

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

CRM-A-336-MA-2018(O&M)

Date of decision:-12.10.2018

Gurmeet Kaur

...Applicant

Versus

State of Punjab and others

...Respondents

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

Present: Mr.O.P. Kamboj, Advocate
for the applicant.

H.S. MADAAN, J.

CRM-5089-2018

Prayer made in the application is for condonation of 29 days' delay in applying for leave to appeal.

Heard. Sufficient cause has been shown for condonation of such delay. The application is, therefore, accepted and the delay of 29 days in applying for leave to appeal is condoned.

CRM-5090-2018

This is an application for placing on record documents i.e. statements of PW1 and PW2 as Annexures A1 and A2, respectively and for exemption from filing certified copies thereof.

Heard.

The application is allowed and the documents are ordered to be made part of the record.

CRM-A-336-MA-2018

Applicant – Gurmeet Kaur has filed this application under Section 378(3) Cr.P.C. seeking permission for leave to appeal against respondents challenging the impugned judgment dated 4.8.2017 passed by learned Sessions Judge, Ferozepur.

The applicant prays that such judgment passed by the learned Sessions Judge, Ferozepur be set aside by way of acceptance of the appeal and accused be convicted and sentenced in accordance with law.

Briefly stated, facts of the case are that SHO, Police Station Guru Har Sahai, District Ferozepur had forwarded accused Sandeep Singh, Balwinder Singh, Sajjan Kumar and Ram to face trial on the allegations of such accused having committed offences under Sections 376-D, 382, 366, 341 and 506 IPC.

The criminal machinery in this case was set into motion by the prosecutrix, who in her statement made to the police on 14.9.2014 stated that she was married with Kuldeep Singh son of Balwant Singh about nine years earlier; her elder sister Santosh Rani is married with one Rooban Kumar of village Chak Nidhana; on 13.9.2014, she along with her husband Kuldeep Singh had gone to meet her elder sister Santosh Rani on a motorcycle; at about 9:00 p.m., the couple had left for village Panje Ke Uttar on the motorcycle and while their motorcycle was on *kacha* path

leading to village Kutabgarh Bhatta, five unidentified persons intercepted the motorcycle and they started beating husband of the complainant enquiring from him from where he had brought the prosecutrix; the husband of the prosecutrix informed them that she was his wife and they were going to her parental house; those miscreants started demanding money from the complainant and her husband and when they refused to give money, two unidentified persons caught hold of Kuldip Singh, whereas remaining three unidentified persons caught hold of the complainant; those persons then dragged the complainant/prosecutrix and took her to a room at a distance of 10 acres on the motorcycle; they gave beatings to her and committed rape upon her; Kuldip Singh – husband and Rooban Kumar – brother-in-law of complainant came there, however, the accused ran away; while fleeing from the spot, the accused had snatched ear rings of the complainant, which she was wearing at that time.

After formal FIR was registered on the basis of statement of the prosecutrix, she was got medically examined from Civil Hospital, Ferozepur. During the course of investigation, the prosecutrix got recorded her supplementary statement at Police Station Guru Har Sahai on 29.9.2014. Accused Balwinder Singh was arrested in this case on 27.10.2014, Sajan Kumar on 7.1.2015, Ram on 20.1.2015. However, during investigation of the case Ranjit Singh, Kuldeep Singh, Jagtar Singh and Jaswinder Singh were found to be innocent.

After completion of investigation and other formalities, challan against the accused was prepared and filed in the Court of Sub-

Divisional Judicial Magistrate, Guruhar Sahai.

On presentation of challan in the Court of Sub-Divisional Judicial Magistrate, Guruhar Sahai, copies of documents relied upon therein were supplied to the accused free of cost as provided under Section 207 Cr.P.C. Then finding that offences under Sections 376-D, 366 IPC are exclusively triable by Court of Sessions, learned Sub-Divisional Judicial Magistrate, Guruhar Sahai committed the case to the Court of learned Sessions Judge, Ferozepur.

