

In the High Court of Punjab and Haryana at Chandigarh.

CRM-A No. 9-MA of 2018

Date of Decision:- March 28, 2018

Afseena

.....Applicant

Versus

State of Haryana and another

.....Respondents

CORAM: Hon'ble Mr. Justice T.P.S.Mann
Hon'ble Mr. Justice Gurvinder Singh Gill

Present : Mr. Inderjit Sharma, Advocate, for the applicant.

Gurvinder Singh Gill, J.

1. The complainant (prosecutrix), seeks leave to file appeal against judgment dated 3.11.2017 vide which accused Asruddin has been acquitted of offences punishable under Sections 365 and 376 IPC.
2. The allegations, in nutshell, are that the prosecutrix who is a widow having three children has been residing at her parental house and that about 5-6 months ago, the accused met her for purchasing a buffalo and after making the advance payment of ₹2,000-3,000/-, assured to make the balance payment. Accused took the mobile number of the complainant and also told her that he would marry her but did not pay the balance amount. It is alleged that the accused raped her and also threatened her that in case she disclosed about the same he will not pay the balance amount. It is further alleged that on

4.11.2015, the accused asked her to come out of the village to collect her balance amount and when she went there he along with two others abducted her in a Bolero vehicle. However, when the victim raised alarm, some villagers informed her brothers who chased the Bolero vehicle then she was dropped out of the Bolero vehicle.

3. Upon conclusion of investigation, challan was presented against accused Asruddin who was tried but was acquitted by trial Court vide impugned judgment which has been challenged by the prosecutrix by seeking leave to file appeal.
4. The learned trial Court while acquitting the accused noticed that the delay of about a week in lodging the FIR has remained unexplained and that there was no evidence of any injury on the person of the victim though she alleged that she had been forcibly lifted in the Bolero vehicle and in fact during her cross-examination she also stated that she had sustained some minor injuries on her leg. The learned trial Court also noticed that in fact on 5.11.2015 one FIR (Ex.D-1) has been lodged against the complainant and her brother and present FIR was lodged thereafter as a counter blast by the complainant. Further, still the alleged rape which had taken place about 3-4 months prior to lodging of the FIR is stated to have taken place in the house of the complainant herself where her mother and children were also present in another room but they didn't get to know about the same.
5. We have heard learned counsel for the applicant and have gone through the reasoning of acquittal given in the impugned judgment.
6. The allegations of rape pertain to a period of 3-4 months prior to lodging of the

FIR. The prosecutrix is a widow having three children and as such cannot be said to be a naive adolescent. She is a mature lady and thus it remains unexplained as to why she did not report the matter to police or to anybody else. In fact, even the alleged subsequent occurrence of alleged abduction was not promptly reported and the FIR was lodged after about a week of said occurrence. During cross-examination she has stated that the accused used to visit her occasionally and that she had been raped thrice but due to fear she did not disclose about the same to her mother or to anybody else. She stated that all the three times she had been raped during night time. Staying quite despite being repeatedly raped leaves much to be explained on part of prosecutrix. Merely saying that she was threatened would not sufficiently explain the silence on part of prosecutrix who is a mature lady. The aforesaid facts coupled with the fact that one FIR had been registered against the prosecutrix and her brother on 5.11.2015 certainly puts the Court at a caution as the possibility of the present case being a counter blast is quite apparent. In these circumstances, the reasoning given by the trial Court for acquitting the accused cannot be said to be faulty.

7. In any case, law as regards challenge to acquittal is well settled to the effect that acquittal is not to be disturbed normally and even if other view is possible, the same would not justify interference in an order of acquittal.
8. Hon'ble Apex Court in a case reported as 2017 (2) RCR (Criminal) 460 Madathil Narayanan & Ors. V. State of Kerala & Anr. held as under :-

“It is a well settled principle of law that if two views are plausible, the view which goes in favour of acquittal has to be adopted. This legal principle has been reiterated by

this Court in the case of *Arulvelu v. State rep. by the Public Prosecutor*. In the case of *Bindeshwari Prasad Singh @ B.P. Singh v. State of Bihar (now Jharkhand)*, this Court has held that in the absence of any manifest illegality perversity or miscarriage of justice, the order of acquittal passed by the Trial Court may not be interfered by the High Court in exercise of its appellate jurisdiction. The aforesaid view has further been reiterated by this Court in the following two cases viz. *Rathinam @ Rathinam v. State of Tamil Nadu* and *Sunil Kumar Sambhudayal Gupta (Dr.) v. State of Maharashtra*.”

9. A Division Bench of this Court, in a case reported as 2016(2) Law Herald 1603 Mithlesh vs. State of Haryana and another, while upholding acquittal of an accused charged with committing rape, noticed the following facts which are somewhat identical to the present case :-

“It is also important to note that the applicant was a mature female of 24 years. She herself was maintaining physical relations with respondent No.2 and never lodged any complaint for a period of about one and a half years. It does not inspire confidence that she would have suffered harassment to the alleged extent and would keep mum for such a long period without disclosing the alleged tale of her harassment even to her parents. She intimated the alleged sexual harassment to her father just two days before the registration of FIR. Defence taken by respondent No.2 gets corroboration from the statement of PW10 Dr. Sarita Rani, Medical Officer, who medico legally examined the applicant that there were no signs of injury on the person of the applicant.”

10. The impugned judgment is well reasoned and we do not find any infirmity in

the same so as to justify any interference. We do not find any ground to grant leave to file appeal and the application as such is dismissed.

(T.P.S.Mann)
Judge

(Gurvinder Singh Gill)
Judge

March 28, 2018
mohan

Whether speaking/reasoned

Whether reportable

Yes/No

Yes/No