

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-A-1893-MA-2016 (O&M)

Date of decision: 07.03.2019

Babita

.....Applicant

versus

State of Haryana and others

.....Respondents

**CORAM: Hon'ble Mr.Justice Rajiv Sharma
Hon'ble Mr.Justice Kuldip Singh**

Present: Mr.Vinod Ghai, Senior Advocate with
Mr.S.S.Sandhu, Advocate for the applicant
Ms.Shubhra Singh, Addl. A.G. Haryana
Mr.Sandeep K. Sharma, Advocate for respondent no.2

1. *Whether Reporters of Local Newspapers may be allowed to see the judgment?*
2. *To be referred to the Reporters or not ?*
3. *Whether the judgment should be reported in the Digest?*

Kuldip Singh, J.

Applicant-prosecutrix has filed this application under Section 378(3) Cr.P.C. for grant of special leave to appeal against judgment dated 22.7.2016, vide which, respondents-accused were acquitted of the charges framed against them under Sections 376, 366, 342, 376(D), 506 IPC and Section 3(1) (xii) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

The brief facts of the case are that on 27.9.2014, the prosecutrix, who is married to the complainant Sita Ram, was present alone in her house. It is alleged that at that time, accused Sumit @ Mogli came to

her house and made her smell handkerchief, as a result of which, she became unconscious. When she regained her conscious, she found herself confined in a room, where said Sumit @ Mogli and other boy, who was later on identified as Sandeep, were present. Accused Sumit @ Mogli asked the prosecutrix to marry him and threatened her in case she refused his proposal. Thereafter, Sumit @ Mogli and said boy committed rape upon her.

On 27.9.2014, when Sita Ram husband of the prosecutrix failed to find her since 22.9.2014, he reported the matter to the police, which registered the case under Section 346 IPC.

As per version given by the prosecutrix in her statement recorded under Section 164 Cr.P.C., on 28.8.2014, accused Sumit @ Mogli took her to his home, where, his family members confined her in a room. Thereafter, on the instigation of his mother, Sumit @ Mogli again committed rape on her. Then the mother of the accused Sumit @ Mogli went to the house of the prosecutrix and extended threats to the life of her family members. As per the prosecution version, on 30.9.2014, the prosecutrix along with another boy, were standing near Dhingra Petrol Pump, Kalanaur, when a police party accompanied by Manoj @ Goldy, brother of the prosecutrix, Sita Ram, husband of the prosecutrix and Kamlesh, mother-in-law and brother Jai Bhagwan spotted them, on which, said boy ran away. The prosecutrix disclosed that the said boy was Sumit @ Mogli, who had enticed her away and wanted to marry her. Prosecutrix was produced before Judicial Magistrate, who recorded her statement under Section 164 Cr.P.C. Various other offences of rape, wrongful confinement and intimidation were added. Prosecutrix was got medico legally examined.

Accused Sumit @ Mogli was arrested on 2.10.2014 and Sandip was arrested on 2.11.2014.

After the completion of formalities under Section 207 Cr.P.C. and the commitment of the case to the Sessions Court, accused were charge sheeted under Sections 376, 366, 342, 376(D), 506 IPC and Section 3(1) (xii) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, to which, they pleaded not guilty.

The prosecutrix examined 19 witnesses to support its case, including prosecutrix, her husband, her brother, doctor and the Judicial Magistrate 1st Class.

When examined under Section 313 Cr.P.C., accused Sandeep pleaded innocence and stated that he has been falsely implicated. Accused Sumit @ Mogli also raised similar plea. Accused did not lead any evidence in defence.

We have heard learned counsel for the applicant and have also carefully gone through the file.

The trial Court, after scanning the evidence of the prosecution, disbelieved the version put forth by the prosecutrix regarding her alleged kidnapping. The trial Court was of the opinion that the prosecutrix herself accompanied the accused Sumit @ Mogli, as she was in love with him. However, when she was apprehended by the police along with Sumit @ Mogli; due to the pressure of her parents, she made the statement to the Magistrate and in the Court, implicating Sumit @ Mogli and his friend Sandeep in the present case.

