

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

CRM-A-792-MA of 2017

Date of Decision: July 11, 2017

State of Haryana

.....Applicant

Versus

Krishan Kumar

..... Respondent

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

HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

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

T.P.S.MANN, J.

Judgment dated 29.1.2016 passed by learned Additional Sessions Judge (Exclusive Court for Heinous Crimes Against Women), Kurukshetra stands challenged by the State of Haryana by filing the present application under Section 378 (3) of the Code of Criminal Procedure by seeking grant of leave to appeal whereby the accused/respondent stood acquitted of the charges under Section 376(2)(I) IPC and Section 3(1)(xii) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

According to the prosecution, the prosecutrix, who was 35 years of age and having four children, i.e. two sons and

two daughters, her youngest daughter being six months old. The prosecutrix was not mentally stable and she used to remain in the house. On 5.5.2015 at 11.00 a.m., her husband Amrit Lal went to Dr. Hakam, Jhansa Chungi Chowk, for taking medicines. When he returned home at 11.40 a.m., he found the door of the room locked and a brick was placed against it inside the room. He saw the accused, who was his neighbour, lying with his wife in a naked condition under a blanket. Accordingly, her husband lodged report with the police for taking legal action against the accused.

At the trial of the case, Amrit Lal-complainant could not be examined as he had died in the meantime. However, the prosecutrix stepped into the witness box as PW2 and testified as under:-

“Krishan, who is standing, got me naked. Said me to go outside. Abused. He hold my hand. Gave abuses in the name of mother. Ghost used to come and take me away. Amrit Lal is my husband. He had expired. My children do not study. While leaving breath he said me to take care of children. Husband did not do any work. I used to give him money. No brother will care. After the death of Amrit Lal, nobody asked about ourselves. Having two children.

One boy and one girl. The person who is still outside is my father. Krishan said to run away. Nothing more to be said.

She explained that Amrit Lal is her husband, who had expired and he had not worked rather she used to give him money. Ghost usually came and took her away. At the time of death, her husband told her to take care of their children and after her death no one cared for her. She was having two children. Her father was standing outside Court. Krishan told her to run away. Krishan was her brother. He used to go for work. Amrit Lal gave beating to her. His mother used to beat him. She was taking bath without clothes outside. She had gone for sleep. Her brother did nothing. Advocate is her brother and she was told what was to be stated inside (in the Court).

From a perusal of the statement made by the prosecutrix before the learned trial Court, it can be concluded that she did not state anywhere of having been subjected to sexual intercourse by the accused without her consent. It is true that the prosecutrix was mentally not stable yet in view of the fact that she was a mother of four children and her

youngest daughter was aged six months, it cannot be said that she did not know anything about the act of sexual intercourse. There being no mention by the prosecutrix against the accused of having subjected her to forcible sexual intercourse, it cannot be said with certainty that the accused had subjected her to sexual intercourse and, that too, against her wishes.

Even otherwise, from the report Ex.P1 of the Forensic Science Laboratory, it is made out that no semen could be detected on the various exhibits, i.e. wearing apparels of the prosecutrix as well as the cotton swabs and slides, which were taken at the time of medical examination of the prosecutrix.

There is available on record copy of compromise deed dated 20.5.2014 Mark-A placed by the accused in defence regarding the quarrel between him and Amrit Lal in respect of passage and, therefore, possibility cannot be ruled out of complainant Amrit Lal coming up with imaginary allegations while submitting complaint Ex.P32, on the basis of which, FIR was registered.

In view of the above, no fault can be found with the impugned judgment passed by the learned trial Court

while acquitting the accused/respondent of the charges against him.

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

**(T.P.S. MANN)
JUDGE**

July 11, 2017
amit rana

**(MAHABIR SINGH SINDHU)
JUDGE**

Whether reasoned/speaking

Yes/No

Whether reportable

Yes/No