

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

**CRM-A-1233-MA-2016 (O&M)
Date of Decision: 11.10.2018**

Roshan Lal

... Applicant/appellant

Versus

State of Haryana and others

... Respondents

**CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL
HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU**

Present:- Mr. Sanjiv Kumar Panwar, Advocate,
for the applicant.

MAHABIR SINGH SINDHU, J.

The present application has been filed under Section 378(4) of the Criminal Procedure Code, 1973 (for short, 'Cr.P.C.') for seeking leave to appeal against the impugned judgement dated 17.03.2016 whereby learned Additional Sessions Judge, Palwal has acquitted respondents No.2 to 4 from the charges under Sections 376D and 366 of the Indian Penal Code, 1860 (for short, 'IPC').

1. In the present case, initially a complaint dated 16.07.2013 (Ex.P2) was made to the police by the present applicant/appellant and the prosecution against respondent No.2 was launched. The applicant/appellant alleged that he is resident of village Behrola and working as Gateman in

Saraswati Mahila Mahavidyalya College, Palwal. Further alleged that on 13.07.2013 at 11.00 AM, he went to attend his duties and his wife Dharmawati had gone outside from the house for getting fodder for the animals and his daughter aged 17 years, was alone. At that time, Om Pal - respondent No.2 enticed away their daughter. The applicant is alleged to have given an information that as per his knowledge Bijendri (Om Pal's aunt) was involved in the conspiracy with him for the occurrence in question. On the basis of the above complaint, formal FIR No.313 dated 16.07.2013 under Sections 366, 376 IPC was registered against Om Pal and Bijendri at Police Station Sadar Palwal. Thereafter, in due course, the investigation was carried out by the police and after completion thereof, report under Section 173 Cr.P.C. was submitted against Om Pal to the learned Illaqa Magistrate. The case was committed to the Court of Ld. Sessions Judge and thereafter learned trial Court framed the charges on 14.08.2014 under Sections 366 and 376 IPC against Om Pal - respondent No.2, to which he pleaded not guilty and claimed trial.

2. During the trial, the prosecutrix was examined as PW3 on 15.12.2014 and thereafter an application under Section 319 of the Cr.P.C. was moved and which was allowed. Consequently, respondents No.3 and 4 were also ordered to be summoned as additional accused vide order dated 17.12.2014 and consequently, fresh charges were framed under Sections 376D and 366 IPC against all the three accused by the trial Court vide order dated 23.01.2015 to which the respondents pleaded not guilty and claimed trial.

In order to prove the case, the prosecution examined 15 witnesses

including the prosecutrix as PW2 and the entire incriminating material was put to the respondents under Section 313 of the Cr.P.C. and they pleaded false implication and claimed themselves to be innocent.

It transpires that in defence, three DWs were examined. Learned trial Court after taking into consideration the entire material available on the record, acquitted the respondents from the charges.

3. Hence, the present application for seeking leave to appeal against the impugned judgement.

4. It is contended by the learned counsel for the applicant/appellant that there is sufficient material on record to prove the charges framed against the respondents but the learned trial Court has completely ignored the same and committed a grave error of law. Further argued that acquittal of respondents No.2 to 4 has resulted into complete failure of justice and thus the present application be allowed.

5. Heard learned counsel for the applicant/appellant and perused the record.

6. Present applicant appeared as PW3 and deposed that on 13.07.2013 his daughter went missing from house at about 11.00 AM and he was informed about this fact at 1.32 PM by his wife. Consequently they made search of their daughter but failed and ultimately on 16.07.2013 he reported the matter to the police by way of complaint dated 16.07.2013 (Ex.P-2). Further deposed that their daughter was about 17/18 years of age and they felt suspicion that respondent No.2 along with his aunt were

behind the incident. He also stated that after 28 days of disappearance of his

daughter, he received a telephonic call on 09.08.2013 from Narnaul and their daughter was recovered from Narnaul and she was brought back home and then she narrated about the sexual assault by respondents No.2 to 4.

