

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

CRM-A-2651-MA of 2017

Decided On : 03.05.2018

Mamta

....

Applicant

vs.

State of Punjab and others

....

Respondents

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

HON'BLE MR. JUSTICE DEEPAK SIBAL.

* * *

Present : Mr. Sandeep Arora, 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 – Cr.P.C.), the applicant seeks grant of leave to appeal against the judgment dated 11.07.2017 passed by the Additional Sessions Judge, Jalandhar (for short – the trial court), through which respondents no.2 and 3 have been acquitted of the charges framed against them under Sections 363, 366-A, 376(D), 328, 382, 109, 306/34, 120-B of the Indian Penal Code, 1860 (for short – IPC) read with Sections 7 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 the sister of the complainant-prosecutrix namely Diksha was married to one Vicky, who had a friend namely Rajinder Singh @ Rahul. The prosecutrix was in love with Rahul and he made promises to marry her. However, his mother

did not agree for their marriage. Despite that, Rahul continued to hold false promises to marry her and on 28.01.2015 at about 08:00 PM, took the prosecutrix to the house of respondent no. 3, where Gurpreet @ Gopi and Raj Kumar @ Raju were already present. Raju served the prosecutrix with a cold drink, on consumption of which, she lost her senses and in that condition, Rahul raped her. Thereafter, Gopi and Raju also committed rape on her. After some time, respondent no.2, who is maternal uncle of Rahul, came there along with respondent no. 3. The prosecutrix told them what had happened but they in turn, threatened to kill her if she disclosed the above incident to anybody. After that, respondent no. 2 also outraged her modesty. The accused persons also gave beatings to the prosecutrix and snatched her mobile phone. After threatening her, respondents no. 2 and 3 dropped the prosecutrix near her house. On 01.02.2015, the prosecutrix tried to end her life by consuming phenol tablets but after being treated, her life was saved.

On completion of investigation, report under Section 173 Cr.P.C. was filed by the Investigating Agency against Rajinder Singh @ Rahul, Raj Kumar @ Raju, Gurpreet @ Gopi, Satvir @ Kulwinder and Seeta @ Sunita for offences under Sections 342, 354, 376, 382, 506, 120-B IPC read with Sections 3 and 4 of the POCSO Act. The matter was referred to the Court of Sessions as it was exclusively triable by that Court, which marked the case to the trial court, which after finding a prima facie case against the accused, charged them for offences under Sections 363, 366-A, 376(D), 328, 382, 109, 306/34, 120-B IPC and Section 7 (punishable under Section 8) of the POCSO Act.

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The trial court, after sifting the evidence which had come on record, convicted Rajinder Singh @ Rahul under Sections 363, 366-A, 376-D, 328 read with Section 120-B and 382 IPC, as also Raj Kumar @ Raju under Sections 376-D, 328 and 382 IPC. However, accused Gurpreet @ Gopi as also respondents no. 2 and 3 were acquitted by the trial court after they were given benefit of doubt. It is acquittal of respondents no. 2 and 3 which is the subject matter of challenge in the present proceedings.

Learned counsel for the applicant, while reiterating the submissions made on behalf of the prosecution before the trial court, submitted that the trial court erred in acquitting the accused-respondents no. 2 and 3 of the charges levelled against them as there was overwhelming evidence on record to prove their guilt and therefore, there was no reason in fact or in law with the trial court to acquit them.

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

On the record are found several variations/contradictions in the statement of the prosecutrix qua the involvement of respondents no. 2 and 3. Before the police, the prosecutrix had stated that after Rahul, Raju and Gopi committed rape on her, respondents no. 2 and 3 came to the spot and after threatening her, respondent no. 2 did obscene acts with her. However, while appearing before the trial court as PW-3, she deposed that after she had been given the cold drink, she fell unconscious. At that time, she received a telephonic call from her mother. Accused Rahul handed over the phone to respondent no. 3, who talked to her mother and told her that

the prosecutrix, along with her, had come to attend some function at Silver Height Apartments and after that, respondent no. 3 left the room after bolting the door from outside. She further went on to depose that Rahul, Gopi and Raju, who remained inside the room with her, raped her and thereafter, respondents no. 2 and 3 again came into the room. During her cross-examination, the prosecutrix stated that she did not know when respondents no. 2 and 3 came to the room. In fact, in the later part of her cross-examination, she stated that respondents no. 2 and 3 came to the place of occurrence the next morning.

In view of the above contradictions as also for the reasons that as alleged, there was found no evidence on record that the house, where the alleged occurrence took place, was owned by respondent no. 3, no fault can be found in the findings recorded by the trial court acquitting respondents no. 2 and 3 of the charges framed against them by giving them the benefit of doubt.

Accordingly, the present application is found to be devoid of any merit and, therefore, dismissed.

Leave to appeal is declined.

(T. P. S. MANN)
JUDGE

(DEEPAK SIBAL)
JUDGE

May 03, 2018

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