

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-A-2029-MA of 2016
Date of Decision: 23.02.2017

Monika

....Applicant

Versus

State of Haryana and others

.....Respondents

**CORAM: HON'BLE MR. JUSTICE T.P.S. MANN
HON'BLE MR. JUSTICE H.S. MADAAN**

Present: Mr. Ram Niwas Kush, Advocate, for the applicant.

T.P.S. Mann, J.

The applicant, who is the prosecutrix and, thus, a victim, as defined under Section 2(wa) of the Code of Criminal Procedure (hereinafter referred to as 'the Code'), has filed the present application under Section 378(3) of the Code, for grant of leave to appeal against the judgment dated 22.7.2016 passed by learned Additional Sessions Judge-cum-Special Court for Heinous Crimes against Women, Hisar.

Vide impugned judgment, learned trial Court acquitted Raj Kumar and Vijender accused under Section 376(1) IPC and Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as 'the Act'), Amit accused under Section 376(2)(n) IPC and Section 3(2)(v) of the Act, ASI Satbir Singh accused under Section 376(2)(a)(i) IPC and Section 3(2)(v) of the Act and Guddi accused under Section 109 IPC.

According to the prosecution, Suresh Kumar, father of the prosecutrix lodged a complaint with the police on 4.5.2013 that his daughter had gone missing from the house on that day since 9:00 a.m. He had received a call on his mobile and the caller had threatened him. Said caller also threatened the wife of the complainant on her mobile and abused her. The caller had threatened to kidnap his daughter. The caller identified himself as Aman. The complainant suspected that his daughter had been enticed away by the said caller. Accordingly, FIR under Sections 363 and 366 IPC was registered at Police Station, Narnaud, District Hisar.

The investigation was carried out by ASI Satbir Singh accused, who on 9.5.2013 recovered the prosecutrix from the house of her friend Asha at Jind. The prosecutrix was then taken to the Judicial Magistrate Ist Class, where her statement under Section 164 Cr.P.C. was recorded. In that statement, the prosecutrix disclosed that she had left home of her own as her parents were forcing her for marriage. Accordingly, cancellation report was forwarded on 7.6.2013. Subsequently, on 23.10.2013, the prosecutrix gave another statement before the police in the presence of legal aid counsel, wherein she changed her version completely by disclosing that she was a student of B.A. 1st Year in Government College, Jind in the year 2012. At that time, she had developed friendship with accused Amit Kumar, who had promised to marry her. Said Amit Kumar ravished her on several occasions on the pretext of marriage. In May, 2013, he refused to marry her as his parents were not willing for this marriage and proposed for

her marriage with his friend Jitender, but she refused for the same and threatened to lodge a complaint with the police in case Amit Kumar did not marry her. She further disclosed that on 4.5.2013, Amit Kumar accused had taken her to the house of Jitender in New Krishna Colony and later on she came to know that it was not the house of Jitender, but it was of Raj Kumar accused and Jitender used to live there as he had been working with him. On 4.5.2013 itself, in the evening Raj Kumar ravished her after taking her inside a room, whereas his wife Guddi kept standing as guard outside the room. She was kept confined in that house till 7.5.2013. In the meantime, her father had lodged a complaint to the police regarding her missing and ASI Satbir Singh had recovered her and brought her to the Police Station Narnaud on 8.5.2013. They reached the Police Station at around 4:30 p.m. At around 8:00 p.m., when lady constable Meena went outside for 10-15 minutes for some work. ASI Satbir Singh came there and offered her a glass of milk. On drinking the same, she became slightly unconscious and then ASI Satbir Singh ravished her in the police station. He threatened to kill her in case she disclosed about the same to anyone. After some time, lady constable Meena returned and stayed with her for the entire night, but she did not disclose anything to her. On 9.5.2013, ASI Satbir Singh along with lady constable Meena had taken her before the Magistrate at Hansi and had asked her to tell the Judge that she was major and willing to go to Nari Niketan but would not go back home. She repeated the same facts before the Judge and was sent to the house of Raj Kumar. From there, on 13.5.2013, she was taken to

