

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

CRM-A-1478-MA of 2017

Decided On : 20.03.2018

Saloon Devi Applicant

versus

State of Haryana and another Respondents

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

HON'BLE MR. JUSTICE DEEPAK SIBAL.

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Present : Ms. Aashna Gill, Advocate
for the applicant.

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DEEPAK SIBAL, J. :

Through the instant application filed under Section 378 (3) of the Code of Criminal Procedure, 1973 (for short – Cr.P.C.), the applicant seeks grant of leave to appeal against the judgment dated 29.04.2017 passed by the Additional Sessions Judge (Exclusive Court), Bhiwani (for short – the trial court), through which respondent No.2 has been acquitted of the charges framed against him under Sections 376(2), 498-A, 494, 506, 420 of the Indian Penal Code, 1860 (for short – IPC).

Briefly stated, the case of the prosecution is that on 26.06.2011, the prosecutrix was married to respondent No.2. Thereafter, they lived as husband and wife and she financially supported him. However, on

20.11.2011 in a clandestine manner, respondent No.2 married one Meenakshi. When the prosecutrix came to know of this fact, she confronted him only to be rebuked. The prosecutrix then approached the aforesaid Meenakshi, who on coming to know of the fact that respondent No.2 was already married to the prosecutrix filed a complaint to the police during the investigation of which it was found that the prosecutrix was the legally wedded wife of respondent No.2 and that he had maintained relations with her without getting their marriage registered. However, the matter between the parties was compromised and such compromise was also published in the newspaper. In March 2014, the prosecutrix came to know that respondent No.2 married another girl and this was despite the fact that he had sworn an affidavit before the police that the prosecutrix was his legally wedded wife. When the prosecutrix confronted respondent No.2, he alongwith Krishna and Sandeep gave her merciless beatings.

On completion of the investigation, report under Section 173 Cr.P.C. was prepared and presented by the investigating agency before the competent court. Since the offence, for which respondent No.2 was charged, was exclusively triable by the Court of Sessions, the case was committed to the Sessions Court and thereafter, marked to the Additional Sessions Judge (Exclusive Court), Bhiwani, and it was that Court, which charge-sheeted respondent No.2 under Sections 376(2), 498-A, 494, 506, 420 IPC. On his pleading not guilty, respondent No.2 was put on trial.

The trial court, after sifting the evidence which had come on

record, acquitted respondent No.2 of the charges levelled against him as the trial court was of the opinion that the prosecution had failed to prove its case to bring home the guilt of respondent No.2. It is such acquittal of respondent No.2 which is the subject matter of challenge in the present proceedings.

Learned counsel for the applicant, while reiterating the submissions made on behalf of the prosecution before the trial court, submitted that the trial court erred in acquitting respondent No.2 of the charges levelled against him as there was overwhelming evidence on record to prove his guilt and therefore, there was no reason in fact or in law with the trial court to acquit him.

The submissions made by learned counsel for the applicant have been considered but the same do not warrant acceptance.

As per the evidence on record, no injuries were found on the person of the prosecutrix to indicate any struggle at the time when she was allegedly subjected to rape. The admitted facts available on the record further go on to show that the prosecutrix and respondent No.2 were sexually involved for a long period of time and the prosecutrix being a mature lady presumably entered into such relationship with open eyes. It is further not acceptable that for the aforesaid period which spread over several years, respondent No.2 continued to commit rape upon the prosecutrix without any protest by her. There is also no evidence led by the prosecution that at any point of time, the prosecutrix resisted to the close

relations between herself and respondent No.2. The case of the prosecution is further silent on the aspect whether the alleged rape by respondent No.2 was ever brought to the notice of the family members of the prosecutrix by her.

The medico legal examination which was conducted on the prosecutrix on 10.02.2016 as also the chemical examination conducted on her clothes did not reveal the presence of any human semen. The prosecution also did not attempt to connect respondent No.2 with the alleged crime by conducting DNA profiling on the blood samples of respondent No.2.

It is the case of the prosecutrix that respondent No.2 initially raped her in the year 2011 and abandoned her in January 2014. However, the FIR was got lodged only on 09.02.2016 i.e. after a delay of over 02 years. No reason is forthcoming from the record which would throw light on the above inordinate delay of 02 years.

The allegations of cruelty are also not found proved on the record. Entrustment and recovery of dowry articles is not found. In fact, the prosecutrix in her deposition before the trial court admitted that no dowry articles were given at the time of her marriage with respondent No.2.

So far as the charges under Section 420, 494 and 506 IPC are concerned, except the bald statement of the prosecutrix no other evidence is available on record. No overt act on the part of respondent No.2 which would prove commission of the afore-referred offences is also found.

In view of the above, the present application is found devoid of any merit and, therefore, dismissed.

Leave to appeal is declined.

(T. P. S. MANN)
JUDGE

(DEEPAK SIBAL)
JUDGE

March 20, 2018
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<i>Whether speaking/reasoned</i>	:	<i>Yes/No</i>
<i>Whether reportable</i>	:	<i>Yes/No</i>