Learned Sessions Judge, Ferozepur finding that charge for offence under Sections 341, 376-D, 366, 382 and 506 IPC was disclosed against the accused Balwinder Singh, Sajan Kumar and Ram, charge-sheeted them for the said offences, to which, they pleaded not guilty and claimed trial. The case was fixed for evidence of the prosecution.

During the course of trial of such accused, an application under Section 319 Cr.P.C. was filed by the prosecution for summoning of Vikram Singh, Jagtar Singh, Jaswinder Singh, Ranjit Singh and Kuldeep Singh as additional accused, which was allowed vide order dated 24.8.2015. Accused Sandeep Singh, who was an absconder was arrested and supplementary challan was filed against him on 23.10.2015.

On appearance of additional accused as well as accused Sandeep Singh in the trial Court, amended charge was framed against all the accused, to which, they pleaded not guilty and claimed trial.

During the course of its evidence, the prosecution had examined as many as eleven witnesses, namely, PW1 – the prosecutrix, PW2 – Kuldeep Singh, PW3 – Dr.Pankaj Gill, PW4 – Dr.Amneet Kaur,

PW5 – Dr.Tushti, PW6 – Constable Satnam Singh, PW7 – Head Constable Mohinder Singh, PW8 – ASI Harnek Singh, PW9 – SI Shinder Singh, PW10 – HC Gurdev Singh and PW11 – Dr.Nikhil Gupta.

Statements of accused were recorded under Section 313 Cr.P.C. in which the accused denied the incriminating circumstances appearing against them.

Accused Balwinder Singh, Sajan Kumar and Ram pleaded that they are innocent and have been falsely involved in this case.

Whereas accused Ranjit Singh took up a plea that Kashmir Singh son of Khewan Singh wanted to have a separate Gram Panchayat but he did not support his move, as such he was annoyed with him and therefore, he got him involved in this false case; that on 13.9.2014, he was studying in Guru Nanak College, Ferozepur in BA Part-III and was residing there and he was not present at the spot and had not committed any crime.

Similarly, accused Jagtar Singh took up a plea stating that he has been implicated in this case at the instance of Kashmir Singh son of Khewan Singh of his village as Kashmir Singh had created a new Dhani under the name of Dhani Kashmir Singh becoming its Sarpanch; that he (Jagtar Singh) had filed a writ petition being member Panchayat in the year 2013 and formation of new Panchayat was stayed by the Hon'ble High Court and subsequently that order creating new Dhani was set aside by the High Court; that Reshma Bai was the Sarpanch of the village, due to said enmity a number of false cases were registered against such accused at the behest of Kashmir Singh, however, he has been acquitted

in those cases; that Kashmir Singh has been instrumental in getting this false case registered against him and even thereafter, he had been pursuing that case also along with the complainant and her husband and he was also declared innocent by the police during investigation.

Accused Jaswinder Singh took up a plea that he has been falsely involved being nephew of Reshma Rani, Sarpanch, who along with Jagtar Singh had protested the move of creation of new Panchayat under the name of Dhani Kashmir Singh.

Accused Sandeep Singh and Vikram Singh took up the same plea as that of Jagtar Singh and Jaswinder Singh.

Accused Kuldeep Singh had taken up a plea that on 13.9.2014, he was studying in Class 10th at Government Senior Secondary School, Chak Budho Ke, Jalalabad; that he has been residing at Jalalabad to pursue his studies and was not present at the spot.

In defence evidence, accused examined HC Mohinder Singh as DW1 and Gurbhej Singh as DW2 and also tendered in evidence Enquiry report dated 8.2.2015 of SI Shinder Singh as Ex.D4, copy of order dated 28.10.2014(Ex.DA) passed by the High Court, certified copy of order dated 10.12.2014 (Ex.DB) and certified copy of order dated 18.9.2015 (Ex.DC) by the Court of SDJM, Guru Har Sahai.

