

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRM-A-2046-MA of 2015

Date of Decision: September 14, 2017

Rajbala

.....Applicant/Appellant

versus

State of Haryana and another

.....Respondents

**CORAM: HON'BLE MR.JUSTICE SURYA KANT.
HON'BLE MR.JUSTICE SUDHIR MITTAL.**

Present: Mr. Vijay Singh Kajla, Advocate
for the applicant/appellant

Sudhir Mittal, J.

Accused - Ajay Kumar son of Khadga Ram has been acquitted by the trial Court of charges framed under Sections 450, 506 and 376 IPC. The prosecution case in a nutshell is that on 19.10.2014 Rajbala wife of Rohtash was sleeping in her room with her three children at night. Her husband Rohtash had gone to visit his relations. Her in-laws were sleeping in a separate room outside. At about 2.00 a.m., the accused entered her room, bolted it from inside and raped her. Thereafter, he threatened the said Rajbala with dire consequences of killing her family members, in case she revealed this incident to anybody and then he left. Rajbala then informed her husband on his mobile and he returned home on 21.10.2014. Thereafter, FIR No. 271 dated 21.10.2014 under Sections 450, 376 and 506 IPC was registered at Police Station Siwani.

2. After committal of the case to the Court of Sessions by learned Illaqa

Magistrate the accused was tried for offences under Section 450, 506 and 376(1)

IPC and was acquitted of all charges.

3. The prosecutrix has filed the present appeal against acquittal alongwith an application for leave to appeal.

4. Learned counsel for the applicant-appellant has contended that the learned trial Court has erred in acquitting the accused because the statement of the prosecutrix under Section 164 Cr.P.C. was recorded before the Judicial Magistrate Ist Class Bhiwani and the same has been proved by Sh. Parveen Kumar Judicial Magistrate Ist Class Bhiwani as PW-9. Moreover, the evidence of the prosecutrix as PW-1 is in accord with the prosecution case. Under the circumstances the trial Court should have convicted the accused.

5. After hearing learned counsel for the applicant-appellant and perusing the record of this case, we are satisfied that the trial Court has not committed any error in acquitting the accused. Learned trial Court has examined the statement of the prosecutrix as PW-1 in para 13 of the impugned order which is as follows:-

“In the night of 18/19.10.2014, she was sleeping at her home with her three children. Her mother-in-law was sleeping in the room situated outside. At around 2.00 a.m. the accused Ajay present in the Court, who belongs to her village Badwa entered into the room and committed rape upon her person against her wish. He also gave her threats that if she would dare to tell this fact to anyone, he would kill her and her family. She told this fact to her husband on his mobile phone. She called her husband from the mobile of her father-in-law. He husband came on 21.10.2014. The matter was reported to the police when she along with her husband Rohtash went to report the matter. She has seen her complaint Ex. P2, which bears her signature at point A. Her medico legal examination was also conducted. On 21.10.2014, her

custody was handed over to Sh. Bhaga Ram, her father-in-law vide memo Ex. P3. She had shown the scene of occurrence to the police. On the next day i.e. 22.10.2014, she was produced before the learned Magistrate at Bhiwani and her statement was recorded. Her statement Ex. P4 bears her signature at point A. It was recorded by the Magistrate Sh. Parveen Kumar, Judicial Magistrate Ist Class, Bhiwani. In her cross-examination, she stated that her husband is labourer by occupation. He husband was away to village Jhupa. He had gone to do the labour work at village Jhupa. He used to work on a hotel. She (PW) does not know the name of the owner of the hotel, on which her husband used to work at village Jhupa. Jhupa is approximately 5 kms. away from her home. Her mother-in-law and father-in-law used to live with her. Both of them on the date of occurrence were sleeping in the 'Baithak' of the house. She (PW) was sleeping inside the room. She has three children. Her children were also sleeping with her. She cannot tell why she did not bolt her house on the date of occurrence. Accused is of her village. He was not known to her. Her father-in-law is aged about 50 years. She did not raise any voice when the accused entered into her house and assaulted her. She voluntarily stated that he extended threat to her. The accused was not armed with any 'lathi', 'danda' or lethal weapon. She immediately disclosed about the occurrence to her parents-in-law. Her parents-in-law were sleeping in a 'Baithak' and the door of the 'baithak' was bolted by them. She knocked at their door and then informed them about the occurrence. Her eldest child is 5 years old and younger to him is 4 years old and youngest is 3 years old. Her children did not wake up. The light of the room was switched off. She cannot tell that how she identified the

accused. She did not sustain any injury. She did not inflict any injury on the person of the accused. She voluntarily stated that she slapped him. The accused remained with her for 4-5 minutes. The accused did not torn her clothes. She also did not torn the clothes of the accused. The accused did not put off his clothes. The accused only removed her 'Salwar'. When the accused left the room of her house, at that time also, the light was switched off. She admitted that the light remained switched off throughout the occurrence. The accused extended threat to her, therefore, she could not raise any voice. She can not tell why they remained silent upto 21.10.2014."

6. Further, she has admitted that there are about 15 members in the joint family and they all live in the same house.

7. From the above, it is apparent that there was only one single bed in the room of the prosecutrix on which her three young children were also sleeping. The act of rape was committed on the same bed without any of the children waking up and without any injuries upon the body of the prosecutrix or of the accused. The clothes of the prosecutrix were also not torn and the act was completed within 4-5 minutes. No alarm was raised by the prosecutrix even though the accused was not armed and the lights in the room remained switched off through out the incident. The FIR was registered two days after incident. Even though the prosecutrix had allegedly informed her husband on his mobile phone regarding the incident but he did not show any urgency. There is no evidence of resistance by the prosecutrix even though her in-laws and the families of her brothers-in-law are also residing in the same house.

8. The evidence on record clearly suggests consent on the part of the prosecutrix. There is no error in appreciation of evidence by the learned trial Court.

9. For the above reasons, the application seeking leave to appeal as well as the main appeal are dismissed.

[SUDHIR MITTAL]
JUDGE

[SURYA KANT]
JUDGE

September 14, 2017
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Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No