

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Criminal Misc. A-609-MA of 2018
Date of decision: September 14, 2018

Suman

....Applicant

Versus

State of Haryana and another

....Respondent

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

Present: Mr. Sat Narain Yadav, Advocate for the applicant

Fateh Deep Singh, J.

Heard.

The brief allegations of the applicant-prosecutrix are to the effect that she was working as sweepress in Government Girls College, Badhra, and, on 14.1.2017 around 4.00 PM, the accused who is employed as Lab Assistant caught hold of her and molested her and in the process committed rape upon her and thereafter threatened her that in case she disclosed the matter to any one, he would kill her. As a consequence of this, the prosecutrix made a written complaint on 14.1.2017 to the police. In her allegations, the prosecutrix also alleged that an associate of the accused, namely, Lalit Kumar was also present and when her husband came to the

College to fetch her, the present respondent Rajender Singh accused and Lalit Kumar fled away. It was on the basis of this complaint, FIR No. 9 dated 14.1.2017, under Sections 376 and 506 of the IPC and Section 3(2)(v) of SC and ST Act was registered at Police Station Badhra. During the course of trial, the prosecution has sought to summon Lalit Kumar as an additional accused by moving application under section 319 Cr.P.C. However, the same was declined vide order dated 2.6.2017.

In the evidence of the prosecution, the following witnesses were examined:-

PW1 Constable Ashwani Kumar who tendered his affidavit Ex. PW1/A.

PW2 SI Om Parkash who took the prosecutrix for medico legal examination from General Hospital, Charkhi Dadri and proved the memo Ex. PW2/A regarding taking into police possession sealed parcels of the exhibits of the body of the prosecutrix.

PW3 SI/SHO Suraj Bhan testified of having received complaint Ex. PW3/A by the prosecutrix along with endorsement of ASI Sunita and on the basis of which formal FIR Ex. PW3/B was registered after endorsement Ex. PW3/C.

PW4 Dharmender Singh, Draftsman proved scaled site plan of the place of occurrence as Ex. PW4/A.

PW5 HC Sandeep Kumar, then Reader to the DSP, Headquarter, Dadri proved investigations by the DSP and proved disclosure statement Ex. PW9/A and disclosure statement of accused Rajender Singh regarding the place of occurrence Ex. PW9/B and the medico legal examination of the accused.

PW6 MHC Udey Bhan proved through his affidavit Ex. PW6/A regarding deposit of the sealed parcels and due dispatch to the Laboratory.

PW7 Dr. Anita Gulia, SMO, General Hospital, Bhiwani testified having medico legally examined the prosecutrix on police request Ex. PW7/A and proved the MLR of the prosecutrix Ex. PW7/B and tendered her affidavit Ex. PW7/C proving the procedure adopted by her in the medico legal examination of the prosecutrix. This witness further proved the report of Forensic Science Laboratory Ex. PA and proved the clothes of the prosecutrix i.e. Underwear Ex. MO-1, Salwar Ex. MO-2, Lady shirt Ex. MO-3, Brassier Ex. MO-4, Chunni Ex. MO-5, Woolen Sweater Ex. MO-6, sample of pubic hair Ex. MO-7 and Vaginal swabs Ex. MO-8.

PW8 L/ASI Sunita testified having moved application Ex. PW7/A for medico legal examination of the prosecutrix before the concerned doctor and further having moved application Ex. PW8/A for recording statement of the prosecutrix by the Magistrate under

Section 164 Cr.P.C. and proved the statement of the prosecutrix Ex. PW8/B.

PW9 DSP Suresh Kumar detailed his investigation proving on record rough site plan Ex. PW9/A, recording of statements of the witnesses under Section 161 Cr.P.C., disclosure statement made by the accused Ex. PW9/AA and proved the memo of place of occurrence Ex. PW9/B, application moved before the Hospital for medico legal examination of accused Ex. PW9/BB and taking into police possession sealed parcels through memo Ex. PW2/A.

PW10 the prosecutrix stepped into witness box and detailed her allegations.

PW11 Dr. Abhivind, Medical Officer, Primary Health Centre, Kharawar, District Rohtak proved having medico legally examined the accused while posted in General Hospital, Charkhi Dadri proving copy of the same Ex. PW11/A and his affidavit Ex. PW11/B.

PW12 Ms. Ankita Sharma, Sub Divisional Judicial Magistrate, Charkhi Dadri proved application by the police Ex. PW12/A regarding recording of statement of the prosecutrix and the statement under Section 164 Cr.P.C. of the prosecutrix Ex. PW10/A and orders passed thereon Ex. PW12/B.

