

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Criminal Misc. A-1495-MA of 2018
Date of decision: October 04, 2018

State of Haryana

....Applicant

Versus

Sumit

....Respondent

Coram: Hon'ble Mr. Justice T.P.S.Mann
Hon'ble Mr. Justice Fateh Deep Singh

Present: Mr. Praveen Bhadu, Assistant Advocate General, Haryana
for the applicant

Fateh Deep Singh, J.

Through this invocation under Section 378(3) of the Code of Criminal Procedure, 1973 the applicant has sought to challenge judgment dated 17.8.2017 of the Court of learned Additional Sessions Judge, Rohtak whereby the trial court has acquitted the accused.

Heard.

A case by way of FIR No. 54 dated 3.9.2016 under Sections 376(2)(n) & 506 of the Indian Penal Code, 1860, was registered with Police Station Women, Rohtak on the basis of written complaint dated 3.9.2016 and allegations of the prosecutrix. In her

allegations, the prosecutrix claimed that respondent-accused Sumit came into her contact and they became friends in January, 2016 and had met each other once or twice in a Park and thereafter remained in contact on phone. It is alleged that after one month when they met at the Park, the accused had asked the prosecutrix to give gold chain of her mother for enabling him to sell the same and with the sale proceeds enable him to get admission in an academic course. Enticed by this request, the prosecutrix claims that she gave the chain to the accused who sold the same for a sum of Rs 30,000/- and kept the money with him. The allegations subsequently arose when on 16/17 of April, 2016, the accused is alleged to have taken her to a hotel where she was forcibly raped and threatened by the accused that he would defame her in the society and among friends in case she would reveal this episode to anyone. The prosecutrix alleges that thereafter the accused had committed rape upon her on three/four occasions in the same very hotel and started blackmailing and extending threats to her. It is further alleged that on 3.6.2016, the accused again committed rape upon her and thereafter changed his mobile number so as to disable the prosecutrix from approaching him on phone. On this conduct of the accused, the prosecutrix revealed the matter to her family and father of the applicant had contacted father of the accused who asked to wait for three/four

months. However, the accused is alleged to have refused to abide by his promise and hence the case in question was got registered.

After completion of investigation and submission of challan on commitment, the prosecution examined PW1 EASI Samit Kumar who proved scaled site plan Ex. P1, PW2 Inspector Garima, who testified regarding filing of report under Section 173 Cr.P.C. The prosecutrix stepped into witness box as PW3 and proved her complaint Ex. P2 and statement under Section 164 Cr.P.C. Ex. P3 followed by the testimony of PW4 Dharmender Kumar to vouch for the records of the hotel from the extracts from Visitor's register proving documents Ex. P4 to Ex. P16.

Thereafter, PW5 Wazir uncle of the prosecutrix was examined to detail that the prosecutrix was residing in a hostel as her biological father had expired and her mother had remarried with this witness. This witness has tried to detail the events which the prosecutrix confided in him and the fact that he has met the family of the accused but they refused to go by the promise of the accused and proved handing over of the custody of the girl to him through memo Ex. P16.

PW6 Dr. Vijay Dhull who medico legally examined the accused proved documents Ex. P17 to Ex. P19 followed by the deposition of PW7 Constable Lalit who was part of the investigation

and detailed the investigation so carried in this case and proved documents Ex. P20 and Ex. P21. PW8 is Dr. Priti who medico legally examined the prosecutrix through police request Ex. P22 proving her MLR Ex. P23 and her affidavit by way of examination-in-chief Ex. P24. Lastly the prosecution examined the Investigating Officer PW9 SI Bimla Devi who detailed the investigation and in the process proved documents Ex. P2, Ex. P25, Ex. P26, Ex. P22, Ex. P27 to Ex. P30, Ex. P1, Ex. P4, Ex. P6, Ex. P9, Ex. P12, Ex. P5, Ex. P7, Ex. P10, Ex. P13, Ex. P8, Ex. P11, Ex. P14, Ex. P15, Ex. P31, Ex. P18, Ex. P20, Ex. P21 and Ex. P16. Thereafter, the prosecution evidence was closed.

The entire incriminating evidence, oral as well as documentary, was put to the accused in his statement under Section 313 Cr.P.C. who denied the allegations but did not lead any evidence in defence and that is how upon arguments, the impugned findings have been given and that is how the present matter has come about before this Court.

Appreciating the submissions of the counsel for the applicant, the very own stand of the prosecutrix is to the effect that she is a student of B.Sc. Ist year invariably leads to the inference that she is educated grown up major girl and can very well understand the intricacies of such things. It is there in her allegations that she

initially befriended the accused and had been meeting him in a Park and also carrying on telephonic conversations. The girl in her testimony accepts the fact that she has voluntarily and on her own accompanied the accused to a hotel on number of occasions where they have enjoyed the pleasures of life is in itself strongly suggestive of the fact that she was a consenting party to this rendezvous. Furthermore the prosecutrix has alleged that she has handed over the gold chain of her mother to him and during intervening night of 16/17 April, 2016 stayed with the accused at the hotel where she alleges to have been raped for the first time. Furthermore it is the own stand of the prosecutrix that thereafter she was ravished on three/four occasions by the accused and throughout this period from January, 2016 when she came in contact with the accused till lodging of the present complaint on 3.9.2016, she did not murmur anything are matters which have serious repercussions on the case of the prosecution and puts the same in a bad light.

The inordinate delay between the occurrences and the lodging of the report certainly is fatal to the case of the prosecution. Her own stand during her cross-examination that she does not want to go to her parents and had stayed in the Protection Home does not augur well for the applicant. What one can gather from these circumstances and the evidence that it was only after the relationship

between them had gone sour, a case has been got registered and thus, the Courts cannot be allowed to be used as tools of revenge. The trial court has detailed at length the various serious lacunas in the case of the prosecution and has given a well reasoned order why it did not feel it legal to accept the case of the prosecution.

In the light of what has been detailed and discussed above, we do not find any merit in the application for leave to file the appeal and the same stands dismissed. Leave to appeal is declined.

	(T.P.S. MANN)	(FATEH DEEP SINGH)
	JUDGE	JUDGE
October 04, 2018		
'dst'		

<i>Whether speaking/reasoned ?</i>	<i>Yes / No</i>
<i>Whether Reportable ?</i>	<i>Yes / No</i>