

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-A-1848-MA-2017

Decided on: 20.11.2017

State of Haryana

.....Applicant

vs.

Vikas and another

....Respondents

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

Present: Mr. Kapil Aggarwal, Addl. A.G., Haryana.

MAHABIR SINGH SINDHU, J.

The State of Haryana has filed the present application under Section 378(3) seeking leave to appeal against the judgment dated 06.10.2016, passed by learned Addl. Sessions Judge, Gurgaon, for short 'Trial Court' vide which the respondents have been acquitted of the charges under Sections 376(1) and 376(2)(i) IPC and Section 4 of of The Protection of Children from Sexual Offences Act, for short 'POCSO Act'.

2. The brief facts of the case are that an FIR No.94 dated 21.03.2014 under the above mentioned Sections at Police Station, Sector 40 Gurgaon was registered on the basis of statement made by prosecutrix 'A' alleging that she is 17 years old and native of village Kalyana, Police Station Sadar Charkhi, District Bhiwani and residing with her mother, brother and sister in village Kanhai in a rented accommodation of Billu Yadav. Another prosecutrix, i.e. prosecutrix 'B' who is her friend, also lives nearby in a room with her parents. On 20.03.2014, prosecutrix 'B' stated that she is suffering from stomach ache and both of them went to take medicines. On the way, they met their neighbours Sombir and Vikas who belong to District Rohtak and both the accused told them that they have

some cleaning work in a flat in Sushant Lok and you will get Rs.500/-each for doing the same. Both these accused were previously known to them. Therefore, both the prosecutrices went with them and on the way, the accused persons told them that the owner of the house of the flat has not reached there and they should wait for sometime. Thereafter, both the accused took them near Fortis Hospital and subsequently in a park and after waiting for a long time, prosecutrix 'A' asked the Sombir whether the owner has come, then he replied that the owner has not reached. Then, both the accused asked the prosecutrices to go to the park for strolling and then went to South City D block in the park where Sombir-accused started misbehaving with prosecutrix 'A' and accused-Vikas misbehaved with prosecutrix 'B'-Sushila. Both the prosecutrices objected, but there was nobody present in the park therefore, accused Sombir raped prosecutrix 'A' and Vikas-accused raped prosecutrix 'B'. On the next day in the morning, when both the prosecutrices returned back to their home, then prosecutrix 'A' revealed the entire incident to her sister i.e. Samina.

3. Thereafter, the matter was reported to the police and after registration of the FIR, investigation was carried out and statements of both the prosecutrices were recorded under Section 164 Cr.P.C. Both the respondents were arrested on 21.03.2014. The case was committed to the Ld. Sessions Court and prima-facie it was found that offences were made out against accused Sombir under Sections 376(1) IPC and Section 4 of POCSO Act and against Vikas charges were framed under Section 376(2)(i) IPC and Section 4 of POCSO Act, to which both the accused pleaded not guilty and claimed trial.

4. In order to prove its case, the prosecution examined eighteen witnesses and brought on record documentary evidence. No defence witness was examined by the accused, but in the plea under Section 313 Cr.P.C, they claimed innocence being falsely implicated.

5. Learned Trial Court after taking into consideration the entire material available on record, acquitted the respondents of the charges as prosecutrixes themselves as well as all the material witnesses have turned hostile.

6. Hence, the present application for leave to appeal.

7. Learned State counsel has argued that both the prosecutrixes were minors on the date of occurrence and in view of FSL report (Ex.PX) and DNA report (Ex.PY), both the accused cannot escape from the conviction. He further contended that although material witnesses have turned hostile, but rape is a very serious and non-compoundable offence, thus, acquittal of both the accused is not legally sustainable.

8. Heard Ld. State counsel and perused the paper book, but this Court does not find any merit in the submissions.

9. PW-1 prosecutrix 'A' deposed that she and her mother had gone to the police station for verification of making the ration card and police officials obtained her signatures on blank papers and took thumb impression of her mother. It was further stated that no occurrence had happened with prosecutrix 'A' and no offence was committed by accused-Sombir against her. She further deposed that her statement Ex.PA was not voluntary before the Illaqua Magistrate; rather it was made on asking of the police officials.

Thus, PW-1 turned hostile and in her cross-examination, she denied her earlier statement Ex.PB.

10. PW-2 Murti Devi, mother of prosecutrix 'A' deposed that her daughter's age is 19 years and clarified that date of birth of prosecutrix 'A' has not been recorded in any official record earlier. She also turned hostile and denied that she gave affidavit Ex.PD to the police in which she has mentioned the age of her daughter i.e. prosecutrix 'A' as 17 years.

