

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-A-2294-MA of 2016
Date of Decision: 07.11.2017

Kavita

.....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. Sachin Mittal, Advocate, for the applicant.

T.P.S. MANN, J.

The prosecutrix has filed the present application under Section 378 read with Section 372 of the Code of Criminal Procedure for grant of leave to appeal against the judgment dated 05.10.2016 passed by learned Additional Sessions Judge, Gurgaon, whereby the accused-respondent stands acquitted of the charges under Sections 376B and 323 IPC.

According to the prosecution, the prosecutrix was earlier married on 16.02.2004 at village Sulkha, District Rewari and had two children, aged 10 years and 7 years. She had been living separately from her husband for the last four months at village Rathiwas, in the house of the accused. The accused had obtained a writing from her that they would live separately and accordingly, started residing as such. On the intervening night of 3/4.8.2015, he came to her house and persuaded her to open the door and thereafter, committed rape upon her. The accused again came to her house and assured her that he would not come to her

house, but again came to her house on 5.8.2015 in the evening and thrashed her.

Having heard learned counsel for the applicant and on going through the record, this Court finds that the prosecutrix and the accused were a married couple, but living separately with their own consent. A divorce petition was filed, wherein they reached a compromise and started living together again. Thus, there could not be any case of forcible entry of the accused into the house of the prosecutrix on the intervening night of 3/4.8.2015. It was she, who had opened the gate and allowed the accused to enter into her house. Moreover, after the said incident, she did not report the matter to the police. It was only after the second alleged incident of 5.8.2015 that she had lodged the FIR against the accused.

In view of the above, no case is made out for any interference in the impugned judgment of acquittal passed by the learned trial Court.

The application is without any merit and, therefore, dismissed. Leave to appeal is declined.

(T.P.S. MANN)
JUDGE

(MAHABIR SINGH SINDHU)
JUDGE

07.11.2017
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Whether speaking/reasoned	: Yes/No
Whether Reportable	: Yes/No