

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-A-1254-MA-2017
Decided on : - 13.12.2017

Shashi Bala

... 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. Baljeet Beniwal, Advocate,
for the applicant.

MAHABIR SINGH SINDHU, J. (Oral)

Present application under Section 378(4) of the Code of Criminal Procedure (for short 'Cr.P.C') has been filed by the prosecutrix for seeking leave to appeal against the judgment dated 29.03.2017, passed by the learned Additional Sessions Judge, Palwal, vide which respondent No.2 has been acquitted of the charges under Sections 376 and 506 IPC.

2. Brief facts of the case are that the prosecutrix-applicant made a statement dated 29.01.2016 (Ex.P2) and alleged that she is a housewife and about 30 years old. Respondent No.2, being cousin of her husband, has been staying with her for the last three years and she used to do all the household work for him. By extending the threat of eliminating the victim and her children he had been committing rape upon her from the day he started living with her family; but due to fear she did not disclose the incident to

anyone including her husband. Accordingly, she requested for taking legal action against respondent No.2.

3. On the basis of above statement, FIR No.11 dated 29.01.2016 was registered under Sections 376 and 506 IPC at Women Police Station, Palwal.

4. After registration of FIR, usual investigation was conducted by the police and thereafter report under Section 173 Cr.P.C. was submitted. The case was committed to the Court of Sessions by the learned JMIC, Palwal, as offence under Section 376 IPC was triable by the Court of Session.

5. Learned trial Court, prima facie, found that respondent No.2 has committed the offences under Sections 376 and 506 IPC and thus framed the charges, to which, respondent No.2 pleaded not guilty and claimed trial.

6. In order to prove its case, the prosecution examined ten witnesses and brought on record documentary evidence and thereafter the entire incriminating material was put to the accused under Section 313 Cr.P.C., but he denied the same and claimed innocence. However, no evidence was led in his defence.

7. Learned trial Court after taking into consideration the material available on record and after hearing both the sides, acquitted respondent No.2 of the charges framed against him by giving benefit of doubt vide impugned judgment dated 29.03.2017. Hence, the present application for seeking leave to appeal.

8. It is argued by learned counsel for the applicant-complainant that learned trial Court has acquitted respondent No.2 only on surmises and

conjectures and did not take into consideration the entire material available on record and that resulted into miscarriage of justice as offence under Section 376 IPC is a very serious offence.

9. Heard learned counsel for the applicant and perused the paper-book.

10. Applicant-complainant appeared as PW-2 and reiterated her stand made in the initial version of the statement with a slight improvement and relevant part reads as under: -

“PW2-Stated that I have three children. I am residing at Gadiya Mohalla, Hodal alongwith my husband and my three children. Accused Bharat is son of maternal uncle of my husband. He was also residing in Gadiya Mohalla, Hodal. He was having visiting terms at my house. He forcibly committed rape upon me for the last three years. Again said he was having visiting terms at my house for last three years and continuously committing rape upon me for last two years. He threatened me that he will kill me and my children and my husband. On 21.1.2016 accused Bharat Singh came to my house and he administered something to my husband due to which my husband suddenly fall ill. He was treated at Kishan Singh Hospital, Hodal and he was referred to Palwal where the treatment of my husband was done but I can not tell the name of hospital. After two days of the incident of 21.1.2016, I revealed the incident of rape committed by accused Bharat to my husband and other family members. On 28.1.2016 I reported the matter to police at PS Hodal where police advised me to report the matter at PS Women, Palwal. On 29.1.2016 I visited PS Women Palwal where my statement Ex.P2 was recorded by the police, which bears my thumb impression.”

11 PW-6 Sunil, husband of the complainant, also stated that on 21.01.2016 respondent No.2 came to his house in the absence of his wife

and administered some poisonous substance to him in milk. Later on, he

was admitted in Pritam Singh Hospital and from there to Palwal and finally to Diamond Hospital, Palwal. It is further stated that after two hours, he was discharged from the hospital and on 27.01.2016, his wife revealed everything to him and on the next day, the matter was reported to the police.

12. It is an admitted case of the prosecutrix herself that accused-respondent No.2 was on visiting terms to her house for the last three years and continuously raped her but she did not disclose the same to anyone due to fear. However, she has not disclosed as to who stopped her for reporting the matter to the police. Undisputedly, the prosecutrix is of 30 years of age and a mature lady with three children; whereas the accused is younger than her. Even the prosecutrix herself alleged that she was raped in her house, which is situated in thickly populated area, but she did not disclose to anyone. Even during her cross-examination, she has gone to the extent of stating that she cannot tell the exact date when the accused committed rape upon her for the first time.

13. Moreover, it is not the case of the prosecutrix that respondent No.2 is a very influential person and she was feeling scared; rather he is relative of her husband. There is no mark of any external injury on any part of the body of the prosecutrix and therefore, learned trial Court has rightly come to the conclusion that she was the consenting party. The story propounded by the prosecutrix that she was fully scared about herself and her children at the hands of respondent No.2 is not believable. Even PW6, who is husband of the prosecutrix, has stated during his cross-examination that he did not notice anything abnormal in the behaviour of his wife during this period.

14. As per testimony of PW7, there is no fresh mark or injury on the body of the prosecutrix. Although as per FSL report (Ex.P4) human semen was detected on the underwear, slides and others parts of the body of the victim; but the DNA profile report could not be processed as the investigating officer did not obtain any blood sample of respondent No.2 for the purpose of comparison. As such, the most material document, which could have proved the allegations of the prosecution is also missing. Even the story made up by the prosecution regarding administering poison in the milk and given to husband of the prosecutrix is also not proved by any cogent evidence.

15. There is no doubt that statement of prosecutrix is sufficient to convict the accused in a rape case; but that is subject to the condition that the testimony of the prosecutrix is found to be worthy of credence and reliable. In the present case, the statement of prosecutrix is neither credible; nor trustworthy.

16. The very fact that as per testimony of PW7 there was no fresh mark or injury on the body of the victim is a clear indication that the prosecutrix did not resist the conduct of the respondent No.2. The prosecutrix while appearing as PW-2 in her cross-examination stated that respondent No.2 committed rape upon her about twenty days prior to 21.01.2016, whereas PW7 has stated in her affidavit that the prosecutrix told her that the last attempt was made three months back from the date of medico-legal examination i.e. 29.01.2016. Therefore, the entire testimony of the prosecutrix is unreliable and untrustworthy. Even PW2 has admitted that when accused last time committed rape upon her she was having physical relations with her husband also.

17. In view of above, this Court does not find any merit in the present application though the offence under Section 376 IPC is very serious offence and learned trial Court has rightly appreciated the evidence while scrutinizing the material available on record and the same is, accordingly, dismissed. Leave to appeal is declined.

(T.P.S. MANN)
JUDGE

(MAHABIR SINGH SINDHU)
JUDGE

December 13, 2017
naresh.k

Whether speaking/reasoned	:	Yes
Whether Reportable	:	Yes