11. PW-3 prosecutrix 'B' deposed that she is a student of 5th class in DPS School, Sector-45, Gurgaon and claimed that nothing had happened

with her. She further deposed that she went to police station with her mother and police obtained her signatures on the blank papers. She further stated that she does not know Vikas and no offence has taken place against her. She further stated that statement before Illaqa Magistrate was not voluntary and it was given only on the asking of the police.

In her cross-examination, PW-3 denied her statement Ex.PF given to the police and she even failed to identify the accused present in the Court.

12. PW-6 Samina, who is the sister of prosecutrix 'A', PW-4 Satyawati mother of Prosecutrix 'B' and PW-5 Sat Narain brother of prosecutrix 'B' also turned hostile.

13. PW-13 Dr. Sarita Rani had medico legally examined both the prosecutrices and tendered her affidavit Ex.PW 13/A. Ex.PU is the MLR of Prosecutrix 'A' and Ex.PT is the MLR of prosecutrix 'B'.

14. PW-15 Rajiv Kawatra, Senior Scientific Officer proved the DNA report dated 13.05.2016 (Ex.PY).

15. PW-18 Monika Dhankar, Senior Scientific Officer proved the FSL report dated 03.06.2014 (Ex.PX).

16. It is also pertinent to mention here that prosecutrix 'A' disclosed her age in her statement (Ex.PA) as 17 years and later on disclosed her age as 19 years. Similarly, prosecutrix 'B' initially disclosed her age as 13 years in her statement (Ex.PE), but when recording her testimony in Court as PW-3, she disclosed her age as 14 years, but there is no documentary evidence on record to prove the same.

17. As per the version of the prosecutrices themselves, they stated that no crime was committed by both the accused. All the material witnesses turned hostile and both the prosecutrices have also failed to

identify the accused. There is medical evidence in the form of FSL report Ex.PX and DNA report Ex.PY. DNA profile of prosecutrix 'A' matched with Vikas whereas DNA profile of prosecutrix 'B' matched with Sombir. However, as per allegations the prosecutrix 'A' was raped by accused-Sombir and prosecutrix 'B' was raped by accused-Vikas. Therefore, FSL and DNA reports have not matched according to the allegations against the accused and the same cannot prove the complicity of the respondents.

Still further, Ld. Trial Court has observed in paragraph 19 of its judgment that as per MLR (Ex.PT) of prosecutrix 'B' conducted by PW-13 Dr. Sarita Rani, Medical Officer, General Hospital, Gurgaon, observed as under:-

“She was conscious, cooperative and well oriented to time, place and person. There was no external sign of injury on her private parts and anywhere else. Hymen ruptured, vagina admitted two fingers.”

18. In view of the observations of PW-13, the Ld. Trial Court came to the conclusion that medical records of prosecutrix 'B' indicates that she had attained her majority. Ld. Trial Court further observed in paragraph 20 that due to lack of evidence on record, the prosecutrix 'B' is also held to be major girl on the date of occurrence.

19. Hence, Ld. Trial Court has rightly observed that both the prosecutrices were held to be major on the date of occurrence and they gave false evidence and turned hostile. Thus, their testimony cannot be termed as sufficient evidence to prove the guilt.

20. In view of the above, this Court is fully in agreement with the reasoning given by learned Trial Court while acquitting respondents being the possible view. There is no merit in the present application to grant leave to appeal.

Although Ld. Trial Court has adopted the right approach while taking cognizance of offence in terms of Section 344 of Cr.P.C. against both the prosecutrices, i.e. PW-1 and PW-3 to eradicate the evil of perjury and that recourse is obligatory under Rule 8 of the Punjab and Haryana High Court Case Flow Management Rules, 2007 framed by this Court, for short 'Rules of 2007' and Rule 8 of Rules of 2007 reads as under:-

8. "Proceedings for perjury- If the Trial Judge, delivering the judgment, is of the view that any of the parties or witnesses have willfully and deliberately uttered blatant falsehoods, he shall consider, at least in grave cases, whether prosecution should be initiated for perjury and order prosecution accordingly."

21. Thus, this Court accords sanction for prosecution of PW-2- Murti Devi (mother of prosecutrix 'A'), PW-4-Satyawati (mother of prosecutrix 'B'), PW-5-Satya Narain (brother of prosecutrix 'B') and PW-6-Samina (sister of prosecutrix 'A') alongwith PW-1 and PW-3. Necessary steps be taken by the Ld. Trial Court in this regard.

22. Consequently, the application for seeking leave to appeal is dismissed.

23. A copy of this order be sent to Ld. Trial Court for further necessary action in the matter.

(T.P.S. MANN)
JUDGE

(MAHABIR SINGH SINDHU)
JUDGE

20.11.2017
Dinesh

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No