After hearing arguments, the learned trial Court had convicted accused Sandeep Singh and Jaswinder Singh for the offences punishable under Sections 376-D, 366, 341, 506 IPC, however, they had been acquitted of the offence punishable under Section 382 IPC. Whereas learned trial Court acquitted accused Balwinder Singh, Sajan Kumar,

Ram, Ranjit Singh, Jagtar Singh, Vikram Singh and Kuldip Singh of the charge framed against them.

The reasons given for arriving at such conclusion are as under:

- (i) In her first statement Ex.P1, which the prosecutrix got recorded on the next day of the incident, she had named Sandeep Singh, Jaswinder Singh and Jagtar Singh only, whereas in her supplementary statement, she had named the other accused. While getting her statement recorded in the Court during trial, she had named all the accused except Sajan Kumar. In her statement Ex.P1, she had stated that two young persons caught hold of her husband, whereas remaining three young persons had caught hold of her from her arms, forcibly taking her to the room, meant for tubewell motor, where those three persons had taken off her clothes and committed rape upon her and she had identified Sandeep Singh and Jaswinder Singh at the instance of her brother-in-law Rooban Kumar.
- (ii) Statement Ex.P1 made by the prosecutrix on the very next day of the occurrence appearing to be probable and authentic qua Sandeep Singh and Jaswinder Singh accused, whereas supplementary statement Ex.P2 made by her on 29.9.2014 comes out to be totally an improved version.

- (iii)The statement of the prosecutrix finding corroboration from testimony of her husband Kuldip Singh PW2 qua Sandeep Singh and Jaswinder Singh only.
- (iv)By producing medical evidence in the form of testimony of Dr.Amneet Kaur - PW4, who had medico legally examined the prosecutrix proving her medico legal report Ex.P10 had deposed that as per report of Chemical Examiner Ex.P13, spermatozoa were detected in the vaginal swabs, thus the prosecution had succeeded in proving its case against two accused i.e. Sandeep Singh and Jaswinder Singh only.
- (v)Jagtar Singh accused being aged about 70 years, the case of the prosecutrix being that three young persons had committed rape upon her, Jagtar Singh accused is not a young man being of advanced stage of 70 years. This fact having been conceded by the prosecutrix in her cross-examination itself, therefore, presence at the spot of accused Jagtar Singh becomes doubtful and resultantly, he earned acquittal in the case.
- (vi)Regarding Sajan Kumar accused, he was not even named as a culprit by the prosecutrix, rather she had stated that Sajan Kumar had not followed them to the spot and Sajan Kumar had not committed rape upon her. PW2 Kuldip Singh husband of the prosecutrix had also not named Sajan Kumar as one of the culprits.

(vii)As regards accused Balwinder, Ram, Ranjit Singh, Vikram Singh and Kuldip Singh, they were not named in the first statement got recorded by the prosecutrix on the next day of the occurrence i.e. 14.9.2014 but were named in her supplementary statement got recorded by her on 29.9.2014 without explaining as to from where she had come to know about their names, thus pointing out that she had named those persons after due deliberations and consultations, there being a doubt over authenticity of the supplementary statement got recorded by the prosecutrix.

(viii)No identification parade was got arranged by the prosecution agency, therefore, identification of accused was not established.

This judgment left the complainant aggrieved and she has approached this Court seeking special leave to appeal.

We have heard the learned counsel for the applicant besides going through the records.

After hearing learned counsel for the applicant, we find that the judgment passed by the Court below is well reasoned one, based upon proper appraisal and appreciation of evidence and correct interpretation of law. There is no illegality or infirmity therein. The judgment is certainly not perverse and it cannot be said that it has been passed ignoring the settled principles for adjudication of a criminal case.

Under the circumstances, the application seeking permission

for leave to appeal does not have any merit and is dismissed accordingly.

12.10.2018
Brij

(T.P.S. MANN)
JUDGE

(H.S.MADAAN)
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No