

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

CRM-A-580-MA-2017 (O&M)

Date of Decision: July 06, 2018

State of Haryana

...Applicant

Versus

Rajinder alias Jinder and another

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. P.P. Chahar, DAG Haryana
for the applicant.

JAISHREE THAKUR, J. (Oral)

CRM-9072-2017

1. There is delay of 306 days in filing the accompanying application u/s 378(3) Cr.P.C. for grant of leave to file the appeal.
2. It is contended that the delay has occurred due to the administrative procedure and official process and time taken by various authorities in dealing with the file. It is submitted that the delay in filing the accompanying application was not intentional or deliberate on the part of the applicant-State.
3. For the reasons explained in the application, the same is allowed and the delay of 306 days in filing the accompanying application is condoned.

CRM-A-580-MA-2017

1. The instant application has been filed seeking grant of leave to file appeal against the judgment dated 30.01.2016 passed by the Additional Sessions Judge, Karnal whereby, respondents herein have been acquitted in FIR No.440 dated 27.12.2014, under Sections 328, 506 of Indian Penal Code and Section 4 of POCSO Act, registered at Police Station Madhuban.

2. In short, the facts of the case are that on 17.11.2014, the prosecutrix was alone at her house and her mother had gone to her place of work. At about 12.00 noon, she had gone to fetch water from a street water bore. Her neighbour Asha called her at her house, but she refused to go. Thereafter, when went outside to throw rubbish, Asha again called her. When she reached Asha's residence, she noticed that three young boys were watching TV. Asha served her tea and samosha. Thereafter, accused Rajinder forcibly took her to a room and Asha closed the main gate from outside. Accused Rajinder committed rape upon her. When she came outside, remaining two boys were not found there. Thereafter, Rajiinder took her to nearby fields and raised a threat that she should refuse to accompany her mother before the police otherwise, he would eliminate her family members.

3. On the basis of aforesaid statement, aforesaid FIR was registered. Accused was arrested and on completion of the investigation, challan was presented in the court. Copies of the challan were supplied to the accused and the case was committed to the court of sessions by the Judicial Magistrate Ist Class, Karnal. Thereafter, accused Asha was ordered to be summoned on an application 319 Cr.P.C. The accused persons were charge-sheeted under Sections 328 read with section 34 of Indian Penal

Code, Section 506 of Indian Penal Code and Section 6 read with Section 16 of POCSO Act, to which they pleaded not guilty and claimed trial.

4. In order to prove its case, the prosecution examined Sneh Lata, Head Mistress as PW1, EHC Vir Shakti Singh as PW2, prosecutrix as PW3, Preeto, mother of the prosecutrix as PW4, Dr. Ritika as PW5, EASI Rameshwar as PW6, Dr. Neeraj Sharma as PW7, Inspector Sube Singh as PW8, SI Parkash Kaur as PW9 and SI Om Parkash as PW10.

5. The accused were examined under Section 313 Cr.P.C. wherein, they denied the allegations of the prosecution and pleaded innocence. However, they did not adduce any evidence in their defence.

6. After hearing both the sides, the trial court acquitted both the accused persons of the charges levelled against them. Being aggrieved against the same, the instant application has been filed seeking grant to leave to file the appeal.

7. The trial court in its judgment has observed that *the mother of the prosecutrix while appearing as PW4 in her cross-examination mentioned that the police met her on the next day of the incident. Prosecutrix did not meet her on the day of occurrence. Police disclosed to her about the incident on the day of occurrence. She did not move any application for tracing her daughter. Further SI Om Parkash (PW10) in her cross-examination mentioned that on 17.11.2014 the victim was present in the house of Sarpanch of village Nagla Megha. She did not want to go to her parents and did not disclose anything to him. He did not obtain any consent of her parents on that day regarding her custody. On that day no cognizable offence came to his knowledge. Police was called by the*

Sarpanch of village Nagha Megha. He also mentioned that parents of the victim did not want to take her to their house. From this admission of SI Om Parkash, PW10 it comes out that neither the prosecutrix wanted to go to her house nor her parents were interested in taking her along. She was taken back from Bal Bhawan after about a month, thereafter, statement u/s 164 Cr.P.C. was made by the prosecutrix. Mother of the prosecutrix has admitted in her cross-examination that at the time of recording of said statement, she was accompanying the prosecutrix. However, from the admission made by all the three witnesses as referred above, it comes out that genesis of the occurrence is being suppressed and actual facts have not been brought before the court. If the prosecutrix was already produced before the police and she had disclosed that the accused wanted to murder her then, it was not difficult for her to disclose about the incident in question to the police then and there. Non-disclosure of the facts to the police at that time leads to the only conclusion that the statements of prosecutrix as referred above are quite doubtful. Even otherwise, the prosecution has not examined the maternal grant mother of prosecutrix to establish link in between them. Besides, the Sarpanch of village Nagla Megha has also not been examined so as to prove the facts that the prosecutrix was at his house. He was the person, who could disclose as to under what circumstances, she came to his house. Non-examination of this witness also leads to the conclusion that the material facts have not been brought before the court. Even the prosecutrix while appearing as PW3 has not disclosed that she went to the house of Sarpanch of village Nagla Mehga and from there she was taken away by the police for admitting her

to Mahila Ashram. Non-disclosure of these facts by the prosecutrix also leads to the conclusion that she intentionally withheld the material facts. It is only after coming of her parents in to picture, she made a statement against the accused regarding commission of rape upon her, that too, after about a month of the alleged incident. The delay in between has remained unexplained. Once the prosecutrix was left by the police at Mahila Ashram and the accused were not in the picture, she could easily got the matter reported through the Incharge of the said Ashram but no such efforts have been made in this case. The trial court after assessing the evidence available on the file, came to the conclusion that the whole of the case of the prosecution becomes doubtful and thus, giving the benefit of doubt to the accused, the trial court acquitted the accused persons of the charges framed against them.

8. Learned DAG appearing on behalf of the applicant-State failed to point out any material on the record, to support his contentions that the judgment passed by the trial court is liable to be set aside. The trial court has considered all the material factors that the prosecutrix did not disclose the fact of commission of offence of rape upon her at the first instance, while she was left at the Mahila Ashram by the police. Initially, neither the prosecutrix was ready to go to her parents nor the parents were ready to take the prosecutrix with them. The prosecutrix remained silent for a period of one month in the Mahila Ashram and it is when the mother of the prosecutrix took her back from Mahila Ashram, that the allegations of commission of offence of rape have been levelled by the prosecutrix. It comes out that the prosecutrix has withheld the material facts.

9. In view of the above, this court does not find any illegality or infirmity in the findings recorded by the trial court. Consequently, the application in hand is hereby dismissed, being devoid of any merits.

July 06, 2018
vijay saini

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No