

In the High Court of Punjab and Haryana at Chandigarh.

CRM-A-2221-MA of 2017 (O&M)

Date of Decision:- 10.01.2018

State of Haryana

.....Appellant

Versus

Lal Singh @ Lal Chand

.....Respondent

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

Present : Mr. S.S.Pannu, Deputy Advocate General, Haryana,
for the appellant.

M.M.S.Bedi, J.

1. State has preferred this appeal against acquittal of respondent-accused along with an application under Section 378(3) of the Code of Criminal Procedure, 1973 for grant of leave against the judgment of acquittal and an application for condonation of delay of 104 days in filing the appeal.
2. Briefly stated, the case of the prosecution, as per the story given by the prosecutrix, is that on 30.9.2015, the prosecutrix, a 40 years old married lady, gave an information to the police at telephone No.100 regarding assault on her. As per her allegations, on the date of occurrence, the accused-respondent went to her house and forcibly raped her besides threatening to kill her. She allegedly rescued herself by making call at telephone No.100 as such, resulting in the arrival of the police in her house when the respondent-accused escaped.
3. On appreciation of evidence, the trial Court passed an order of acquittal,

disbelieving the story of the prosecutrix that respondent No.2, who happens to be her brother-in-law (Jeth) had committed rape upon her, as alleged by her. The trial Court while appreciating the evidence has given the following reasons for passing an acquittal order:

- “(i) The first information given by the prosecutrix to the police at 100 number is limited to the words that someone (name not disclosed) has been fighting with her and making ‘jabardasti’.
- (ii) The question if accused was arrested from the ground or not, is at material variance in the statement of prosecutrix compared with Ex.P1, P2 and as witness PW8 and in the alleged history given by the prosecutrix to the attending doctor in MLR Ex.P10. On one side the prosecutrix states that accused Lal Singh was arrested from the ground and in the same breath, sometimes says that he had absconded when police came on the ground. Police record has shown his arrest at subsequent time in the night from residence of Rewari.
- (iii) The manner in which the prosecutrix alleges the incident to have taken place is highly unbelievable. She has varied these sequence of events as how accused Lal Singh first came to her house and what all happened with her, in her statement Ex.P1, P2, as witness PW9 and in the alleged history of her MLR Ex.P10.
- (iv) Prosecutrix alleges hue and cry made by her but surprisingly her such hue and cry has not been heard by

neighbours who were admittedly present in and around the place of occurrence.

- (v) No injury mark on the person of the prosecutrix, who was medico legally examined on the same day of incident, belie her tall claims of forcible rape with heavy resistance on her part, in such physical assault.
- (vi) Prosecutrix had all of sudden left her tenanted house not giving information to the landlord also, as stated by PW1 Raj Kumar, is quite surprising and without any explanation. There could have been shy or social avoidance in one such act of the prosecutrix. But the back ground of the prosecutrix is that she had been living away from her husband for last three years in the rented room with her brother in law namely Parvesh and had been facing criminal and civil litigations with her husband. She had four children and all of them had been living separately from her. Since the prosecutrix had all the courage throughout her past life to have undergone the rigmaroles of life difficulty and she had the boldness on the other hand to have called up 100 number at the same time when rape was being committed upon her, her sudden disappearance from the ground is not explained.
- (vii) It is disbelieved that the prosecutrix could have informed the police at the same time when her one hand was held by accused and she used the second hand to use the mobile phone to connect to the police and to give her complaint.

The police witness who had attended the phone call received at number 100 namely PW5 ASI Dinesh Kumar has specified that prosecutrix had used two different phone numbers to have contacted the police at 100 number to lodge the complaint as from the first phone number the voice was not clear and after that prosecutrix used another phone number to give her call to police at number 100. These facts are again unexplained.

(viii) Prosecutrix is not believed to be sterling witness as her evidence does not gain confidence of the court.

(ix) Despite matching of FSL, DNA report in favour of the prosecutrix, it cannot be ruled out that it is a case of consensual physical relationship between accused and the prosecutrix.”

4. Mr. S.S.Pannu, Deputy Advocate General, Haryana has vehemently contended that the acquittal order has been passed upon conjectures and that the material scientific evidence i.e. the similarity of DNA of the sample of semen, recovered from the clothes of the prosecutrix matched with the DNA structure of the respondent.
5. We have heard counsel for the State and carefully gone through the judgment of the trial Court.
6. The medical evidence is always considered to be a corroborative evidence to the ocular evidence/direct evidence produced on the record. In the present case, the prosecutrix admittedly is 40 years of age and is related to respondent-accused, he being her husband's elder brother. The story of the prosecution

that he had gone to her house on the pretext of settling her dispute with her husband, remained in the house of about two hours and later committed rape forcibly without causing any scratch on her body is on the face of it improbable and has rightly been disbelieved by the trial Court. Nine reasons mentioned hereinabove have been given for disbelieving the story of the prosecutrix. We have considered the contention of learned counsel for the State that there is no reason for the prosecutrix to falsely implicate the respondent. It is an admitted fact that the prosecutrix has got dispute with her husband who happens to be the younger brother of respondent. In view of the said circumstances, the motive to falsely implicate the respondent cannot be debated. The detailed reasons given by the trial Court have been thoroughly scrutinized by us and we are of the opinion that on re-appreciation of evidence, it is not a fit case in which order of conviction could be passed against the respondent by setting aside the judgment of trial Court by virtue of which benefit of doubt has rightly been given to the respondent. No ground is made out for interference in the judgment of trial Court. Resultantly while the delay of 104 days in filing the appeal is condoned, leave to appeal against the judgment of acquittal is declined. The application is dismissed.

(M.M.S. Bedi)
Judge

(Gurvinder Singh Gill)
Judge

January 10, 2018
mohan

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No