

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-A-480-2021
DECIDED ON: 15th JULY, 2022

STATE OF HARYANA

.....APPELLANT

VERSUS

SOHAN LAL @ SONU

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH
HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Ms. Tanisha Peshawaria, Deputy Advocate General, Haryana
for the applicant/appellant.

SANDEEP MOUDGIL, J

Prayer in this application under Section 378(3) Cr.P.C. is for grant of leave to appeal against the judgment of acquittal dated 18.02.2021 passed by learned Additional Sessions Judge-cum-Special Judge, Fast Track Court, Fatehabad (for short 'Trial Court'), whereby, respondent has been acquitted of the charges framed against him under Sections 346, 328, 376(2)(n) and 506 IPC.

Briefly stated, the present case was initially registered under Section 346 IPC on the complaint dated 24.11.2018 moved by the father of the prosecutrix. It was alleged that on 23.11.2018 at about 3.00 pm, his daughter had gone somewhere without informing him. During investigation, the prosecutrix was recovered from Gurugram on 25.11.2018 and her statement under Section 164 Cr.P.C. was got recorded wherein she had stated that she had gone with her brother-in-law (Jija) Sohan Lal to Sheetla Mata

Mandir, Gurugram with her free will. On 27.11.2018 the prosecutrix along-with her mother got recorded her subsequent statement that on 23.11.2018, she was alone at her house then her brother-in-law (Jija) Sonu came and served her a Ladoo (sweet) and after consuming the same, she became unconscious. Accused took her in a room of her house and did wrong acts with her. Thereafter, accused left the house and she followed him because she was in an inebriated condition. Then accused took her in a room in fields and committed wrong acts with her. Thereafter, he took her to Gurugram at various unknown places and committed wrong acts with her repeatedly without her consent. On the basis of this statement, Sections 328, 376(2) and 506 IPC were added subsequently. Earlier, she had given statement in the Court under threat of being killed given by accused Sonu. The place of occurrence was inspected by ASI Saravjit Kaur, statements of witnesses were recorded. Medical examination of the prosecutrix was got conducted. On 27.12.2018 the accused was arrested and his medical examination was also got conducted. After completion of investigation, final report under Section 173 Cr.P.C. was submitted against the accused.

Accused was charge-sheeted for the commissioning of offence punishable under Sections 346, 328, 376(2)(n) IPC by the learned Judge, Special Court Fatehabad vide order dated 02.03.2019 to which he pleaded not guilty and claimed trial.

Prosecution, to prove the charge against respondent, examined as many as 15 witnesses including the prosecutrix and the doctors, who medico-legally examined the prosecutrix, produced material documents and objects/articles so exhibited in support thereof.

While recording the statement of accused, he denied all the allegations and pleaded false implication and claimed innocence. He did not

lead any evidence in defence.

The trial Court vide its judgment dated 18.02.2021 acquitted the accused by giving him benefit of doubt. It is this judgment which has been assailed in the present appeal before this Court.

Ms. Tanisha Peshawaria, DAG, Haryana vehemently argued that the trial Court has erroneously passed the impugned judgment without discussing the factual position despite therebeing cogent and reliable evidence on record. It is further submitted that the prosecutrix was made to consume some intoxicated sweet and taking the advantage of her semi-conscious state, the accused committed rape upon her in a room in the fields and thereafter also took her to Gurugram where the prosecutrix was subjected to rape repeatedly under threat and coercion. The learned State counsel also contended that the act of rape is duly supported by medical evidence in the shape of affidavit Ex.P-10 proved by PW-8 Dr. Loveleen, Medical Officer, General Hospital Fatehabad, Ex.P29 i.e. the report of DNA which shows that seminal stains on the salwar of the victim are matching with the DNA profile of accused Sohan Lal, to which the accused failed to explain as to under what circumstances it appeared on the salwar of the victim-prosecutrix which is sufficient to establish the act of sexual intercourse with the prosecutrix. Learned State counsel concluded the submissions urging that the evidence of the prosecution remain consistent and trustworthy on all the material points wherein cross-examination of the prosecution witnesses was quite lengthy but could not shake the crediblity of witnesses, therefore, the accused be convicted accordingly and summed up with the prayer that leave to appeal may be granted and respondent be summoned.

We have examined the prosecution case scientifically and mythologically alongwith the submission made by the learned State counsel but are not in agreement with the prosecution story.

