

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-A No.2488-MA of 2017 (O&M)
Date of decision : July 30, 2018

Jyoti

..... Applicant

Versus

State of Haryana and another

..... Respondents

**CORAM : HON'BLE MR. JUSTICE A.B. CHAUDHARI
HON'BLE MR. JUSTICE KULDIP SINGH**

Present:- Mr. Ram Kumar Saini, Advocate for the applicant.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ?
2. To be referred to the Reporter or not.
3. Whether the judgment should be reported in the digest ?

KULDIP SINGH J.

This order will dispose of the application filed by the applicant under Section 378(4) Cr.P.C. for grant of leave to appeal against the judgment dated 05.09.2017 passed by learned Addl. Sessions Judge-cum-Judge, Special Court for Heinous Crime against Women, Hisar, whereby accused-respondent No.2 was acquitted of the charges framed under Sections 376, 363, 452, 506 read with Section 34 of IPC and Sections 3 and 4 of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 (for short 'the SC & ST Act').

The facts of the case are that the present case was registered on the basis of a complaint made by the present applicant in the Court of learned Judicial Magistrate 1st Class, Hisar, which was sent to Police Station, Civil Lines, Hisar under Section 156(3) Cr.P.C. Before that, FIR No.58, dated 23.01.2011, under Section 366 and 120-B IPC was

registered against the accused-respondent No.2 and is stated to have been cancelled. Another FIR No.292, dated 26.05.2012, under Sections 376, 363, 364, 452 and 506 read with Section 34 IPC and under Sections 3 and 4 of the SC & ST Act was registered and after investigation was cancelled, against which, protest petition was filed. In the complaint, originally Narender S/o Dharamvir, his brother Sandeep, mother Saroj, Dharamvir father of Narender and one Aashish Sharma S/o Om Parkash were named. However, after summoning, at the time of framing of the charges, except Narender, all the accused were discharged.

The story put forth by the complainant-prosecutrix is that her father was working in C.M.O. Office, General Hospital, Bhiwani about 5-6 years back. They had a quarter in the hospital. At that time, accused-respondent No.2 Narender had a bad eye on her. Therefore, her father got himself transferred from Bhiwani to Hisar. She claimed that on 21.01.2011, at about 10.30 a.m., when she was going to Jat College, Hisar for attending her classes, accused-respondent No.2 Narender accompanied by her mother Saroj, one Aashish Sharma and one unknown person met her. She was forcibly made to smell something in a handkerchief. Thereafter, she was forcibly taken in the car. She became unconscious. Thereafter, she came to know that accused-respondent No.2 had forcibly confined her in a room in a colony of Delhi City where he used to ravish her against her wishes and also threaten to kill her. She was also pressurized to marry him. On 29.01.2011, accused-respondent No.2 had forcibly solemnized marriage with her on the pistol point in Arya Samaj Mandir, Delhi. Thereafter, she was kept at an unknown place. The parents of accused-respondent No.2 used to visit there.

Accused-respondent No.2 ravished her there many times and he also gave beatings to her. On 28.02.2011, the police reached there but she did not disclose the truth as accused-respondent No.2 had threatened her at gun point. She was produced by the police in the Court in the case pertaining to FIR No.58, dated 23.01.2011, under Sections 366 and 120-B IPC got registered by her father. Since, she was threatened, therefore, she could not disclose the true facts to anyone. Due to fear, she also could not disclose the truth before the Court. Thereafter, she was forcibly taken to Bhiwani and was kept confined there. On 30.06.2011, Sandeep, brother of accused-respondent No.2 entered the room and forcibly ravished her. She further claimed that when she disclosed about this incident to the accused family, they started abusing her and threatened to kill her. After some time, she got pregnant. All the accused used to beat and abuse her by caste. On 31.08.2011, accused-respondent No.2 gave a leg blow on her stomach, which resulted in miscarriage. She was continuously tortured and harassed. On 04.09.2011, accused-respondent No.2 and his family members lodged FIR No.484, under Sections 323, 364 read with Section 34 IPC against the family members of the prosecutrix and some other unknown persons at Bhiwani but the same has been cancelled.

The prosecutrix further claimed that on 08.05.2012, accused-respondent No.2 and his family members came to her house and tried to put her in the vehicle forcibly but she was rescued by her parents. The cancellation report submitted by the police is wrong.

The lower Court committed the case to the Sessions Court for trial.

The learned Addl. Sessions Judge-cum-Judge, Special Court for Heinous Crime against Women, Hisar charge-sheeted only accused-respondent No.2 Narender for the commission of offences punishable under Sections 376, 363, 452, 506 read with Section 34 IPC and under Sections 3 and 4 of the SC & ST Act. However, the remaining accused were discharged. After hearing the prosecution and the accused and also going through the evidence, accused-respondent No.2 Narender was acquitted.

We have heard learned counsel for the applicant and have also gone through the judgment of the trial Court.

It comes out from the facts stated in the complaint itself that the prosecutrix was living with accused-respondent No.2 at Delhi. Even when, the police came to them, she did not claim that she has been kidnapped and raped. She was even produced in the Court but she did not state anything against accused-respondent No.2. She even became pregnant. She claims that she was beaten as a result of which she suffered miscarriage. She admitted in her cross-examination that when she went to her parents, accused-respondent No.2 got registered a case of kidnapping against her parents at Bhiwani and then she reported to the police that she had voluntarily gone to her parents.

It also comes out that when the prosecutrix was recovered on 28.02.2011, her statement under Section 164 Cr.P.C. (Ex.DR) was recorded by the Magistrate, wherein she stated that she has solemnized marriage with accused-respondent No.2 Narender in Arya Samaj Mandir, Delhi and she had gone with him of her free will. Ex. DE is the marriage certificate showing the marriage of accused-respondent No.2 with the prosecutrix on

29.01.2011. The said certificate bear their photographs as well as their signatures. In her cross-examination she also admitted that two affidavits were given in Arya Samaj Mandi, Delhi at the time of their marriage. The prosecutrix stayed with accused-respondent No.2 till 03.09.2011 i.e. for little less than eight months. During this period, the prosecutrix visited the doctor for her treatment. She had also gone to the college and appeared in the exams but did not disclose the alleged act to anybody.

The trial Court took the view that the offences alleged against accused-respondent No.2 are not proved. The prosecutrix is aged about 27 years. Therefore, the story put forth by her in the complaint is rightly disbelieved by the learned Addl. Sessions Judge-cum-Judge, Special Court for Heinous Crime against Women, Hisar. The complaint is found to be ground less. Accordingly, there is no ground to grant leave to appeal. Hence, the application for grant of leave to appeal is dismissed. Consequently, the appeal also stands dismissed.

(A.B. CHAUDHARI)
JUDGE

(KULDIP SINGH)
JUDGE

July 30, 2018

sarita

Whether speaking / reasoned

Yes

Whether Reportable:

No