

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Criminal Misc. A-492-MA of 2018

Date of decision : July 06, 2018

Sarla

....Applicant

versus

State of Punjab and another

....Respondents

**Coram: Hon'ble Mr. Justice T.P.S. Mann
Hon'ble Mr. Justice Fateh Deep Singh**

Present : Mr. Shiv Charan Bhola, Advocate
as legal aid counsel for the applicant.

Fateh Deep Singh, J.

The court of learned Additional Sessions Judge-cum-Special Court for Heinous Crime against Women, Hisar tried accused Rakesh now respondent no. 2 in criminal case bearing FIR No. 215 dated 10.9.2016 under Sections 376(2)(n), 452 and 506 of the Indian Penal Code pertaining to Police Station Adampur and through impugned judgment of acquittal dated 27.11.2017 held that the prosecution failed to prove its case beyond reasonable doubt and therefore, acquitted accused of the charges so framed against him.

The same is subject matter of challenge before this Court by resort to provisions of Section 378 (3) of the Code of Criminal Procedure.

Heard Mr. Shiv Charan Bhola, learned counsel for the applicant and perused the records.

The brief allegations are that a complaint dated 10.9.2016 was moved by prosecutrix claiming that she was household lady and studied upto 7th class and her marriage was solemnized with Asa Ram about 12 years back and her husband works as a Jeep Driver. It is alleged that accused Rakesh usually visits her house and two years prior to the filing of the criminal complaint (which has been filed on 3.11.2016), the accused had come to borrow pliers and put a pistol on her ear and told the prosecutrix that he loves her and thereafter both sides used to communicate on telephone. It is alleged that the accused on such occasions threatened her that he would consume spray and commit suicide and in the process committed rape upon her. A few days thereafter the accused again threatened to kill her and forced her to make relations against her consent. In her allegations the prosecutrix claims that on 1.8.2015 around 1/1.30 PM, accused came to her house and tried to forcibly make her submit to his desires and on account of which an altercation took place between them on account of which the matter

went to Panchayat which was convened a number of times but nothing tangible came out of it and thereafter the prosecutrix disclosed the matter to her husband leading to the filing of the complaint. The prosecutrix was medically examined from General Hospital, Hisar and her statement under Section 164 Cr.P.C. was also recorded and upon completion of investigation, challan against the accused was presented and he was charged for offences under Sections 376(2)(n), 452 and 506 IPC to which the accused denied and claimed trial.

The prosecution at the trial examined one Sangeet Meenakshi as PW1 and prosecutrix stepped herself into witness box as PW2 and thereafter examined her husband Asa Ram as PW3 followed by testimony of HC Rajbir, PW4, Constable Alka, PW5, Raju Walia, Draftsman, PW6, EHC Randhir Singh, PW7. Thereafter, the prosecution examined Dr. Shalini Lohan, PW8, ASI Nirmala, PW9, Dr. Samir Kamboj, PW10 and lastly examined SI Dogar Singh as PW11 and thereafter closed the evidence.

The accused denied the allegations in his stand taken under section 313 Cr.P.C. but did not lead any evidence in defence leading to the passing of the impugned findings.

Appreciating the submissions, it is the own case of the

prosecutrix that she is a grown up married lady and the accused had been visiting their house and that two years prior to the filing of the complaint had entered into relationship with her and thereafter they started talking to each other on telephone. Thus, from this inordinate delay certainly substantiates the fact that there is a strong element of consent to the on-goings escapades between the two. Neither any evidence has been led to bring about the explanation of this delay that Panchayats were convened which could convince the Court as to the truthfulness of the same. The stand of the prosecutrix that she was ravaged on 4/5 occasions by the accused and that she kept silent further is a strong distressing feature for the prosecution that all is not well with the story put forth by the prosecutrix. The testimony of the prosecutrix as PW2 that thereafter some days an altercation had taken place between them and thereafter she moved complaint Ex. P2 are matters which impels the Court to scrutinize the evidence of the prosecution with more care and caution. In her testimony by way of cross-examination she accepts that she has made made statement under section 164 Cr.P.C. by way of Ex. P3 but has failed to mention therein that the accused under the threat of consuming poisonous substance had been ravashing her together with the fact as has been taken note of by the court below the allegation that the

accused had placed a pistol on the head of the prosecutrix and committed rape upon her do not find mention in her stand taken in Ex. P3 and her own admission that four months prior to the registration of the FIR, she has moved an application before the police of Adampur but accepts the fact that she nowhere in that application had levelled allegations of rape against the accused are matters of much significance that the allegations are an afterthought imputations which seriously undermined her allegations. Furthermore as has been observed by the court below there is a categorical admission by the prosecutrix in her cross-examination that the accused had gifted her a mobile phone on which she used to talk with the accused and it was only on that phone she used to talk to the accused though there are other family members and she never disclosed the fact of rape to anyone during this intervening period. The fact as per her own admission when she was lastly ravished it was in the fodder room but she never raised any hue and cry and rather instead kept mum and did not even inform the family members certainly puts the credibility of the prosecution story in a bad light.

The trial court in view of these serious shortcomings and drawbacks in the prosecution story has rightly come to the conclusion that the testimony of the prosecutrix is not of

unimpeachable credibility and that there was no material evidence that it was under threat and coercion the prosecutrix has submitted to the desires of the accused and has thus come to a totally justifiable conclusion.

In view of the foregoing discussion detailed above, this Court comes to the conclusion that there is no illegality or perversity in the findings which are well reasoned and duly substantiated by the own unbelievable stand of the prosecution. Thus, no cause for grant of leave to appeal arises in the present case. The application for leave to appeal thus stands declined and dismissed.

(T.P.S.Mann)
Judge

(Fateh Deep Singh)
Judge

July 06, 2018
dst

Whether speaking/reasoned ?	Yes/No
Whether Reportable ?	Yes/No