

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRM-A-2343-MA-2017

Date of decision:13.12.2017

Baljit Kaur

.....Applicant

Versus

Jasbir Singh alias Jassi and another

.....Respondents

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

Present: Mr. Gagan Pradeep Singh Bal, Advocate with
Mr. K.L. Singla, Advocate
for the applicant.

MAHABIR SINGH SINDHU, J.

Present application under Section 378(3) of the Code of Criminal Procedure is for grant of leave to file appeal against impugned judgement dated 4.8.2017 passed by learned Special Court, S.A.S. Nagar, Mohali vide which respondent No.1-Jasbir Singh alias Jassi was acquitted of the charges punishable under Sections 376, 450 of the Indian Penal Code ("IPC"-for short).

Brief facts of the case are that the complainant-applicant made a complaint Ex.PW-2/A to the police and stated that she is resident of Isapur Jangi, Police Station Lalru and a housewife. Her husband is working as bar-winder. On 29.8.2016 complainant after taking her meals

was sitting alongwith her children in her house, then respondent No.1 came to their house and asked for a Bidi (bittlepipe). She has further alleged that on earlier occasions also he used to come once in a while for same very purpose and after having a Bidi, he went away. At about 8:30 p.m. when both the children of the prosecutrix i.e. son and daughter in the age group of 5-7 years were sleeping, then respondent No.1 under the influence of liquor came again to her house and committed rape upon her. Although, prosecutrix tried to raise an alarm, but respondent No.1 forcibly gagged her mouth and made her to fall on bed and committed rape upon her and thereafter he opened the door and ran away. It is further alleged that husband of the prosecutrix came at 10 p.m. and to avoid any embarrassment, she did not disclose the occurrence in clear terms to her husband. It is further alleged that on 30.8.2016 after sending her children to the school, the prosecutrix apprised her husband about the aforesaid occurrence, but he advised that let the children come from the school as there is no access to G.T. Road from the village and there is a double railway crossing due to which children are to be escorted and brought back. It is further alleged that when children came, they left the house and prosecutrix got typed the application and intimated the matter to the police.

Respondent No.1 was arrested on 8.9.2016 and after usual investigation, report under Section 173 Cr.P.C. was submitted by the police before Illaqa Magistrate. Thereafter, learned Judicial Magistrate

Ist Class, Dera Bassi committed the case to the Court of Sessions as the offence punishable under Section 376 IPC was exclusively triable by the Court of Sessions.

Learned trial Court prima facie found that respondent No.1 had committed the offences punishable under Section 376 and 450 IPC and accordingly, he was charged for the same, but he pleaded not guilty and claimed trial.

In order to prove its case, the prosecution examined eight witnesses and brought on record the documentary evidence.

Statement of respondent No.1 was recorded under Section 313 Cr.P.C. in which all the incriminating circumstances appearing against him was put to him, but he denied the same and claimed innocence.

In defence, respondent No.1 examined DW-1 Harjinder Singh.

After hearing both side and perusal of record, learned trial Court acquitted respondent No.1 of the charges framed against him by giving the benefit of doubt. Hence the present application for seeking leave to appeal.

It is argued by learned counsel for the applicant that learned trial Court had committed grave error of law while acquitting respondent No.1 and has ignored the cogent evidence available on record and same has resulted into grave injustice to the prosecutrix.

We have heard learned counsel for the applicant and perused the paper-book.

The prosecutrix appeared as PW-2 and she reiterated the initial version made in the complaint.

PW-1 Dr. Darpan Kaushal, who examined the prosecutrix on 30.8.2016 proved the MLR Ex.PW1/A as well as report of Chemical Examiner Ex.PW1/D and as per her opinion the possibility of sexual intercourse cannot be ruled out.

PW-4 Kulwinder Singh, the husband of the prosecutrix supported the case of the prosecution in terms of the version given by the prosecutrix.

PW-8 ASI Shamsheer Chand stated that he was the Investigating Officer of the case and he arrested respondent No.1 on 7.9.2016.

DW-1 Harjinder Singh who is the brother of respondent No.1 deposed that he got registered FIR No.21 dated 2.3.2011 under Sections 323, 325, 341, 506, 148, 149 IPC, Police Station G.R.P., Patiala against the relatives of PW-4 Kulwinder Singh, (husband of prosecutrix) and the said case was at the fag end and just to put a pressure the present case was got registered on the basis of false accusation against respondent No.1.

There is no dispute that prosecutrix is a married lady having two children. During her cross-examination it has come on record that room of the prosecutrix is adjoining to the room of her brother-in-law

(Jeth) and at the time of occurrence her Jeth, Jethani and their children were also present in their room and thus in such a scenario it is not conceivable that respondent No.1 had committed rape upon the prosecutrix and she did not raise any protest. The allegations of the prosecutrix that she did not raise an alarm as her mouth was gagged by the respondent No.1-accused is not acceptable in view of the fact that other family members were also present when she was subjected to alleged sexual assault by respondent No.1. Even there is no injury or mark of scratch on the body of the prosecutrix as per medical evidence. If a mature woman is subjected to sexual assault by a man then she ought to have resisted and there was no allegation that respondent No.1 was having any weapon and he had terrorized her.

As per testimony of PW-1 Dr. Darpan Kaushal, there was no mark of any injury on the body of the prosecutrix, thus the learned trial Court has rightly expressed the doubt about the truthfulness of her version. There is nothing on record to prove that prosecutrix disclosed any thing about this incident to her brother-in-law (Jeth) who was living in the adjoining room. Even she did not disclose the occurrence to her husband in the night. It was only on the next day that after sending their children to the school, she disclosed the occurrence to her husband and thereafter the matter was reported to the police and that too when children came back from the school. Although some explanation is furnished by the prosecutrix that there is a railway crossing in between road and their

house and it is not safe for the children to come at their own, but this version is falsified by cross-examination of PW-4 Kulwinder Singh itself who stated that their children go to school in a Van. Thus learned trial Court has rightly come to the conclusion that prosecutrix in a pre-planned manner got registered the concocted version, in view of her most unnatural conduct. Although the prosecutrix has deposed that her clothes had been torn and same were handed over to the doctor but Dr. Darpan Kaushal while appearing as PW-1, during her cross-examination stated that no torn clothes were shown to her by the prosecutrix. Even no torn clothes were produced in the Court or during investigation of the case. The prosecutrix has claimed that there was mark of injury on her jaw-line of her face, but again the same is falsified by Dr. Darpan Kaushal who stated that no injury mark was there at the time of conducting her medical examination. Although as per the chemical examination report Ex.PW1/D, spermatozoa was detected in the contents of vaginal swabs and the underwear of the prosecutrix, but she is a married lady and may be on account of sexual relationship with her husband, thus, same cannot be the conclusive evidence that it is on account of sexual assault by respondent No.1.

In view of the facts and circumstances discussed hereinabove, this Court is in fully agreement with the view taken by the trial Court being the possible view and there is no material evidence to differ with the view taken by the trial Court. In view of the above

discussion, this Court does not find any ground to grant leave to appeal.
Consequently the application is dismissed and leave to appeal is declined.

(T.P.S.MANN)
JUDGE

(MAHABIR SINGH SINDHU)
JUDGE

13.12.2017
Gaurav Sorot

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| 1. | Whether reportable? | No |
| 2. | Whether reasoned / speaking? | Yes |