

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-A-887-MA of 2016 (O&M)

DATE OF DECISION: APRIL 3, 2017

SHALU

...APPLICANT

VERSUS

VINOD KUMAR AND OTHERS

...RESPONDENTS

**CORAM: HON'BLE MR. JUSTICE M. JEYAPPAUL.
HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASHI.**

PRESENT: MR. S.S.WALIA, ADVOCATE FOR THE APPLICANT.

M. JEYAPPAUL, J.

CRM-14331-2016

1. There is a delay of 23 days in filing the appeal. We are convinced with the reasons assigned for the delay. Therefore, the delay is condoned and the application is allowed.

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2. The prosecutrix has sought special leave to prefer an appeal against the judgement of acquittal of respondents No.1 and 2 for the charges under Sections 376(2)(n), 376(D) and 506 IPC.

3. It is the case of the prosecution that respondent No.1 Vinod Kumar committed rape upon her for several days. Once she was called by him to her aunt's house in Parav near Sheetla Mata Temple where he ravished her. He threatened her with dire consequences if she preferred to disclose the incident to her family members. She was called by respondent No.1 to village Daulatpur about 1½ year ago where Vinod, respondent No.1

and Kukldeep @ Deepak, respondent No.2 alongwith Johny ravished her. She was again called to Tohana where Vinod Kumar committed rape upon her. She was frightened as accused threatened to kill her husband.

4. On the side of the prosecution, 7 witnesses including the prosecutrix were examined.

5. Respondents No.1 and 2 have stated in their statements under Section 313 Cr.P.C. that they were falsely implicated by the prosecutrix.

6. On the side of the defence, Constable Surender Kumar was examined as DW1 and Ms. Babita Chaudhary, Protection Officer, Hisar was examined as DW2.

7. We heard the elaborate submissions made by learned counsel appearing for the applicant.

8. We find that the prosecutrix has come out with material improvement in her testimony before the Court. Never had she given any details as regards some stupefying substance administered to her in the first information report. She deposed before the Court that respondent No.1 administered stupefying substance which made her unconscious and thereafter, she was raped. The funniest part of the story reeled out by the prosecutrix is that even at the time when she was 14 years old, long prior to her marriage, she was ravished by respondent No.1. He also promised her that he would marry her. These material details do not find place in the first information report. At the time when the prosecutrix lodged the first information report, she was 28 years old. In other words, she had kept quiet for about 14 long years in regard to the ravishment alleged by her. Such an

absurd story does not pass the test of credibility.

9. The prosecutrix having got married was blessed with children. Had there been any such rape committed upon her for quite a long time, she would not have kept quiet without disclosing the same to her husband. In the first information report, she had come out with a version as though she was raped about 2 years ago. But in her testimony she had deposed that she was raped by respondent No.1 about 14 years ago.

10. It appears that there was some marital dispute between herself and her husband and as a result of which she had given a complaint Ex.D1 wherein she had categorically alleged that her husband raised suspicion on her character and used to maltreat her. Such an allegation made by the prosecutrix raises a serious doubt about the alleged rape projected by her. The above complaint Ex.D1 had been lodged by the prosecutrix against her husband long prior to the present first information report lodged by her alleging rape by respondents No.1 and 2. If at all there had been any rape, she would have definitely disclosed the incident of rape to the police also.

11. The prosecutrix has come out with an improbable version. Material contradictions between first information report and the deposition of the prosecutrix create a doubt in the case of the prosecution. The delay in lodging the first information report has created a further dent in the case of the prosecution.

12. In our considered view, the trial Court has rightly discredited the testimony of PW1, the star witness in this case, and recorded acquittal. We do not find any merit in the application seeking special leave to prefer an

appeal. Therefore, leave sought for is declined and the application is dismissed.

(M. JEYAPPAUL)
JUDGE

April 3, 2017
Gulati

(AUGUSTINE GEORGE MASIH)
JUDGE

Whether Reportable :

Whether Speaking/Reasoned : Yes