

In the High Court of Punjab and Haryana at Chandigarh.

CRM-A No. 1479-MA of 2017 (O&M)

Reserved on 15.1.2018

Date of Decision:- January 17, 2018

Mukta Sharma

.....Appellant

Versus

State of Haryana and another

.....Respondents

CORAM: Hon'ble Mr. Justice M.M.S.Bedi
Hon'ble Mr. Justice Gurvinder Singh Gill

Present : Mr. R.S.Rai, Senior Advocate with
Mr. Gautam Dutt, Advocate, for the applicant-appellant.

Gurvinder Singh Gill, J.

1. The victim (prosecutrix), aggrieved by judgment dated 17.1.2017 passed by learned Additional Sessions Judge, Gurgaon has filed the present appeal challenging acquittal of accused Harvinder Singh for offences punishable under Sections 376 and 180 of IPC, besides seeking leave to appeal.
2. The case of prosecution, in nutshell, is that the accused Harvinder Singh is brother-in-law (Jija) of prosecutrix. Since husband of the prosecutrix had some issues and financial problems, the accused had been calling the prosecutrix to meet him to resolve the same. On 29.6.2015, the prosecutrix was called by the accused to meet him at the pool side in a club and when she reached there, he took her upstairs in a room where they discussed the matter for a short while but subsequently he made advances towards her and tried to hug her forcibly.

The prosecutrix alleged that the accused forcibly removed her clothes and raped her. The prosecutrix has further alleged that even subsequently the accused kept on sending '*whatsapp*' messages to her saying that he loves her. When she could not bear the pain any more then she reported the matter to the police.

3. After investigation of the matter, the accused was tried by the Court of Additional Sessions Judge, whereby the accused has been acquitted. The Trial Court concluded as follows :-

- 1) The delay in registration of FIR has not been sufficiently explained rendering the prosecution case doubtful.
- 2) The prosecutrix does not appear to be a reliable witness.
- 3) The prosecutrix has not been able to establish her presence at the place of occurrence for more than one hour as on the date of occurrence from 7 a.m. to about 8.30 a.m.
- 4) The manner in which the alleged sexual assault is stated to have been committed does not sound probable.
- 5) There is strong probability of false implication as admittedly there had been financial issues between the family of the prosecutrix and other persons including close relatives of accused Harvinder.
- 6) The defence witnesses are more credible than the witnesses of the prosecution.
- 7) Charges under section 180 IPC are not made out inasmuch as the same pertain to refusal by accused to sign his disclosure statement Ex.P-14 and demarcation memo Ex.P-15 allegedly prepared during investigation as the accused is denying the very execution of these

documents.

4. We have heard the learned counsel for the applicant-appellant and have gone through the reasoning of acquittal given in the impugned judgment.
5. We find that the Trial Court has marshaled the evidence meticulously to reach at the conclusions mentioned above. The reasoning given therein does not suggest any misreading of evidence. The allegations that the prosecutrix, upon being called by the accused went to the club alone in the early hours of the day and was raped, when examined in light of the fact that the prosecutrix is not a naive adolescent but a mature lady, do not appeal to reason.
6. In any case, law as regards challenge to acquittal is well settled to the effect that acquittal is not to be disturbed normally and even if other view is possible, the same would not justify interference in an order of acquittal.
7. Hon'ble Apex Court in a case reported as 2016 SCC OnLine SC 834 Madathil Narayanan & Ors. V. State of Kerala & Anr. held as under :-

“It is a well settled principle of law that if two views are plausible, the view which goes in favour of acquittal has to be adopted. This legal principle has been reiterated by this Court in the case of *Arulvelu v. State rep. by the Public Prosecutor*. In the case of *Bindeshwari Prasad Singh @ B.P. Singh v. State of Bihar (now Jharkhand)*, this Court has held that in the absence of any manifest illegality perversity or miscarriage of justice, the order of acquittal passed by the Trial Court may not be interfered by the High Court in exercise of its appellate

jurisdiction. The aforesaid view has further been reiterated by this Court in the following two cases viz. *Rathinam @ Rathinam v. State of Tamil Nadu* and *Sunil Kumar Sambhudayal Gupta (Dr.) v. State of Maharashtra*.”

8. A Division Bench of this Court, in a case reported as 2016(2) Law Herald 1603 Mithlesh vs. State of Haryana and another, while upholding acquittal of an accused charged with committing rape, noticed the following facts which are identical to the present case :-

“It is also important to note that the applicant was a mature female of 24 years. She herself was maintaining physical relations with respondent No.2 and never lodged any complaint for a period of about one and a half years. It does not inspire confidence that she would have suffered harassment to the alleged extent and would keep mum for such a long period without disclosing the alleged tale of her harassment even to her parents. She intimated the alleged sexual harassment to her father just two days before the registration of FIR. Defence taken by respondent No.2 gets corroboration from the statement of PW10 Dr. Sarita Rani, Medical Officer, who medico legally examined the applicant that there were no signs of injury on the person of the applicant.”

9. The impugned judgment is well reasoned and there is no infirmity in the same. Additionally, it may be mentioned here that even delay of 97 days in filing the

appeal is not sufficiently explained. Delay is condoned but we do not find any case for grant of leave to appeal against judgment of acquittal. The application is devoid of merits and is dismissed.

(M.M.S.Bedi)
Judge

(Gurvinder Singh Gill)
Judge

January 17, 2018
kamal

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No