

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-A No.2512-MA OF 2017 (O&M)
DATE OF DECISION : 1ST MAY, 2018

State of Haryana

.... Appellant

Versus

Deepak

.... Respondent

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

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Present : Mr. Vivek Saini, Deputy Advocate General, Haryana.

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A. B. CHAUDHARI, J.

CRM-37611-2018

For reasons mentioned in the application, which is accompanied by affidavit, delay of 119 days in filing the appeal is condoned.

The application stands allowed accordingly.

CRM-A No.2512-MA of 2018

1. This is appeal against acquittal recorded by learned Additional Sessions Judge, Sirsa in Sessions Case No.146-SC of 2015 decided on 25.04.2017 in case FIR No.356 dated 13.05.2015 registered under Sections 376 (2)(n), 328 & 344 IPC at Police Station City Sirsa, by which the respondent Deepak was acquitted by the trial Court.

2. In support of the appeal against acquittal, learned State counsel vehemently argued that the trial Court committed an error in recording the order of acquittal of the respondent by taking a perverse

view of the matter. According to him though the prosecutrix is of around 19 years she has deposed before the Court that respondent-Deepak had committed rape with her without her consent and therefore, there was evidence to show that the offences were proved against respondent accused. The trial Court has however taken a perverse view of the matter and wrongly recorded finding of acquittal which is required to be reversed by this Court.

3. With the assistance of the learned counsel for the State we have gone through the judgment and order of acquittal recorded by the trial Court so also the reasons. It is seen from the prosecution case that Exhibit P-3 complainant dated 13.05.2015 was lodged by PW-9 Lali stating therein that her younger daughter 'K' aged about 20 years studying in college had gone in the morning but did not come back. The family members undertook the search as she suspected that PW-10 'K' the prosecutrix hidden herself somewhere or somebody has hidden her. On 19.05.2015 PW-9 complainant Lali herself produced PW-10 'K' the prosecutrix before the police. The police investigated and her statement under Section 164 Cr. P. C. was recorded. Further investigation was undertaken and accused was arrested. It was the case of the prosecutrix 'K' that she was wrongfully confined by the accused in the old Housing Board Colony from 09.05.2015 to 19.05.2015 i.e. for more than ten days. On 09.05.2015 she was taken by the accused by putting drug in tea and thereafter committed rape on prosecutrix 'K' in a rented room.

4. We have carefully perused the reasons recorded by the trial Court so also the evidence showing conduct of the prosecutrix 'K' and

we find that the trial Court made no mistake in recording the order of acquittal, looking at the over all conduct of the prosecutrix 'K' and her family members. The trial Court also found that the place where she was confined is one kilometer from her house and she did not raise any hue and cry though she said to have resided for more than ten days in confinement on the 1st floor of the house. The prosecutrix 'K' being major, the Court has rightly examined the possibility of consent given by her at her own volition and therefore it was difficult to record conviction on such evidence. Not only that the complainant PW-9 Lali herself stated that PW-10 'K' had a mobile phone with her when she went out of the house. The prosecutrix did not disclose anything in the house about the rape or her alleged abduction or the repeated alleged rape on the promise of marriage.

5. The reasons recorded by the trial Court for disbelieving the prosecution case about the rape of prosecutrix 'K' are reproduced hereunder from paras 38 to 41:

“38. In her cross-examination, 'K' (PW10) has stated that Deepak became known to her one month prior to the occurrence and that she did not know in which class Deepak studied and that the accused used to hang around the college but he did not follow her and that the accused used to come to her college frequently and she became known to him and that she could not say whether the accused was illiterate or he was educated and that she met with the accused

once or twice in a park near her college and that the accused used to propose her for marriage but, she had not given any commitment because she was not interested in him and that despite her clear disinclination towards the accused, he used to repeatedly make proposals of marriage and that she had not disclosed these facts to her parents and that she had gone to meet the accused in the park alone and that she had never gone to any restaurant etc. with the accused prior to 9.5.2015. She has further stated in her cross-examination that the place where she was confined by the accused was at a distance of about one Km from her house and that she was confined on the first floor of the house by the accused and that she did not know whether any family resided on the ground floor of the house and that the toilet and the kitchen were not attached to the room, where she was confined and that the toilet and kitchen were separate on the roof and that the toilet was at a distance of about 15 feet from the gate of the room, where she was confined and the kitchen was at a distance of about 10 feet from the gate of the room and that there were houses also near the house, where she was confined and that from 9.5.2015 to 19.5.2015, she never came down and that

the accused used to bring meals from the market and they used to take it and that they never went out for taking meals and that she used to go to the toilet twice a day and that the accused used to escort her and that she never raised any alarm while going to the toilet and that the accused used to gag her mouth and that her clothes were torn when she tried to free herself from gagging and that a family used to reside on the ground floor and that she only saw a woman, the day she left. She has again stated in her cross-examination that she did not tell that woman on 19.5.2015, that she was forcibly confined by the accused and that the accused used to administer some medicine to her whenever he went outside and that on 19.5.2015, when she came down from the first floor, the accused was not there. They used to take meals once a day in the morning and that she did not know from where the accused used to bring meals, however, meals were not prepared in the kitchen and that she did not take her clothes with her and that she did not wear the same clothes which she was wearing on 9.5.2015 and that on 9.5.2015, the accused was on foot, when she had accompanied him to Sky Touch Café and that in the past, the accused used to come to her college on motorcycle and that

