

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Criminal Misc. No.A-853-MA of 2017

Date of Decision : August 23, 2017

Smt. Suresh

....Applicant

VERSUS

State of Haryana and another

.....Respondents

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

Present : Mr. S.K. Verma, Advocate
for the applicant.

T.P.S. MANN, J.

The prosecutrix has filed the present application under Section 378(3) of the Code of Criminal Procedure, 1973 for challenging the judgment dated 22.2.2017 passed by learned Additional Sessions Judge (Exclusive Court), Bhiwani whereby the accused, namely, Azad, stood acquitted of the charges under Sections 376(2)/450/506 IPC.

According to the prosecution, the prosecutrix submitted a written complaint on 24.11.2015, alongwith copy of application dated 18.11.2015 which was given at CM Window, at Police Station Women, Bhiwani stating therein that she had two children, aged 10 and 7 years. Her husband was an agriculturist and remained busy in his work. The accused, namely, Azad had been threatening to eliminate her and her family for the last about two months. Whenever he got an opportunity, he

would forcibly enter her house and commit rape upon her at pistol point. She also used to be sexually assaulted by Kuldip, younger brother of Azad accused by putting her in fear of death of her husband and children. Said Kuldip Singh was serving in Army and had come to the village on leave. She could not disclose about it to anyone out of fear. Both Azad and Kuldip had been threatening her with dire consequences by using pistol which was provided to them by their maternal uncle, in case she disclosed anything to anyone in this regard. She remained under distress for quite some time. Finally, she informed her husband about everything and also approached the police for lodging the complaint against culprits and wanted strict legal action to be taken against them for committing rape upon her and for criminally intimidating her.

Having heard learned counsel for the applicant and on going through the impugned judgment of acquittal, this Court finds that the prosecutrix and her elder sister PW13 Kailash were married in the same village, i.e. Sui and the two accused Azad and Kuldip belonged to their family. PW13 Kailash has deposed that the prosecutrix was under tension for quite some time and the husband of the prosecutrix disclosed before her that the prosecutrix was in tension since long as Azad accused used to enter their house and commit rape upon her whenever he got an opportunity. She also deposed that this fact was narrated to her by Prithvi. In cross-examination PW13 Kailash stated that one day before giving application to the police, her brother-in-law PW14 Pirthvi told about the entire incident. Further, she had stated that whatever she had deposed in the Court about the incident had been told to her were also told by the

husband of the prosecutrix. She admitted that the prosecutrix never ever told her anything herself. PW14 Pirthvi has testified that in November, 2015 his wife was under tension who upon enquiry told that accused used to harass her for the last about two months by entering their house and forcibly committing rape upon her and threatened to kill her and her family members. She had also disclosed to him that in the meantime, Kuldip, brother of Azad accused had also committed rape upon her and he threatened her with pistol in case she disclosed about this fact to anyone. Both PW13 Kailash and PW14 Pirthvi were not witness of the occurrence. Rather, the facts were disclosed to them by the prosecutrix. In cross-examination, PW14 Pirthvi admitted that before 18.11.2015, the prosecutrix did not tell him anything about the accused. Same was the stand of PW13 Kailash. As such, the statements of PW14 Pirthvi and PW13 Kailash were hearsay and based only on the information provided to them by the prosecutrix.

The star witness of the prosecution is the prosecutrix herself, who stepped into the witness box as PW9. It has come on the record that Azad accused and the prosecutrix were closely related. Neither in her examination-in-chief nor in cross-examination, the prosecutrix stated about the initial act of forcible sexual intercourse was without her consent or against her will or wish tried or resisted the sexual advances of the accused although she was physically very strong. In the FIR and also while deposing before the trial Court, the prosecutrix did not mention about the gagging of her mouth by the accused with hand at the time of commission of the offence. The place of occurrence of the various incidents was within

four walls of the house of the prosecutrix situated within abadi of the village. If she had made an attempt to resist or raised any hue and cry, it would have attracted large number of people from the locality. On the other hand, the prosecutrix made no attempt or raised any alarm so as to attract the neighbours in order to rescue her. Therefore, forcible sexual intercourse in midst of the village seems to be highly impossible. The medical evidence shows no mark of injury on the prosecutrix. According to the opinion of the doctor, even though sexual intercourse could not be ruled out yet the allegations of the prosecutrix that she had been subjected to forcible sexual intercourse within a span of about two months and, that too, against her consent could not be accepted. PW12 Dr. Sonia noted the age of the prosecutrix as 28 years at the time of her medico-legal examination whereas PW5 Dr. Vikas Rewaria mentioned that accused was 21 years at the time of his examination. However, fact remains that she did not resist the attempt of the accused who would remove her clothes at the time of the commission of the offence or while the accused would be in the process of removing his clothes.

PW12 Dr. Sonia, while conducting medico-legal examination of the prosecutrix had taken into possession the underwear and Salwar (washed garments) of the prosecutrix. The clothes, glass slides and swabs of the prosecutrix were examined and revealed the presence of semen. When an attempt was made to connect the semen with the blood sample of the accused through DNA, they did not match. Therefore, mere presence of semen on the clothes, glass slides, and swabs of the prosecutrix is not sufficient to hold that the prosecutrix had been subjected

to multiple rape by the accused. Moreover, the prosecutrix was a married woman and she was staying with her husband.

In view of the above, no fault can be found with the impugned judgment passed by the learned trial Court whereby the accused stood exonerated of the charges framed against him.

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

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

August 23, 2017
satish

**(MAHABIR SINGH SINDHU)
JUDGE**

Whether speaking/reasoned : YES / NO

Whether reportable : YES / NO