PW6 Dr. Rama Narula examined the prosecutrix and prepared Medico-legal Report. Matriculation certificate of the prosecutrix shows her date of birth as 03.02.1993 and the date of occurrence is alleged to be 13.07.2013, therefore, on the date of alleged occurrence, the age of the prosecutrix was about 20 years 05 months. The prosecutrix appeared as PW2 and in her Examination-in-Chief, she stated that when she was alone in the house, Om Pal came there and requested for a glass of water and when she turned back he caught hold of her and took her inside the house and committed rape and also made a video film of these activities. She has also made attribution that Om Pal threatened her not to disclose anything to her relatives. She further deposed that after sometime respondents No.2 and 3 - Om Pal and Arun came to her house and asked her to come at Minar Gate, Palwal. She hired an auto and reached Minar Gate, Palwal at 1.30 PM where she met all the respondents and they took her to Milkpur (Bhiwadi) Rajasthan in Alto car and stayed in a Dharamshala and all the three committed rape. The next day, she met one person in Dharamshala, who was from Narnaul and she accompanied him and he left her at Siwani Girls PG Hostel at Narnaul. She did not reveal anything to him. She candidly stated that she disclosed her name in the Hostel as Neha and not her original name.

Thereafter she gave a telephonic call to her father on 09.08.2013 and was brought back from Narnaul and she narrated the entire story to her family

members. After that, her statement was recorded under Section 164 Cr.P.C. and she was medico-legally examined.

7. There is no dispute that initially prosecutrix stayed in a Dharamshala at Milkpur (Bhiwadi) Rajasthan and thereafter in Siwani Girls PG Hostel at Narnaul for about 26 days without complaining to anyone and thereafter on 09.08.2013 she all of a sudden, informed her father and was brought back to the village on the same day. Evidently, the prosecutrix voluntarily reached Minar Gate, Palwal in an auto on 13.07.2013 and there she is alleged to have met respondents No.2 to 4 and accompanied them in an Alto car up to village Milkpur (Bhiwadi) Rajasthan. During her stay in Dharamshala, she neither objected nor made any grievance to anyone against respondents No.2 to 4. Even in the hostel also she did not disclose any difficulty to the Hostel Warden or someone else as is clear from her cross-examination and relevant part thereof is extracted as under: –

“Prior to 13.07.2013 Ompal never came to our house and on 13.7.2013 he had come on three occasions. I had inquired from accused Arun and Ompal as to why they were calling me at Minar Gate Palwal, when they told me that I should not be concerned about these reasons. I did not inform my parents before leaving for Minar Gate Palwal as I was under threat and fear. Accused were not carrying any weapon, when they threatened me on various occasions on 13.7.2013.

The person whom I met at Dharamshala Bhiwari was named Nikka @ Ramavtar. The accused had not introduced

me with said person Nikka. I do not know how many persons were available in the Dharamshala during the period when I was kept at Dharamshala in Bhiwadi. I cannot say if there were 2, 10 or 20 persons in the said Dharamshala. No entry was made regarding my stay in Dharamshala of Bhiwadi. I do not remember the registration number of alto vehicle in which I was carried by the accused to Dharamshala at Bhiwadi. I do not know at what time, during the night the accused persons had left the Dharamshala. Nikka @ Ramavtar had met me in the Dharamshala on 14.07.2013 in the morning but I do not remember the time of the said meeting. I did not make any inquiry about the postal address of said Nikka @ Ramavtar. He had taken me in a bus to Narnaul and I got admission in PG Hostel there under the fake name Neha. My signatures were not obtained by the hostel authorities. We did not give any purpose to the hostel authorities for my stay there. Ramavtar @ Nikka did not stay there in the hostel. There were 20/30 girl students in the hostel in Narnaul. I do not know their names and addresses. I did not disclose about my problem before them. One lady Geeta was the hostel Warden. I also did not disclose about my problem before her. Smt. Geeta did not talk to me for asking the reason of my stay in the hostel. It was a State sponsored hostel in which I did not pay any charges for my stay."