After tendering report of FSL Ex. PA, the prosecution evidence was closed.

The accused in his stand taken under Section 313 Cr.P.C. denied the allegations taking the plea of false implication. In his defence, the accused examined the following witnesses:-

DW1 Lalit Kumar, Computer Instructor in Government College, Badhra proving that both the prosecutrix and the accused were temporary employees of the Collage and proved the certificate Ex. D1 and resignation of the accused having been accepted on 16.1.2017 Ex. D2. He also proved attendance register pertaining to the accused and the prosecutrix Ex. D3.

DW2 Deepak Kumar Sandhu, Nodal Officer, Idea Cellular Ltd. Panchkula proved call details of Mobile No. 97285-69383 as Ex. DW2/A to Ex. DW2/E and of Mobile No. 90348-76078 as Ex. DW2/F to DW2/J.

DW3 Rajesh Kumar, Nodal Officer, Vodafone Mobiles Services Ltd., Piragarh, New Delhi proved call details from Mobile No. 80535-45534 as DW3/A to DW3/D.

Thereafter defence evidence was closed and it is through impugned judgment dated 6.10.2017, the court of learned Additional Sessions Judge, Charkhi Dadri dismissed the case of the prosecution thereby acquitting the accused and that is how the

present application for leave to file appeal has come about.

Appreciating the arguments put forth by the counsel for the applicant Mr. Sat Narain Yadav and on perusal of the records, it is admitted stand of the prosecutrix that she is a married lady and though initially claimed that her husband was an eye witness to this occurrence but subsequently as per records he has been given up on the ground that he has been won over by the accused. Thus, an adverse circumstance that goes against the story of the prosecution especially when the alleged victim happens to be the real wife of this witness. Since the prosecutrix is the sole witness of her case, therefore, her testimony needs to be considered with more care and caution and as there is no corroboration to it by any independent means. Initially as is there, the prosecutrix has denied having made a call from her Mobile to the accused and when confronted she reverses her stand and admits having made such a call to the accused. Therefore, her testimony needs to be taken with a pinch of salt. The prosecutrix is a grown up lady and the very MLR in respect of her clearly bears out that no such injury was discernible to the doctor who conducted her medico legal examination and therefore, the very plausibility and possibility of allegations of rape have to be scrutinized more carefully. The learned lower court has rightly taken note of the fact that in her testimony before the court, the prosecutrix

has taken the stand that co-accused Lalit Kumar (who has not been summoned by the Court as an additional accused) had shouted at her and threatened her when the accused was in the process of ravaging her as she was raising noise and had also recorded the video of the incident. Neither that video has seen the light of the day much less the fact that it is a serious improvement that neither in her complaint which forms the FIR Ex. PW3/B nor in statement under Section 164 Cr.P.C. she has levelled such allegations or named Lalit Kumar as one of the perpetrator of this crime. Had it been so as claimed by the prosecutrix that Lalit Kumar had played a role in the commission of the crime with all fairness the prosecutrix certainly would not have missed his name at the time of initially levelling the allegations against this person who also happens to be an employee of the College. Though before the Court, the prosecutrix has sought to come up with the plea that the accused had gagged her mouth but it is totally missing in her complaint Ex. PW3/A or in her stand under Section 164 Cr.P.C. Ex. PW10/A nor the allegation of threat by the accused after she was ravished finds mention in the initial stages when she made statement before the Police as well as the Court under Section 164 Cr.P.C. It is the own admission by the prosecutrix during her evidence that the College works uptill 4.00 PM and there are two Chowkidars in the College premises and who were present at

that time and adjoining to it in the same premises is School where two other Watchmen of the School happened to be present but none has come to the aid of the prosecutrix or has been examined by the prosecution when it is there in the testimony of the defence witnesses who were employees of the College that timings of the employees are from 8.00 AM to 5.00 PM further makes the story of the prosecutrix to be highly unpalusible and unacceptable. Thus from this all it is much in evidence that the testimony of the prosecutrix is incoherent, shaky and not worthy of credence. The trial court has rightly disbelieved the version put forth by the prosecution and has totally come to justifiable conclusion dismissing the case of prosecution.

Thus, in the light of these discussions, we do not feel inclined to grant leave to file appeal to the applicant and finding the impugned judgment to be legal, uphold the same, dismiss the application. Leave to appeal is declined.

	(T.P.S. MANN)	(FATEH DEEP SINGH)
	JUDGE	JUDGE
September 14, 2018		
'dst'		

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