

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Criminal Misc. No.A-1167-MA of 2017

Date of Decision : August 04, 2017

Anju Devi

....Applicant

VERSUS

State of Haryana and others

.....Respondents

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

Present : Mr. Jaspal Singh Pannu, Advocate as
Legal Aid Counsel for the applicant.

T.P.S. MANN, J.

The prosecutrix has filed the present application under Section 378 of the Code of Criminal Procedure, 1973 seeking grant of leave to appeal against the judgment dated 7.12.2016 passed by Additional Sessions Judge-I, Fatehabad. Vide impugned judgment, learned trial Court acquitted respondent No.2-Sandeep son of Om Parkash of the charges under Sections 366 and 376(2)(n) of the Indian Penal Code, whereas respondent No.3 Sandeep Kumar son of Khurda Ram of the charge under Section 506 of the Indian Penal Code.

According to the prosecution, the father of the prosecutrix moved an application before HC Vinod Kumar on 3.6.2015 when the latter was present at Bus Station Munshiwal in connection with patrolling and

crime checking duty to the effect that he was an agriculturist and having two children. His daughter, who is the prosecutrix, was aged 18½ years and a day before, they, after taking meal, went to sleep in the courtyard and when in the morning at about 7 a.m., they woke up, he found his daughter missing from the house. They searched for her in his relations and neighbourhood, but to no avail. Accordingly, FIR No.334 dated 3.6.2015 under Sections 366, 376(2)(n) and 506 IPC was registered at Police Station Ratia.

It is also the case of the prosecution that on 5.6.2015, the prosecutrix was recovered from bus stand of village Barwala and her statement under Section 164 IPC was got recorded. Her statement was also recorded in the presence of lady Councillor Smt. Neha Jasuja.

The father of the prosecutrix was examined by the prosecution as PW2. However, he is not the eye-witness of the alleged occurrence. On his written complaint Ex.P3, the case was initially registered under Section 346 IPC. He did not know anything till the recovery of his daughter as to what had happened with her.

The prosecutrix was examined as PW1 and she deposed about the occurrence. In her statement under Section 164 Cr.P.C., which was recorded by the Judicial Magistrate on 5.6.2015, she stated that on 2.6.2015 she was sleeping in her house and when she woke up in the morning she found herself at Rohtak. She found that Sandeep whose father's name and address she did not know, had brought her after kidnapping her during the night from her house. He was accompanied by

two other boys who were not known to her. On 5.6.2015, Sandeep and his companions brought her to Barnala from Rohtak and from there to Police Station Ratia brought and she was produced before the Magistrate. On 3.6.2015, Sandeep accused had committed rape upon her during the night and threatened her that if she disclosed the incident to anyone he would kill her. In her statement under Section 161 Cr.P.C., the prosecutrix stated that on 2.6.2015 she was sleeping in her house. In the morning when she woke up, she found herself at Rohtak and she found that Sandeep had taken her from her house after alluring her to perform marriage and two boys were accompanying him. In the morning of 3.6.2015, Sandeep accused committed rape upon her at Ayalki Waterworks and, thereafter, near Rohtak Canal.

On 4.7.2015 i.e. a month later, the prosecutrix made another statement under Section 164 Cr.P.C. stating therein that in the night of 2.6.2015, she was sleeping in her house and her parents and brothers were also sleeping besides her. Sandeep Kumar accused, who was resident of village Chhatriyan kidnapped her from her house. In the morning, when she woke up, she found herself at Rohtak. Hence, Sandeep, who was friend of other Sandeep and resident of village Uklana asked her to marry with Sandeep of village Chhatriyan and in case she did not marry him, he would kill her and her family members. Sandeep was still threatening her on telephone to kill her and on the pressure put by Sandeep resident Oklana, she performed marry with Sandeep of Chhatriyan in Arya Samaj Mandir, Delhi. Sandeep resident of Uklana had pressurized her to marry Sandeep resident of Chhatriyan.