The close examination of the statement of the prosecutrix goes to show that her version that she was alone in the house and that accused

Mogli came to her house and make her smell handkerchief, as a result of which, she lost consciousness, is not trustworthy. It appears that she voluntarily accompanied Sumit @ Mogli. The cross-examination of prosecutrix shows that she has stated that accused took her to his house in a white colour car. If the prosecutrix was unconscious, she could not remember the colour of the car. Moreover, she has admitted that four children of her brother-in-law were in the adjoining room. Prosecutrix did not raise alarm so as to attract the said four children of her brother-in-law nor the prosecutrix raised alarm when the accused came to her house. From the house which is in a thickly populated area, it is not possible to carry away an unconscious woman. The cross-examination of prosecutrix further reveals that according to her, she was taken to the house of Sandeep, where both the accused allegedly committed rape on her. Next day, accused Sumit @ Mogli took her to house of her relative at Rewari, where she was kept in a room for one week. Thereafter, accused took her to his village Kalanaur and committed rape upon her in connivance with his mother. Next day, his mother went to the mother of the prosecutrix with a proposal of marriage of prosecutrix with Sumit @ Mogli and also allegedly threatened. She further stated in the Court that next day, her parents took her back from the house of the Sumit @ Mogli and went to the police. Cross-examination reveals that in the house at Rewari, there was only one room, in which, all the family members were residing. Therefore, it does not seem probable that in the one room, where other family members are present, accused committed rape upon her at Rewari. Further, it cannot be believed that while the accused Sumit @ Mogli took the prosecutrix to his home, his mother will instigate him to commit rape upon the prosecutrix. Then there is no reason

for her mother to go to the house of the mother of the prosecutrix with a proposal of marriage of prosecutrix with accused Sumit @ Mogli, considering the fact that the prosecutrix was already married with Sita Ram and marriage was still subsisting. Prosecutrix also falsified the version given by her husband Sita Ram and her brother, wherein they had stated that when they were searching, they found prosecutrix standing with the accused Sumit @ Mogli near Dhingra Petrol Pump and that on seeing them and the police, Sumit @ Mogli ran away. The cross-examination of the prosecutrix shows that in fact her parents took her from the house of the Sumit @ Mogli and then they went to the police station. Trial Court has also taken into consideration the fact that the prosecutrix did not raise any alarm while she was taken to the Rewari and when she was taken to house of accused at Kalanaur. Both the houses were situated in a thickly populated area. Prosecutrix was refusing to live with her husband. Her husband waited for full five days before making a complaint to the police regarding missing wife. The house of accused Sandeep is situated in a colony of Electricity Board, which is thickly populated area and according to the prosecutrix, she had gone to the toilet in the said house. However, she did not raise any alarm either in the house of Sandeep or in the house of relative of Mogli at Rewari nor in the house of accused Mogli at Kalanaur. The prosecutrix has claimed in cross-examination that she was taken on a motorcycle to the house of his relatives, which is in narrow street. However, even on the motorcycle, the prosecutrix did not raise any alarm. House of the accused Sumit @ Mogli is also situated in a thickly populated area, where also no alarm was raised by the prosecutrix any time.

The trial Court has also taken into consideration the FSL report,

in which, no semen was found on the clothes of the prosecutrix nor any injury was found on her person, when she was medico legally examined. Presence of semen on the under garment of the accused Sumit was discarded as natural, particularly, when it was taken into possession after several days.

From the above noted discussion, we come to the conclusion that learned Additional Sessions Judge, Rohtak has taken one of the possible views after critically examined the entire evidence. There is no illegality or infirmity in the said findings. Accordingly, application for leave to appeal is dismissed.

(Rajiv Sharma)
Judge

(Kuldip Singh)
Judge

07.03.2019

gk

Whether speaking/ reasoned:	Yes
Whether Reportable:	Yes