Before adverting to the merits of the case, it would be worthwhile to have glance on the scope in acquittal appeals. It is well settled in catena of decisions that an Appellate Court has full power to review, re-appreciate and consider the evidence upon which the order of acquittal is founded. However, the Appellate Court must bear in mind that in case of acquittal, there is prejudice in favour of the accused, firstly, the presumption of innocence is available to him under the Fundamental Principle of Criminal Jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent Court of Law, secondly, the accused having secured his acquittal, the presumption of his innocence is further reaffirmed and strengthened by the trial Court.

Since the prosecutrix had gone to different places even as per her own version appearing as PW-2 in the witness box and PW-7 (x)-complainant, to establish the guilt of accused under Section 376 (2) (n) IPC the age of the prosecutrix would be clinching aspect for the prosecution. During the deposition on 23.11.2020, PW-7 categorically stated that prosecutrix was 18 ½ years of age at the time of occurrence which crystalize that she was major at that time. Further version of the victim-prosecutrix that she did not raise any alarm being under threat by the accused-respondent is not believable for the reasons that she had been travelling in a bus or train where large number of passengers were expected not only in the public transport vehicle but in the bus stand as well as railway station. No effort on her part are coming forth in evidence to get her free from the alleged wrongful confinement of the accused especially considering the fact

that at such public places generally the police parties are found to be patrolling and even a police chowki is established except a bald statement as an excuse that she could not raise any alarm being under threat which is not believable by any stretch of imagination. In fact it is on the part of her parents alongwith police after lodging complaints, she was got recovered from Gurugram. Had her parents and the police not traced her, she might be a consenting party to elope with the accused-respondent without any protest.

Another question for scrutiny before this Court is whether the sexual intercourse by the accused upon the prosecutrix would fall within the ambit of Section 376 (2) (n) IPC for which deposition of PW-2 itself is very material. The prosecutrix has categorically stated that the accused is brother-in-law (jija) in relation established physical relations with her at her house and this fact duly stands proved from the medical evidence Ex.P29 i.e. report of DNA showing seminal stains on the salwar of the victim which matched with the DNA profile of accused-respondent. Thereafter she accompanied to accused to his room situated in fields where again the accused developed physical relations with her where-from both went to Gurugram on 23.11.2018 to the house of sister of the accused where she lived with the accused till 25.11.2018. IT has also come in evidence that on 23.11.2018 the prosecutrix had visited Shri Sheetla Mandir Gurugram to pay obeisance alongwith accused with her free will and without any pressure. It was only on 27.11.2018 when her statement on second time was recorded, she alleged to have been administered sweets (ladoo) stating that after consuming the sweets she became unconscious and the accused committed such wrongful act upon her. Earlier she had given statement that due to the threats given by the accused, which is not believable because in her cross-examination, the prosecutrix has stated that the accused took her to his

sister's house, firstly in a bus from Nalka Dhani and then in train. She did not raise any alarm in the bus. They alighted from bus at Kaithal, nothing was consumed on the journey. It is also the case of the prosecutrix in her deposition that the accused respondent took her in a tempo at Gurugram to the house of his sister to whom she met for the first time. In the statement recorded under Section 164 Cr.P.C. the prosecutrix did not level any allegation qua the sister of the accused that any intoxicant mixed with the tea was given to her.

It is an admitted case by the prosecutrix and by her father that she was major at the time of occurrence of alleged offence and she remained in the house and company of accused-respondent till 25.11.2018 at different places. Having gone through the record we are unable to find any evidence in support of the prosecution case to establish that any stage under these circumstances the prosecutrix ever put any resistance during the commissioning of sexual intercourse or raised alarm whatsoever while travelling all the way long through public places and public transport.

In view of the discussions made hereinabove, and having analysed the evidence on record, we are fully in consonance with the judgment of acquittal granting benefit of doubt to the accused in view of the fact that the conduct of prosecutrix as witness to her own cause is not trustworthy and believable but raises serious doubts who, in fact, had been a consenting party to the whole occurrence. The prosecution has derailed its own story while failing to bring the guilt of accused-respondent to books beyond reasonable doubt.

We therefore, do not find any justifiable reason to interfere with the findings recorded in the judgment dated 18.02.2021 by the trial Court and upheld the acquittal.

Hence, application under Section 378(3) Cr.P.C. seeking leave to appeal is dismissed being devoid of any merits .

(SANDEEP MOUDGIL)
JUDGE

(AUGUSTINE GEORGE MASIH)
JUDGE

15th JULY, 2022
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<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>