

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-A-849-2019 (O&M)
Date of Decision: 9.7.2019

State of Haryana

.....Applicant

Versus

Jai Parkash and others

.....Respondents

**CORAM: HON'BLE MR. JUSTICE AJAY TEWARI
HON'BLE MR. JUSTICE HARNARESH SINGH GILL**

Present: Ms. Tanisha Peshwaria, DAG, Haryana.

Harnaresh Singh Gill, J.

State of Haryana has filed the present application under Section 378(3) Cr.P.C. for grant of leave to appeal against the judgment dated 29.10.2018 passed by the learned Additional Sessions Judge, Gurugram.

Vide impugned judgment, the trial Court has acquitted the respondents of the charges under Sections 376(2)(n)(l), 506 IPC.

The criminal proceedings in this case were initiated on the basis of transfer of Zero FIR No.2, dated 26.10.2016 under Section 376 IPC registered at Police Station Hauz Khas, South District New Delhi to Deputy Commissioner of Police, Gurugram. After receipt of the said Zero FIR, the victim (prosecutrix) had been medically examined as regards her being fit to make statement and after recording her statement, the entire incident was found to have taken place at `The Earth

Savour's Foundation, Bandhwari, village near Teri Golf Course, Gurugram. Therefore, the proceedings were transferred to Police Station DLF, Phase-I, Gurugram. On the basis of investigation, the respondents were arrested on 21.12.2016 and consequently charged for the commission of the offence under Section 376(2)(n)(l) IPC.

Prosecution led its evidence and had examined as many as 16 witnesses.

Statements of the accused under Section 313 Cr.P.C. were recorded in which they pleaded not guilty and claimed trial.

The learned trial Court after having examined the evidence threadbare came to the conclusion that the prosecutrix had been suffering from mental illness of various degrees and that her testimony did not inspire any confidence so as to record a finding of guilt against the respondents-accused. On the basis of evidence on record, it was found that during the period 2014-2016, the behaviour of the prosecutrix had been violent, non-cooperative and aggressive. Still further, it came into the testimony of PW10 and DW1 that the victim was in the habit of making oral sex with her ownself. PW10 in his testimony further went on to depose that the prosecutrix used to have 'oral sex' by use of wooden articles. Still further, the learned trial Court has found that the testimony of the prosecutrix could not be relied upon as apart from not inspiring any confidence, the same was far from the circumstantial evidence. It was further found that the prosecutrix had alleged repeated incidents of rape during her

stay for five months in the NGO, which was having 450-500 inhabitants having fixation of CCTV camera all over and 150 lady inhabitants available, but there was neither any eye witness of the incident nor any corroborative evidence to that effect, including the occasions, dates, time etc. It was noticed by the learned trial Court in para No. 80 of its order as under:-

“80. The courts cannot be swayed by sentiments but there should be core evidence to justify a judgment of conviction against the persons charged so with. However, strong the sentiments or public emotions, suspicion cannot take place the form of ground to convict a person. There is no eye witness of incident despite the fact that large number of rape incidents allegedly took place with victim between approximate period of five months during her stay n NGO despite there being 450-500 inhabitants in the same institution on fixation of CCTV camera all over and 150 lady inhabitants available. It was the duty of prosecution to satisfy that the testimony of witness alone is free from blemish and is conclusively reliable, but prosecution could not be tested on these touch stone of truthfulness and credibility.”

The trial Court has also found that there was no explanation of the prosecution as to how in Ex. P1 the victim despite her medical problems, gave complete narration of facts before the police, especially when she was produced before the

Area Magistrate, Gurugram, she had barely stated four sentences in her statement Ex. P.2.

Learned State counsel, while challenging the impugned judgment of acquittal, submits that the learned trial Court has not taken into consideration the well settled principles of law that in the cases of rape, mere statement of the victim (prosecutrix) is sufficient enough to record a finding of guilt. She further submits that once, the victim was clear and categorical about the incidents of rape committed upon her, there was no occasion for the trial Court, to base its judgment on the mental ailments suffered by the prosecutrix.

We have heard learned State counsel and have also gone through the impugned judgment.

There is no doubt and debate over the principle that in the cases of rape, mere testimony of the victim (prosecutrix) is sufficient enough to record the conviction of the accused, yet the conduct of the prosecutrix needs to be scrutinized before recording the finding of guilt. As noticed in the impugned judgment, the prosecutrix was found to be suffering from mental ailment of various degrees at various points of times.

Still further, the testimony of DW1-Ravi Kalra is very relevant. This witness is the founder member of the place of occurrence i.e. "The Earth Saviours Foundation". He deposed that the said institution had been in existence since 2008. there were some 450 permanent residents in the institution out of whom 150 were ladies, all major in age. He further stated that the prosecutrix had first taken shelter in the institution in the

year 2015 and left the place on 21.12.2015 as she was not willing to reside there. Later on she was re-admitted therein from 14.6.2016 to 13.10.2016 during which she was found to be having hyper behavior and wanted to be freed. It was further stated by this witness that the prosecutrix was handed over to the NGO on 14.6.2016 by the police station DLF Phase II when she had been found roaming in public place in a naked-condition. The entire staff of the institution was terrorized by her behavior.

Taking into consideration the testimony of the prosecutrix, which did not inspire any confidence, coupled with the testimony of DW1 and the medical history of the prosecutrix, in our opinion, learned trial Court has rightly, recorded a finding that there was no conclusive evidence on record on the basis of which a finding of guilt could be recorded against the accused-respondents. It could not be pointed out that such finding suffers from illegality or there is any perversity in such finding, requiring interference by this Court.

In view of the above, application seeking leave to appeal is dismissed. Leave to appeal is declined.

(AJAY TEWARI)
JUDGE

(HARNARESH SINGH GILL)
JUDGE

09.07.2019
ds

Whether Speaking/ Reasoned:
Whether Reportable:

Yes/ No
Yes/ No