

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

CRM-A-2619-MA-2017

Decided on : 08.02.2018

Babita

..... Applicant

VERSUS

State of Haryana and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE T.P.S.MANN
 HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr.S.S.Duhan, Advocate, for the applicant.

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DEEPAK SIBAL, J.

Through the instant application filed under Section 378(3) of the Code of Criminal Procedure, 1973 (for short the “Cr.P.C”) the applicant seeks grant of leave to appeal against judgment dated 31.08.2017, passed by the Additional Sessions Judge-cum-Special Court for Heinous Crime Against Women, Hisar (for short the “trial Court”) through which respondent No.2 has been acquitted of the charges framed against him under Sections 376(1), 354A(2) and 452 of the Indian Penal Code, 1860 (for short the “IPC”) and Sections 4 and 8 of the Protection of Children from Sexual Offences Act, 2012 (for short the “POCSO Act”).

Briefly stated, the case of the prosecution is that on 23.02.2016 when the applicant, a student of class 9, was sleeping in her room with her younger brother, namely Deepak, while her parents slept in the adjacent room, respondent No.2-Nehru by putting his hands on her mouth committed rape upon her. On hearing her cries, her parents woke up and came to the room. After an altercation with her parents, respondent No.2 fled from the

spot. However, he left his mobile phone and shawl at the spot.

Finding a prima-facie case against respondent No.2, he was charge-sheeted for commission of offences under Sections 376(1), 354A(2) and 452 IPC and Sections 4 and 8 of the POCSO Act and on his pleading not guilty he was put on trial.

The trial Court after sifting the evidence which had come on record was of the opinion that the prosecution has not proved its case beyond reasonable doubt and acquitted respondent No.2. It is such acquittal which is the subject matter of challenge in the present proceedings.

Learned counsel for the applicant submitted that the trial Court erred in acquitting respondent No.2 of the charges levelled against him as there was over-whelming evidence on record to prove his guilt and therefore, there was no reason in fact or in law with the trial Court to acquit him.

The submissions made by learned counsel for the applicant have been considered but the same do not warrant a favourable consideration.

On the basis of the birth certificate of the applicant as also the record as mentioned in the birth register, the trial Court concluded that at the time of the alleged incident the applicant was a major. No argument has been raised nor our attention has been drawn to any part of the record by the learned counsel for the applicant to persuade us to take a different view.

As per the applicant when respondent No.2 committed rape upon her she was sleeping with her brother. It is unbelievable that while being subjected to forcible rape, the applicant's brother who was also

sleeping besides her would not get up on coming to know of the same. It is the prosecution's case that respondent No.2 had gagged her mouth with his hands. Even if it was so, her hands were free to wake up her brother. No injury is also found on the mouth of the applicant which would substantiate her allegation that respondent No.2 gagged her mouth with his hands during the course of her being subjected to rape.

There is also no injury found on the private parts of the applicant-prosecutrix.

The record reveals two complaints with regard to the alleged incident. Ex.PC is a complaint made by the father of the applicant which was made on 23.02.2016. There is another complaint Ex.PA which was made by the applicant/prosecutrix on 26.02.2016. No explanation is forthcoming from the prosecution as to why two separate complaints were made with regard to the same incident especially when one made by the applicant is after three days of the alleged occurrence. As per PW-2 Baljeet Singh, father of the applicant, respondent No.2 entered their house in the night of 23.02.2016 at about 1:00 AM and started to tease the applicant due to which she started shouting. On hearing her shouting, his wife woke up and came to the room where the applicant was sleeping with her two brothers namely Deepak and Sandeep. She found that respondent No.2 was teasing the applicant and thereafter Baljeet Singh also came to the room where he scuffled with respondent No.2 but respondent No.2 succeeded in fleeing from the spot. So far as the applicant is concerned, she appeared before the trial Court a PW-1 and contradicted her father to say that she was sleeping with one of her brothers namely Deepak and not the other one

namely Sandeep. In her statement under Section 164 Cr.P.C. she had stated that her brother woke up which was an improvement from her statement made earlier to the police. In her statement under Section 164 Cr.P.C. she further went on to state that respondent No.2 bit her on her cheek but this fact was also found missing in her earlier statement made to the police. Interestingly, when the applicant appeared before the trial Court she deposed on the same lines as her statement made to the police in the first instance, meaning thereby that she contradicted her statement made under Section 164 Cr.P.C. These contradictions have not been re-conciled by the prosecution.

In view of the above, the present application is found devoid of any merit and therefore dismissed.

Leave to appeal is declined.

[T.P.S.MANN]
JUDGE

[DEEPAK SIBAL]
JUDGE

08.02.2018
shamsher

Whether speaking/reasoned	:	Yes / No
Whether reportable	:	Yes / No