

THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-A-2411-MA-2017 (O&M)

Date of decision: 17.10.2018

Rajwinder Kaur

.....Applicant

versus

State of Punjab and others

.....Respondents

CORAM: Hon'ble Mr.Justice A.B.Chaudhari
Hon'ble Mr.Justice Kuldip Singh

Present: Mr.Jatinder Pal Singh Smagh, Advocate
for the applicant-appellant

1. *Whether Reporters of Local Newspapers may be allowed to see the judgment ?*
2. *To be referred to the Reporters or not ?*
3. *Whether the judgment should be reported in the Digest?*

Kuldip Singh, J.

This is an application under Section 378(4) Cr.P.C. for grant of special leave to appeal against judgment dated 13.9.2017 passed by learned Sessions Judge, Ferozepur, vide which, the private respondents were acquitted of the charges framed against them under Sections 376, 376-D and 506 IPC.

The prosecutrix filed a criminal complaint in the Court of the Magistrate, wherein she alleged that her husband Dharampal Singh is an employee of Punsup Department. Accused Tarsem Lal is employed as Chowkidar in the same department. Vinod Kumar is son of the accused Tarsem Lal who is employed in the office of SDM Jalalabad West. Karanbir Singh accused is the friend of Vinod Kumar. Prem Kumar is relative of Tarsem Lal accused. Being co-employee of the husband of the complainant, the accused Tarsem Lal used to come to the house of the complainant. The

remaining accused also used to come her house along with Tarsem Lal. Her husband used to obtain money from the accused from time to time. All the accused knew her personally. All the accused started keeping evil eye on the complainant. Accused Tarsem Lal started bringing liquor in the house of the complainant. The husband of the complainant and all the accused used to take liquor while sitting in the house of the complainant. In November, 2012 at noon time, husband of the complainant and children were not present in the house. Complainant was alone, accused Tarsem Lal all of sudden entered house, closed the door of the house and after gagging mouth of the complainant with a Chunni, forcibly committed rape upon the complainant. Accused also threatened the complainant with dire consequences and also threatened to defame her. Therefore, she remained silent. Thereafter, Tarsem Lal committed rape upon her several times without her consent.

In March 2013, at about 6.00 p.m., when the husband of the complainant was not at home and children had gone out for tuition, the accused Vinod Kumar and Karanbir Singh entered the house of the complainant and committed rape upon the complainant turn by turn. Accused Karanbir Singh also prepared MMS of the complainant on his mobile and threatened to upload the same on internet. Under the threat, they used to commit rape on the complainant. In the month of June 2013, accused Tarsem Lal and Vinod Kumar came to the house of the complainant to demand their money but the complainant and her husband were unable to repay the money. On account of that, a dispute arose. Accused threatened the husband with dire consequences. Complainant further alleged that on 18.5.2014, at about 8.30/9.00 p.m., complainant went to the market for some

house hold shopping. At the same time, all the accused came there on Indica Car and they forcibly put the complainant in the car and took car towards Gole Bagh, where accused committed rape on her turn by turn and then left her near Power House at Makhu Gate, Ferozepur City. On gaining consciousness, complainant came to the house and disclosed the entire facts to her husband. On 19.5.2014 complainant was got admitted in Civil Hospital, Ferozepur, where, she was medico legally examined. Police recorded the statement of the complainant and on the basis of same, FIR No.143 dated 27.5.2014 under Sections 376, 342, 34 IPC was registered. But the police did not arrest the accused and rather cancelled the FIR.

In support of her case, the complainant led preliminary evidence, after which, all accused were summoned vide order dated 22.7.2015 and thereafter, the case was committed to the Court of Sessions.

All the accused were charge sheeted under Sections 376, 376-D, 506 IPC.

In support of its case, the prosecutrix herself appeared as PW2 and examined Dr.Neerja Puri (PW1). She also examined MHC Sukhchain Singh (PW3) and her husband Dharampal Singh (PW4).

In the statement under Section 313 Cr.P.C., all the accused denied the allegations and did not lead evidence and pleaded their innocence.

Trial Court, after going through the entire evidence, hearing arguments of both the parties, acquitted the accused.

We have heard learned counsel for the applicant and also carefully gone through the findings recorded by learned Sessions Judge.

Learned Sessions Judge has considered that the police had

carried out investigation in FIR No.143 dated 27.5.2014 for the same offence and found that the version given by the complainant is not proved and therefore, cancelled the FIR. It also comes out that litigation under Section 138 of Negotiable Instruments Act, 1881 (in short, '1881 Act') is pending between the accused Vinod Kumar and husband of the complainant. One such notice (Ex.DX) upon the husband of the complainant was given on 9.9.2013. Prosecutrix admitted that three cases under Section 138 of 1881 Act are pending against her husband. She admitted that her husband is still proclaimed offender in one of such cases. She admitted that Vinod Kumar accused had instituted one criminal complaint under Section 138 of 1881 Act against her husband on 28.9.2013. Learned Sessions Judge has concluded that in view of the litigation pending between the parties, version given by the prosecutrix cannot be believed. Prosecutrix has alleged that rape at three different times i.e in November, 2012, March 2013 and on 18.5.2014. She did not disclosed all these facts to her husband and disclosed the same only on 19.5.2014. Her version has been found to be false by the police. Police had formed Special Investigation Team to investigate the case and thereafter, recommended cancellation, which creates doubt about the version put forth by the prosecutrix. Regarding kidnapping incident on 18.5.2014, she admitted that main Bazar Ferozepur City is about 2 and 2 and half kilometers length and full of shops. Therefore, it is improbable that four persons will forcibly throw the lady in the car in busy market and run away. Dr.Neerja Puri during medical examination found that there were no visible marks of injuries on the body of the prosecutrix, whereas the prosecutrix herself alleged that there were injuries by the nails of the accused on her breast and she has shown all the

injuries to the doctor. The absence of injuries on the body of the prosecutrix also creates doubt about her version. The trial Court also noticed that Tarsem Lal accused is father of Vinod Kumar and it is improbable that they will commit rape in the presence of each other and in the presence of other accused.

After considering the grounds considered by the learned Sessions Judge, we are of the view that learned Sessions Judge has appreciated the evidence and is of the view that version put forth by the complainant in the complaint is not trust worthy. The police, after forming SIT and fully investigating the case and considering entire evidence also found that the version given by the prosecutrix is not trust worthy.

As such, there is no ground to interfere in the judgment of acquittal passed by learned Sessions Judge, Ferozepur. As such, there is no ground to grant leave to appeal.

The present application is dismissed accordingly.

(A.B.Chaudhari)
Judge

17.10.2018
gk

(Kuldip Singh)
Judge

Whether speaking/ reasoned:	Yes
Whether Reportable:	No