

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

CRM-A-36-2019 (O & M)
Date of decision: 01.08.2022

Sulochana
Versus
State of Haryana and another

....Appellant(s)

....Respondent(s)

**CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA
HON'BLE MR. JUSTICE VIKAS SURI**

Present: Mr. Ravi Malik, Advocate,
for Mr. M.S. Rana, Advocate,
for the applicant.

G.S.SANDHAWALIA, J. (Oral)

CRM-818-2019

Application has been filed for condonation of delay of 94 days
in filing the application for grant of leave to appeal.

Keeping in view the averments made in the application duly
supported by affidavit of the counsel, application is allowed. Delay of 94
days in filing the application for grant of leave to appeal is condoned.

CRM stands disposed of.

CRM-820-2019

Exemption application is allowed as prayed for.

CRM-A-36-2019

The present application has been filed under Section 378(4)
Cr.P.C. for grant of leave to appeal against the judgment passed by the
Additional Sessions Judge, Gurugram wherein, respondent No.2, Raj Kumar
was acquitted of the charge under Sections 376, 452, 506 IPC on
15.01.2018.

We have gone through the judgment and the statement of the

appellant, who appeared as PW-3 (Annexure A-1) and Gyano who appeared as PW-4 alongwith the statement of ASI Amandeep Kaur, who appeared as PW-7. The FIR was registered on 24.05.2016 on the basis of the telephonic message received as the police party alongwith lady ASI reached the place of farm house where the victim and the mother were available. As per the allegations in the FIR, the incident had taken place on the night of 23.05.2016, when respondent No.2 had come to the farm house and had taken the appellant to the room and forcibly made her drink liquor and committed rape on her. The mother of the victim, on hearing the noise came on the spot and when she opened the door, her mother had locked respondent No.2 inside the room. Prosecutrix was also stated to be in litigation with respondent No.2 for the last 20 months. He had earlier been sent to jail and was stated to be in a habit of giving threats time and again to her.

The trial Court, after examining the evidence in detail and scanning the statements of the witnesses, noticed the fact that the appellant had stated that she has a child of Raj Kumar, who is 20 months old and was delivered on 21.09.2014. It was noticed that in the statement before the Magistrate recorded on 24.05.2016 (Ex.P-3), it had been mentioned that she was forced to drink liquor; there was threat to kill the child. Resultantly, the trial Court, keeping into account the settled law laid down by the Apex Court as to when there is contradiction or improvement or discrepancy when witness appears, same has to be tested on the touchstone of credibility and mere improvements and elaborations in the statements made and the statement made by the witness is not liable to be accepted. It was accordingly noticed that as per the statement, the appellant as such was

being ravished from 2009 to 2016 and she made various complaints but the police had not taken any action. It was accordingly noticed that it could not be explained how he could have entered the room when she was sleeping with other family members at 10.00 p.m. Resultantly, conclusion was arrived at that in the absence of any injury on her person, it could be held that she was a consenting party and no such incident had actually taken place. It was held that she was a mature lady and a mother of a child and if she had been taken from the front room to another room in late night hours, it would be a case of consent as such and thus in the absence of any clinching and convincing evidence, the acquittal was recorded.

A perusal of her statement would also go on to show that at that point of time in the year 2009, she and her uncle had lived in the house of the brother of the accused at village Bhondsi and after one month, they left the house and shifted to village Bhiwadi. Respondent No.2 had followed them and her uncle had been persuaded to come back to Gurgaon on the promise of giving employment and they started living at BSF Camp. Respondent No.2 was a married man but was continuously chasing her. She had told him that she was married to one Deepak and the first incident of rape is stated to have taken place on 09.05.2013 when she was present alone in her parental house in village Bhondsi and FIR had also been registered, which had been withdrawn on 26.09.2013. Her husband had left her after registration of the case and she was forced to stay with her parents. On 16.02.2014, respondent No.2 alongwith his wife and his brother had come to the place of the farm house at village Bhondsi and entered the farm house and had given her beatings and forcibly left her at Delhi towards Airport side in jungle, when she was already expecting. Delhi Police was called

and FIR was registered and she was handed over to Police Station Bhondsi and again a compromise had been signed regarding the withdrawal of the case which was registered at Delhi. An effort was made to persuade the family members of respondent No.2 to stop him though he had threatened her to get the child aborted. Another incident had taken place on 10.05.2014 when respondent No.2 had again come to her residence at village Bhondsi and allegedly raped her and broke the windows of the house and an FIR was registered, in which he was acquitted. The delivery of the child had taken place thereafter on which threats were being extended and then reference was made to the incident which had taken place on 23.05.2016.

Thus, there is a categorical case that there was a child also from the relationship and as per the cross examination, child was sleeping with her mother when the incident had taken place. These factors cumulatively would go on to show that there was a relationship *inter se* parties and even a child was born from the relationship. Her marriage had apparently broken up on account of the said relationship. The narration of the above facts would go on to show that she is a mature woman though might be illiterate, but had entered into relationship time and again and had rather come back to village Bhondsi from village Bhiwadi knowing that she would be entering into an interaction with respondent No.2. Apparently, it is a willing interaction and on account of fall out on some terms, at several times criminal proceedings had been lodged at different points of time, which were either withdrawn or resulted in acquittal of the respondent No.2.

In such circumstances, we are of the considered opinion that the trial Court did not err in any manner while acquitting respondent No.2. The judgment as such does not seem to be suffering from any vice of

perversity which would give any reason to reopen the double presumption of innocence which has now come in favour of the respondent, as per the settled principle of law.

Accordingly, keeping in view the above, we are of the considered opinion that no case is made out for grant of leave to appeal in the present facts and circumstances and the present application stands dismissed.

(G.S. SANDHAWALIA)
JUDGE

01.08.2022
shivani

(VIKAS SURI)
JUDGE

Whether reasoned/speaking
Whether reportable

Yes/No
Yes/No