

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

CRM-A-1612-MA of 2017

Date of decision: 10.10.2018

Saroj Kaur

.....Appellant

Versus

State of Haryana and another

.....Respondents

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

Present: Mr.S.S. Dinarpur, Advocate
for the appellant.

MAHABIR SINGH SINDHU, J.

Prosecutrix/applicant-appellant has filed the present application under Section 378(4) of the Code of Criminal Procedure, 1973 (for short “the Code”) for seeking leave to appeal against the impugned judgment dated 16.05.2017 passed by the learned Additional Sessions Judge, Yamunanagar at Jagadhri, vide which, respondent No.2 has been acquitted of the charges under Sections 376 and 506 of the Indian Penal Code, 1860 (for short 'IPC') read with Section 3 (1) (xi) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short “the Act”).

(2) In brief, the prosecution was launched against respondent No.2 on the basis of complaint dated 19.11.2015 (Ex.P-A) by the applicant alleging that she is a married lady and doing house-hold work. She is having one son and a daughter. On 17.11.2015, respondent No.2 called her at Shiv Chowk, Bilaspur, where he used to pay obeisance to Goga Peer (local deity).

Since the prosecutrix was having some family problems, therefore, respondent No.2 advised her to accompany him to Goga Peer to get rid of all these difficulties. In view of the assurance given by respondent No.2, she accompanied him on motorcycle as a pillion rider and he drove her to sugarcane field through Katcha path and on the way, after halting motorcycle, he started indulging in obscene activities. Consequently, she objected, but he dragged her inside the sugarcane field and at about 3.00 PM, he committed rape with her. She cried for help but on account of lonely place, none had come forward. Thereafter, respondent No.2 threatened her to kill in case she disclosed the incident to anyone. He did not allow her to go to police station to report the matter and due to fear, she came back to Bilaspur. Thereafter, she called her relatives from Jagadhri and since, she was not feeling well, therefore, accompanied her relatives and reached home. Ultimately, she requested police for legal action against respondent No.2.

(3) On the basis of above allegations, formal FIR No.274 dated 19.11.2015 was registered under Sections 376 and 506 of IPC read with Section 3(1) (xi) of the Act at Police Station, Bilaspur, District-Yamuna Nagar. In routine, the investigation was conducted and ultimately, report under Section 173 of the Code was submitted before Ld. Illaqa Magistrate. Thereafter, the matter was committed to the learned trial Court and on finding *prima facie* case against the accused (Respondent No.2) charges punishable under Sections 376 & 506 of IPC as well as Section 3 (1) (xi) of the Act were framed to which, he pleaded not guilty and claimed trial.

(4) In order to prove the case, prosecution examined 9 witnesses including prosecutrix as PW-2.

Under Section 313 of the Code, entire incriminating material was put to respondent No.2, but he denied the same and pleaded false implication, however in defence, did not lead any evidence.

Learned trial Court after taking into consideration the entire material available on record came to the conclusion that prosecution has failed to prove its case beyond reasonable doubt against respondent No.2 and consequently, acquitted him of the charges while passing the impugned judgment.

(5) Hence present application for seeking leave to appeal.

(6) It is argued by the learned counsel for the applicant that learned trial Court has committed a grave error of law while acquitting respondent No.2 as there is sufficient material available on record to prove the charges against him beyond reasonable doubt. He further submitted that judgment of acquittal has resulted into complete failure of justice and therefore, the present application deserves to be allowed.

(7) Heard learned counsel for the applicant and perused the paper book.

(8) Although, the prosecutrix levelled allegation of rape in her complaint dated 19.11.2015 (Ex.P-A) against respondent No.2, but while appearing as PW-2, admitted that she is a married lady aged about 48 years, having two children i.e. son aged about 16 years and daughter 13 years. Respondent No.2 was known to her as he used to do some captivating activities and she had already visited him on three occasions.

During her cross-examination, she stated that after committing rape, respondent No.2 dropped her at Shiv Chowk, Bilaspur and many persons were there, but she did not disclose the occurrence to anyone. She

further stated that respondent No.2 gave her ₹200/- as a bus fare and she boarded a bus from Bilaspur to her village. It was further stated that she took bath on the next day and did not report the matter to the police, rather disclosed the incident to her husband on 19.11.2015 and thereafter only FIR was lodged. Neither her husband nor Sunder Lal, to whom she is alleged to have disclosed the occurrence at the first instance have been produced as witnesses to support the prosecution case and therefore, learned trial Court in para 21 of the impugned judgment observed as under:-

“The incident is of dated 17.11.2015, whereas as per her, she told the incident to her husband on 19.11.2015. It is not acceptable that since her husband was ill, she did not tell him about her ravishment, which was supposed to tell by her to her husband 'A' immediately. Strangely enough, after the alleged commission of rape upon her, instead of disclosing the same to her husband firstly at her house, she chose to tell one Sunder Lal, who is as per her, is a distant relative. The conduct of the prosecutrix speaks otherwise, which has created a dent over the prosecution story. There is no evidence that accused had molested the complainant-prosecutrix, knowing that she belongs to a scheduled caste or she is a scheduled caste.”

In view of the above scenario learned trial Court has rightly recorded that statement of prosecutrix does not appear to be convincing and creates a doubt about its veracity and ultimately held that testimony of prosecutrix is not reliable.

(9) No doubt, charges under Sections 376 of 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. Even for proving the charge under Section 3(1) (xi) of the Act also, there is no evidence at all, much less to say cogent evidence. In the present case, learned trial Court has rightly come to the conclusion that testimony of prosecutrix is not reliable 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 with, 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.

(10) In view of the facts and circumstances discussed here-in-above, this Court has no option except to dismiss the application for seeking leave to appeal filed by the prosecutrix/applicant-appellant. Consequently, the application under Section 378 (4) of the Code is dismissed and leave to appeal is declined.

(RAJESH BINDAL)
JUDGE

(MAHABIR SINGH SINDHU)
JUDGE

10.10.2018
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1. Whether reportable? **Yes / No**
2. Whether reasoned / speaking? **Yes / No**