrence. Moreover, it does not sound to reason that the accused would take a girl to a busy place, like bus stand and dare to commit rape upon her at that place.

It may also be mentioned here that in her testimony the prosecutrix stated about having not attended her class for 20 days prior to the incident as she was not well. However, when she was recalled for further cross-examination, she stated that she had been attending her class regularly prior to the incident.

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

(T.P.S. MANN)
JUDGE

August 10, 2017
satish

(MAHABIR SINGH SINDHU)
JUDGE

Whether speaking/reasoned. : Yes / No

Whether reportable. : Yes / No