When the prosecutrix appeared before the learned trial Court, she deposed that on 2.6.2015, she was sleeping in the courtyard of her house after taking her meals. Both the accused came inside her house and made her unconscious by putting a cloth on her nose and took her away. She regained consciousness on 3.6.2015 at village Ayalki. When she was semi-conscious Sandeep Sharma accused committed rape upon her, against her wish. From Ayalki she was taken to Rohtak by both accused in unconscious condition. The other Sandeep threatened to kill her and her parents and pressurized her to perform marriage with Sandeep Sharma and both of them took her to Delhi. Her signatures were obtained on blank papers under a threat and pressure. From Delhi, she was brought back to Rohtak. Next day Sandeep Sharma took her to a canal near Rohtak where he raped her. On 5.6.2015 both the accused brought her to Barwala where the police was present. Both the accused ran away and she was recovered by the police.

In para 24 of the impugned judgment of acquittal, learned trial Court after referring to the various contradictions in the statements made by the prosecutrix at various points of time and after holding that she had materially improved her version, held her testimony to be unbelievable and unnatural. Even according to the prosecution, the prosecutrix was of the age of more than 18 years at the time of the alleged incident. Despite the same, she did not even resist the attempt made by respondent No.2- Sandeep to have sexual intercourse with her. She tried to explain about not resisting to the wrong act of the accused as she was made unconscious by putting a cloth on her nose. However, in the cross-examination, she stated

that she did not raise cries when the accused committed rape upon her even when she was little bit conscious. She also stated that she did not raise cries after alighting from the vehicle and on the way to the roof in waterworks as she was threatened by the accused. However, in her cross-examination, she stated that there was a mattress in the said room in the waterworks where the accused committed rape upon her. She also stated that she could not resist the accused nor inflict injuries to him as she was not conscious but it cannot be explained as to how she could recognize that there was a room at waterworks and how could she say that there was no light in the room or she was brought to Ayalki in a vehicle. She could also not tell the type of vehicle though it was a four wheeler. It is not possible that when the prosecutrix was not conscious she could have known as to how she was taken to Rohtak and did not stop anywhere on the way. Though she regained consciousness at Rohtak but she could not tell the time and they were standing on the road in the vehicle when she became conscious for 2/3 minutes. But she did not raise cry at that time though she was fully conscious. She also stated that they did not have any refreshment on the way from Ayalki to Delhi. She went on to state that she was taken to a Mandir in Delhi and the Mandir was not in the Abadi. In her cross-examination she admitted photographs Ex.D1 to Ex.D8 of her and respondent No.2-Sandeep, which related to their marriage and the photographs were taken in Mandir at Delhi. She further stated that they had stayed in the Mandir for 15/20 minutes. If prosecutrix was not fully conscious, how she could state all those things. According to her, from the Mandir they had gone to the hotel and the room in the hotel was already

booked. She further stated that they stayed in the hotel for two minutes but she did not seek any help from the hotel as she was not allowed to go out. She did not cry after reaching the hotel from the Mandir. They left the hotel on 5.6.2015. While leaving also she did not raise hue and cry. On the way back they had stopped for fuel but she did not raise any cry at the petrol pump. Her explanation regarding all this was that the accused had threatened her. But under the given circumstances, it was well nigh impossible for the accused to have taken her from one place to the other and not making an attempt to seek any assistance or help from the persons who could be present around. In the photographs Ex.D1 to Ex.D8, the prosecutrix was shown to be wearing red colour Saree and red colour Duppatta, besides red colour bangles which are supposed to be worn by a lady at the time of her marriage. In those photographs she did not seem to be in unconscious state and even smiling in some of the photographs.

It is the stand of respondent No.2-Sandeep Kumar that the prosecutrix was a love with him and joined him of her own without any pressure or coercive from any side and she also performed marriage with him at a temple at Delhi of her own sweet will and without any pressure or coercion.

According to the prosecutrix, she had suffered injuries on her private parts and nail marks on her thighs. However, when she was medico-legally examined by PW4 Dr. Sunita Chawla, no such injury marks were found over her body. Even no mark of resistance or injury was found on external examination of her private parts.

In view of the above, it cannot be said that the learned trial Court has wrongly acquitted the accused respondents of the charges against them. Their acquittal is based upon proper appreciation of the evidence brought on the record. 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.

(T.P.S. MANN)
JUDGE

August 04, 2017
satish

(MAHABIR SINGH SINDHU)
JUDGE

Whether speaking/reasoned : YES / NO

Whether reportable : YES / NO