8. It is very strange that from a village in district Palwal, she reached Milkpur Bhiwadi (Rajasthan) and thereafter stayed at P.G. Hostel, Narnaul for almost 4 weeks, but she never raised any grievance nor informed her family members during all this period. Even PW4-Ramavtar who had taken the prosecutrix to the P.G. Hostel, Narnaul also stated that she was waiting for her friend to go back to her village Bhiduki as he had gone in Alumpur Mandir and then on the next day, she left the place. Still further PW7 Geeta also, to whom the prosecutrix met in Dharamshala in village Milkpur stated that prosecutrix requested her that she should be allowed to stay in Dharamshala for two more days. Therefore, the allegation of the prosecutrix that she was raped in Dharamshala by all three accused becomes doubtful as neither PW4 nor PW7 are supporting her story of committing rape or extending any threat. Therefore, the prosecutrix was having sufficient time and occasion and she was not helpless to inform her parents or relatives if something wrong had been committed by respondents No.2 to 4. Even it is revealed from the cross-examination of the prosecutrix itself that the PG Hostel at Narnaul was a State sponsored Hostel, where she stayed by giving fictitious name as Neha for the reasons best known to her. It shows that the prosecutrix remained in the Hostel with her free consent and willingness. Even Dr. Rama Narula PW6 who medico-legally examined the prosecutrix on 13.08.2013 also did not find any external or internal injury on the body of the prosecutrix.

9. There is no evidence, much less to say cogent evidence, available on record to prove that respondents No.2 to 4 stayed in the

company of prosecutrix in the PG Hostel or Dharamshala for the period of 26 days and they committed rape upon her. In her deposition, she candidly stated that she reached Minar Gate, Palwal in an auto at her own, therefore, charge under Section 366 IPC is also not proved. During her cross-examination, prosecutrix stated that after 13.07.2013, she never met the accused and got married on 11.03.2015. Even from the PG Hostel, Narnaul also, no one has been examined by the prosecution for the reasons best known to them.

10. PW9 SI Manohar Lal, who was the investigating officer of the case stated that initially on 09.08.2013, the prosecutrix refused to make her statement and she got recorded her statement under Section 164 Cr.P.C. only on 14.08.2013 after consulting her family members. PW9 has further stated that he visited the house of the prosecutrix regularly between 09.08.2013 to 14.08.2013 for recording her statement but everytime evaded on the pretext that she is not feeling well. Therefore, it is apparently clear that neither she was interested in medico-legal examination nor to give her version in support of the prosecution case. The learned trial Court has rightly acquitted the accused while recording the valid reasons as under: –

“With this background, all these facts mentioning, I cannot justify that prosecutrix is a sterling witness. Her statement is short of unexplained circumstances, difference of facts when connected with other witnesses examined by the prosecution. She apparently had not been threatened by any use of any arm by any of the accused. She was made to travel by public

transport, personal transport of the accused and her stay at Dharamshala and further another stay of 26 days in girls hostel and during all these periods she does not take assistance, help of any nearby person despite ample opportunities coming at her rescue at all these times.”

11. Although, charges under Section 376 IPC can be proved on the basis of testimony of prosecutrix alone but the same should inspire confidence. However, in the present case, the position is entirely different as the testimony of prosecutrix is not found to be reliable by Ld. trial Court. Therefore, learned trial Court has rightly come to the conclusion that testimony of prosecutrix is not as a sterling witness and there is no material available on record to interfere with the conclusion arrived at by the learned trial Court. The view taken by the learned trial Court is the possible view and cannot be termed to be perverse or suffering from any material illegality. Even otherwise, law is well settled that in case two views are possible and the view taken by the learned trial Court is the possible view, then the same should not be interfered, until and unless, either there is a complete failure of justice or findings are based upon no evidence or some material evidence has been ignored. Present case is not falling in any of the above categories.

12. In view of the above, this Court is fully convinced that the view taken by the learned trial Court is the possible view and the same does not deserve to be interfered by this Court. Consequently this Court does not find any illegality or perversity in the judgement of acquittal rendered by the

Ld. trial Court. Hence, the present application seeking leave to appeal is dismissed.

(RAJESH BINDAL)
JUDGE

(MAHABIR SINGH SINDHU)
JUDGE

11.10.2018
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Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No