the accused was all alone on 9.5.2015 and that she could not say how she was brought to the room by the accused after she had become unconscious at Sky Touch Café and that Sky Touch Cafe was generally frequented by the students and other people and that she did not keep any mobile phone with her and that she never used any mobile phone at the time of occurrence or prior to thereof and that she was not using any mobile currently. She has further stated in her cross-examination that she did not remember which clothes were worn by her when she returned home on 19.5.2015 and that she had not taken a bath from 9.5.2015 to 19.5.2015 because she did not have the physical strength due to the intoxicants, which were administered by the accused and that the accused used to administer the intoxicants to her forcibly and that she had received injuries on her upper lip and on her cheek due to the forcible administration of the intoxicants and that on 19.5.2015, the accused had administered her intoxicants in small quantity and that she did not tell the doctor about the injuries received by her at the time of her medico legally examination and that she did not remember whether she had given her torn

clothes to the police and that she did not change her clothes from 9.5.2015 to 19.5.2015.

39. The complainant Lali (PW9) has mentioned in her complaint Ex.P3 that 'K' (PW10) was having mobile No.72061-38267 on 09.05.2015, the date, on which she went from her house. 'K' (PW10) has denied this fact. Lali (PW9) in her cross-examination stated that she had not given the mobile number while dictating application Ex.P3. In her complaint Ex.P3, it has been mentioned by the complainant (PW9) that 'K' (PW10) was wearing white trouser and checkered shirt and in her cross-examination, Lali (PW9) has stated that 'K' was wearing black top and purple trouser when she returned on 19.05.2015.

40. Dr. Ruchika (PW14) has mentioned in her affidavit Ex.P27 given by her in her examination-in-chief that 'K' (PW10) had taken bath after that and had washed her clothes which she was wearing and her clothes were intact and that no fresh external injury was there on any part of her body. This statement of Dr. Ruchika (PW14) is quite contrary to the cross-examination of 'K' (PW10) mentioned above, wherein she stated that she had not taken bath from 09.05.2015 to 19.05.2015 nor did she change

her clothes from 09.05.2015 to 19.05.2015. Manohar Lal (PW17) the owner of the alleged house, in which, 'K' (PW10) was confined and raped by the accused on the first floor, has stated in his cross-examination that he had taken two months rent in advance while giving the room on rent and that he had not taken any proof of identification of the accused Deepak because he was recommended by MC Rajender Kumar alias Tindi and that he did not remember the month when the accused accompanied by MC Rajender Kumar had come to his shop for taking the room on rent and that when the room was given on rent to the accused, besides him, four other family members were tenants in other rooms in the building and that two students were also tenants in a room in the building at the relevant time and that the room, which was given to the accused was on the first floor and that there were other tenants also on the first floor and that the bathroom and toilets on the first floor were common and were being used by all the tenants. Again, this part of cross-examination of Manohar Lal (PW17) is contrary to the above-said cross-examination of 'K' (PW10), wherein she has not stated these facts.

41. In her alleged stay of ten days with the accused in the alleged house, 'K' (PW10) did not disclose to anybody present in the house that the accused had forcibly brought her there or that he had been repeatedly committing rape upon her under promise of marriage. Infact, 'K' (PW10) had gone with the accused out of her free will and had sexual intercourse with him with her consent. xxx.... xxx....
xxx....”

6. From the reading of the above reasons we are satisfied that there is no perversity in the judgment and order of acquittal made by the trial Court. The reasons given above by the trial Court are legal, correct and proper and there is no perversity as such. We are, therefore, not prepared to accept the submission made by learned counsel for the State that the trial Court made any mistake in recording the order of acquittal. We, therefore, find no merit in the present appeal.

7. We however find in the present case that the trial Court has repeatedly mentioned the name of the prosecutrix PW-10 in the entire judgment which is contrary to the will of the Parliament expressed through Section 228(A) IPC as well as guidelines issued by the Apex Court in the cases of State of Karnataka Vs. SC No.77/2011; State Vs. Yasin @ Chunnu @ Sunil 1/15 Puttraj, 2004 (1) SCC 475 and Om Prakash Vs. State of U.P. 2006, CRLJ. 2913. The mentioning of name of the prosecutrix by the trial Court throughout cannot at all be countenanced despite the clear prohibition as aforesaid.

8. In that view of the matter, we direct the Registrar General of this Court to issue a circular sensitizing the learned judges to scrupulously observe the letter and spirit of Section 228(A) of IPC and the Apex Court’s guidelines with further warning that failure to do so would invite disciplinary action.

9. In the result we make the following order:

ORDER

- (i) CRM-A No.2512-MA OF 2017 (O&M) is dismissed.

(A. B. CHAUDHARI)
JUDGE

1ST MAY, 2018
‘raj’

(INDERJIT SINGH)
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>	<i>No</i>
<i>Whether Reportable:</i>	<i>Yes</i>	<i>No</i>