

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Criminal Misc. A-358-MA of 2018

Date of Decision : May, 24, 2018

Kamlesh

....Applicant

VERSUS

State of Haryana and another

...Respondents

**CORAM : HON'BLE MR. JUSTICE T.P.S. MANN
HON'BLE MR. JUSTICE FATEH DEEP SINGH**

Present : Mr. K.K. Chahal, Advocate
for the applicant.

T.P.S. MANN, J.

The prosecutrix has filed the present application under Section 378(3) read with Section 372 IPC for permission to file an appeal against the judgment dated 4.12.2017 passed by the learned Additional Sessions Judge-cum-Judge, Special Court for Heinous Crime against Women, Hisar whereby the accused, who is respondent No.2 herein, stood acquitted of the charges under Sections 346, 366, 374, 376(2)(n) and 506 IPC.

According to the prosecution, on 21.6.2016, Kulbir Singh, husband of the prosecutrix presented an application at Police Station Sadar, Hisar alleging therein that he was doing the work of battery as well as household work. He got married with the prosecutrix in the year 2008 and had two children. On 19.6.2016 at about 9.00

p.m., he was sleeping on the roof of his house. At about 12.00 mid

night he heard his daughter weeping. He got up and found his wife missing. He and his family members searched for his wife in the fields but she could not be traced. Accordingly, he requested the police to trace out his wife.

It is also the case of the prosecution that initially the case for commission of offence punishable under Section 346 IPC was registered. During investigation, the police recovered the prosecutrix and got her statement recorded under Section 161 Cr.P.C. in the presence of Legal Aid Counsel. In her said statement she stated that she had studied upto 8th class. The accused was doing the work of mason in their house for the last two months. On 19.6.2016 at about 12.00 mid night, she came out of her house for urinating. The accused was found present there, who put handkerchief on her mouth and took her away. She tried to raise an alarm but became unconscious. When she regained consciousness, she found herself in a room whereas the accused was sitting next to her. The accused had committed rape upon her. He had also threatened to kill her if she revealed about the incident to anyone. He had confined her in a room and used to lock the room from outside. He did not allow her to make telephone to any person. The accused continued to ravish her without her consent.

After hearing learned counsel for the applicant and on going through the impugned judgment of acquittal, this Court finds that the prosecutrix was major, being more than 24 years of age.

She was a married woman having two children. In her statement made before the police, she had stated that the accused was doing the work of mason in her house for the last two months. On 19.6.2016 at about 12.00 mid night when she went out of her house for urinating, the accused was standing there, who gagged her mouth by putting handkerchief and, thereafter, took her away forcibly. She tried to raise hue and cry but became unconscious. On regaining consciousness, she found herself in a room with the accused, who had raped her after she regained consciousness. To the same effect was the statement of the prosecutrix recorded under Section 164 Cr.P.C. However, in her cross-examination, she deposed that she had never met the accused prior to 19.6.2016. At the same time, she admitted about the accused working as a mason in her house for the last two months prior to the date of the incident. She had ample opportunity to raise an alarm on noticing the accused present at the main gate of her house and, that too, at the dead of night but no such steps were taken by her. She had also mentioned in her cross-examination that she remained with the accused for 10 days at a stretch and during that period the accused used to go outside after putting a lock on the door of the room. She also mentioned that toilet was situated near the room and she used to go to that toilet daily. It was highly improbable that the prosecutrix would remain in a room all alone and not raise any alarm or giving knock at the door or even shouting after the accused would leave in

the morning and come back with food after some time. She also admitted that the accused had taken her to Chandana Gate, Kaithal which was situated in a busy locality where she was standing alongwith the accused and her husband alongwith the police party had arrived there after ten minutes.

In view of the above, no case is made out for any interference in the impugned judgment of acquittal.

The application is without any merit and, therefore, dismissed. Leave to appeal is declined.

**(T.P.S. MANN)
JUDGE**

**(FATEH DEEP SINGH)
JUDGE**

May 24, 2018
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Whether speaking/reasoned : YES / NO

Whether reportable : YES / NO