

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

**CRM-A-5785-MA of 2018
DATE OF DECISION : 09.12.2019**

Sapna

.....Appellant

Versus

State of Haryana and another

.....Respondents

**CORAM : HON'BLE MR. JUSTICE RAJAN GUPTA
HON'BLE MR. JUSTICE KARAMJIT SINGH**

Present : Mr. Rakesh Gupta, Advocate,
for the appellant.

KARAMJIT SINGH, J.

This is an application under Section 378(3) read with Section 482 of the Cr.P.C. seeking leave to appeal against the judgment dated 25.09.2018 delivered by the court of Additional Sessions Judge, Rohtak, acquitting accused-Dharmender for the offences under Sections 323, 328 and 376 of the Indian Penal Code (for short, 'IPC').

Learned counsel for the prosecutrix has argued that the evidence led by the prosecution has not been appreciated in right perspective by the learned trial Court. The prosecutrix was subjected to rape when she went to meet the accused in a hotel in the area of Rohtak, after she became unconscious on consuming the cold drink laced with some sedative. The accused also slapped the prosecutrix. Thus, the prosecution case stands proved. It is also contended that evidence led by the prosecution needs to be reappraised.

The brief facts of the case are that on 03.08.2017, the prosecutrix was called by the accused at Grand Lagan Hotel near Bajrang

Bhawan Railway crossing for interview to provide her a job. On reaching the said hotel, both of them talked to each other and lateron, they took some cold drink, after which, she started feeling dizziness. On this, she sent a text message to her aunt-Anupama Chaudhary. The accused also slapped her and then raped her. On getting information regarding the said incident, the police reached the spot where prosecutrix met them and gave complaint in writing against the accused. On the basis of which, the FIR was registered in this case. The accused was arrested by the police on 03.08.2017. The statement of the prosecutrix under Section 164 Cr.P.C was recorded by the police on 04.08.2017 before the Judicial Magistrate at Rohtak. After completion of investigation, the final report under Section 173(2) Cr.P.C. was submitted.

Finding prima facie case, trial Court framed charges under Sections 376, 328 and 323 IPC against the accused to which he had pleaded not guilty. In support of her case, prosecutrix herself stepped in the witness box and prosecution examined another 16 witnesses. Thereafter, the accused was examined under Section 313 Cr.P.C wherein, he pleaded false implication and claimed innocence. Accused examined DW, HC Ravita, in his defence.

It is noteworthy that in her statement recorded under Section 164 Cr.P.C, the name of the concerned hotel was not disclosed by the prosecutrix. In the said statement, it was disclosed by the prosecutrix that the accused took him to Room No.302 of the hotel situated in front of King Hotel. In her complaint dated 03.08.2017, the prosecutrix had mentioned that it was Grand Lagan Hotel but she did not disclose the number of the

room, where alleged occurrence took place.

As per the prosecutrix, the accused firstly, gave her cold drink mixed with some intoxicant or sedative. The police recovered one bottle of beer, one bottle of cold drink and two glasses from the concerned room of the hotel but the same were not sent for the examination to Forensic Science Laboratory, as has been admitted by the Investigating Officer while appearing in the witness box. Blood sample of the prosecutrix was taken and sent for examination, however, no drug or alcohol found in the said blood sample.

There is no dispute regarding the fact that at the time of the alleged occurrence, prosecutrix was about 22 years of age and she was permanent resident of Delhi. As per the prosecution version, the prosecutrix sent three text messages to PW3-Anupama after reaching the hotel. As per Exhibit P4, the first SMS was sent at about 5:58 p.m., the second message was sent at 6:00 p.m. and the third message was sent at about 6:21 p.m. As per the testimony of the Investigating Officer, the police reached the spot in the hotel at about 7:30/7:45 p.m. The prosecutrix admitted that she was in full senses when the police met her and then she gave complaint, Exhibit P8, in writing to the police regarding the alleged incident. As per the testimony of PW8-Hemant Saini, owner of Hotel The Grand Lagan, coupled with the extract of relevant entry of the register of said hotel, Dharmender and Sapna came to his hotel and revealed their identity as husband and wife. The prosecutrix nowhere stated in her examination-in-chief that after consuming the cold drink in the hotel room, she started feeling dizziness. Even if, the version of the prosecutrix as mentioned in the complaint,

Exhibit P8, is believed, it is not clear as to why she had not raised alarm and left the hotel room when she started feeling uneasiness, after consuming the cold drink.

The prosecutrix while appearing in the witness box admitted that she took panchayati divorce from her husband and is in live-in relationship with one Tanuj for the last three years. PW3-Anupama Chaudhary with whom the prosecutrix was residing at the time of the occurrence, deposed that the prosecutrix performed two marriages and she used to roam with different boys during odd hours. PW3 also stated that from the conduct of the prosecutrix, she is of the opinion that accused Dharmender was falsely implicated in this case on the basis of pre-planned story.

In view of the above, the trial Court correctly came to the conclusion that prosecution has failed to prove its case beyond reasonable doubt. We examined the entire case on merits and did not find it is a fit case for interference in appellate jurisdiction.

Dismissed.

(RAJAN GUPTA)
JUDGE

(KARAMJIT SINGH)
JUDGE

09.12.2019
adhikari

Whether speaking/non-speaking	:	Yes/No
Whether reportable	:	Yes/No