Chandigarh at about 3:30 a.m. by Raj Kumar by saying that she would get married to Amit Kumar. When she was being taken to Chandigarh, she was given some sedative in the water due to which she became slightly unconscious and in that stage, she was taken to the High Court, where she was forcibly got married to Jitender instead of Amit Kumar. On that day, the entire proceedings could not be completed so they returned to Jind and kept on going to Chandigarh on several occasions upto 22.5.2013, when proceedings of her marriage were completed. She thereafter, remained in the house of Raj Kumar till 22.7.2013. Jitender had taken her to his house at village Nidana, where he was living with his six brothers and two sisters. His one brother Vijender was already married. A month later, Vijender also ravished her once on finding her alone. On 22.10.2013, she suffered from fever and was brought to Jind by Jitender. When Jitender went to a barber's shop, she found an opportunity to escape and accordingly went to the bus stand and returned home. She then apprised her parents of the entire incident.

The prosecution had examined the prosecutrix as PW3 and her father Suresh Kumar as PW7. PW1-Dr. Deepa Sardana had deposed about medico legally examining the prosecutrix on 25.10.2013 and finding no external mark of injury on her body.

Having heard learned counsel for the applicant and on going through the impugned judgment, this Court finds that the prosecutrix claimed about having been ravished by Raj Kumar accused in his house on 4.5.2013 after Amit had taken her there

and Guddi accused had kept standing as a guard outside the room. Such a version of the prosecution is highly improbable. The alleged incident was said to have taken place on 4.5.2013. However, when the prosecutrix was produced before the Judicial Magistrate on 9.5.2013, she did not come up with any such allegations, but had claimed that she was living with her friend Asha and was willing to return home in order to pursue her study, though her parents were not permitting her to do so. The allegations against Raj Kumar and Guddi have appeared after about five months of the incident.

Similarly, as regards ASI Satbir Singh accused, allegations were levelled against him after about five months of ravishing the prosecutrix in the police station. It is the prosecution case that lady constable Meena had returned to the police station and the prosecutrix stayed with her throughout the night, but the prosecutrix did not inform the lady constable that she had been ravished by ASI Satbir Singh. Even before the Judicial Magistrate, the prosecutrix did not state about having been ravished by ASI Satbir Singh.

Coming to the case of accused Amit Kumar, who according to the prosecution, had called the father of the prosecutrix on mobile and threatened him, the father of the prosecutrix in his complaint Ex.P20 did not mention his name before the police. Rather, he got recorded that it was one Aman, resident of village Bass, who had threatened him. There is no evidence that Amit Kumar accused and Aman were related to each other, in any manner. Name of Amit Kumar accused also

figured for the first time after about five months of the registration of the FIR. In her statement, the prosecutrix claimed that she was having friendship with Amit, who had physical relations with her under the pretext of marriage, but refused to marry her. However, it has come on the record that it was not Amit Kumar who had refused to marry her, but it were his parents, who opposed the marriage of their son with the prosecutrix.

Coming to the case against Vijender accused, brother of Jitender with whom the prosecutrix was alleged to have been forcibly married, such a version had seen the light of the day after about five months. According to the prosecutrix herself, Vijender were six brothers and two sisters, all living in one house and, therefore, it was highly improbable for Vijender to have ravished her. Moreover, when the prosecutrix was present in that very house, Jitender with whom she had been married was also present. In such like circumstances, his brother Vijender would not have even thought of ravishing her.

Four photographs are part of the record and in all these photographs, the prosecutrix was found quite happy while getting married to Jitender though she claimed to be under influence of some sedative. She was thereafter, present before this Court to seek protection order against her parents. Though she claimed that she had been forcibly made to appear before the High Court, yet the fact remains that she admitted about being present in the High Court. If she had been ravished and kept confined in the manner, as alleged by her, she could have easily brought the same to the notice of the authorities including the

Hon'ble Judge of this Court, before whom she along with Jitender, was present and seeking protection order against her parents.

There is no evidence on the file that the accused had committed various offences against the prosecutrix only on account of the fact that she belonged to a Scheduled Caste. As such, no offence under Section 3(2)(v) of the Act, is made out.

The entire evidence led by the prosecution has been appreciated threadbare by the learned trial Court to come to the conclusion that the prosecution had failed to connect the accused even remotely with the commission of the crime. No case is made out for any interference in the impugned judgment of acquittal passed by the trial Court.

The application is devoid of any merit and, accordingly, dismissed. Leave to appeal is declined.

(T.P.S. Mann)
Judge

(H.S. Madaan)
Judge

23.02.2017
ds

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No