

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-A-198-2019 (O&M)

Reserved on:15.09.2022

Date of decision:20.09.0222

State of Haryana

...Applicant/Appellant(s)

Versus

Deepak Kumar

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE N.S. SHEKHAWAT

Present: Mr. Anmol Malik, DAG, Haryana
for the applicant-appellant.

N.S. SHEKHAWAT, J.

The present application under Section 378 (3) of the Code of Criminal Procedure as well as the main appeal arise out of the judgment dated 12.09.2017 passed by the learned Additional Sessions Judge (Exclusive Court for Heinous Crimes Against Women), Kurukshetra, whereby the respondent-accused was acquitted of the charges under Sections 452 and 376 IPC. The learned trial Court noticed number of discrepancies in the version of the complainant, brought to the fore by the defence, creating serious doubts over the version of the complainant; extended the benefit of doubt and acquitted the respondent of the charges against him. Feeling aggrieved, the applicant-State of Haryana has moved the present application with a prayer to grant leave to appeal against the impugned judgment.

Shorn of unnecessary details, the brief facts of the case are that the complaint in the instant case was lodged by the victim (name of the victim has been withheld as per provisions contained under Section 228-A

IPC and has been referred as 'the victim'), on the allegations that she was a married lady and a house wife. On 12.05.2015, she had returned to her matrimonial home situated in village Amin, District Kurukshetra from her parental home in Punjab. She was accompanied by her father, who also stayed at her matrimonial home on the fateful night. Her husband and her father slept in one room, whereas she along with her children slept in another room. At about 04.30 AM on 13.05.2015, when she was filling water in the court-yard, the accused-respondent entered their house and forcibly took her inside the room. He tore the clothes of the victim and committed rape upon her. When she raised an alarm, her father and husband woke up and tried to catch the accused-respondent, but he fled from the spot. The maternal uncle of the accused-respondent also came at the spot on hearing the noise. The FIR was registered and the statement of the victim was recorded under Section 164 Cr.P.C. by the learned Magistrate and she was medico-legally examined from Civil Hospital, Kurukshetra. The accused-respondent was arrested on 13.05.2015 and was medico legally examined on 14.05.2015. After conclusion of the investigation, the final report under Section 173 Cr.P.C. was prepared and presented against the respondent-accused in the court of competent jurisdiction.

During the course of trial, charges under Sections 452 and 376 IPC were framed against the respondent-accused, to which he pleaded not guilty and claimed trial. Before the statements of the victim and her husband could be recorded, they had committed suicide and could not appear to depose before the learned trial Court. Both the parties led their respective evidence before the learned trial Court and after due consideration of the evidence, the learned trial Court extended the benefit of

doubt to the accused-respondent and he was ordered to be acquitted of the charges framed against him.

We have heard the learned counsel for the applicant-appellant and carefully examined the case file. However, we find no substance in the arguments raised by the learned counsel for the applicant-appellant for the reasons recorded herein below.

In a case of grave charge of rape, the onus always lies on the prosecution to prove each of the ingredients of the offence, it seeks to establish and the onus never shifts. In the instant case, the victim alleged that the accused-respondent had gagged her mouth and had torn her clothes before committing the rape upon her. The victim was a rustic and stoutly built lady and was well nourished as per the case of the prosecution. It is hard to believe that she could not stop any act of forcible intercourse by the accused in her own house, where her father, husband and other family members were there. It was at around 04.30 AM when the alleged incident had taken place and normally in villages, it is the time for the villagers to wake up. It is equally unbelievable that the accused-respondent would have sneaked in the house of the victim at such an hour without the consent of the victim. Moreover, the victim was a grown up married lady and could not only have resisted his move, but could have also raised an alarm. It has been rightly observed by the learned trial Court that only her mouth was gagged and her hands and legs were free and she could have used the same to push or kick the accused. The evidence clearly suggests that the victim did not suffer any injury and this clearly rules out that she had put up any resistance at the time, when she was dragged from the court-yard and was subjected to forcible sexual intercourse.

Still further, the evidence clearly shows that the victim had earlier left her matrimonial home immediately prior to the present case, which led to the registration of FIR No.111 dated 25.04.2015 under Section 365 IPC, registered at Police Station, Kurukshetra University, Kurukshetra at the instance of her husband. The Investigating Officer in the said FIR moved an application for recording the statement of the victim under Section 164 Cr.P.C. (Ex.D1), wherein it was clearly mentioned that the victim had left her matrimonial home on 25.04.2015 on her own. She appeared before the Magistrate and her statement under Section 164 Cr.P.C. was recorded in the said case. The defence examined DW-1 Shri Saurabh Sharma, learned Judicial Magistrate 1st Class, Kurukshetra, who proved on record the statement of the victim recorded under Section 164 Cr.P.C. as Ex.D2. In the said statement, the victim categorically stated that on 25.04.2015, she had left her matrimonial home voluntarily and had called the respondent-accused to Panipat. The victim expressed her wish to go to her parental house and not to her matrimonial house in village Amin. The said statement under Section 164 Cr.P.C. clearly shows that the victim was very close to the respondent-accused and had left the matrimonial home just a few days prior to the present occurrence and she not only left the matrimonial home but also called the respondent-accused at Panipat.

The evidence led by the defence clearly makes out that the victim was not having good relations with her husband but had shared a very close and intimate relationship with the respondent. It is the case of the prosecution, that the father and husband of the victim were sleeping just adjoining the court-yard. Even where the rape was allegedly committed, her children were sleeping and the story put forth by the prosecution

appears to be doubtful.

Not only that, her statement under Section 164 Cr.P.C. is at variance from her complaint Ex.P6 and it can be clearly inferred that she had tried to improve her version gradually. As per her complaint Ex.P6, the victim was present in her court-yard and was filling the water, when the accused entered her house and had taken her to the room by applying force, and had committed rape forcibly with her, whereas in her statement under Section 164 Cr.P.C., it was stated by the victim that she was already present in her room and the accused had entered the room through the door, which was open. He gagged her mouth, bolted the door from inside and committed rape with her. The victim alleged that her clothes were also torn, while committing the said crime. However, in none of her statements, she even alleged that she had resisted the attempt of the accused or raised any alarm prior to the commission of the offence by the respondent. Still further, the said two statements mutually could not co-exist so as to lend support to the case of the prosecution and thus the findings recorded by the learned trial Court are liable to be upheld in this regard.

Moreover, it appears that the police also conducted the investigation to help the family of the victim. When the medico legal examination of the respondent-accused was conducted and MLR Ex.P17 was prepared, several injuries were found on his person as per PW9-Dr. Nitin Kalra. However, when PW-11 ASI Taro Devi, Investigating Officer, was examined, she stated that she did not notice any injury on the person of the accused, whereas the record reveals that the accused had suffered multiple injuries on his person including his forehead, just above the eye-brow, right side of the chin, neck, nose and other parts of the body. This

clearly shows that there was a scuffle or the respondent was caused injuries after his arrest and the prosecution case is again doubtful.

Still further, the learned trial Court has considered the submissions and the evidence led by both the parties in detail. Even the learned trial Court has discussed every aspect of the matter and findings were recorded correctly. Even during the course of arguments, learned counsel for the applicant-State could not point out any material irregularity, illegality or perversity in the impugned judgment passed by the learned trial Court.

Considering the totality of the facts and circumstances of the case noted above, the present application for grant of leave to appeal is without any merit and, therefore, the same is dismissed. Resultantly, the judgment dated 12.09.2017 passed by the learned Additional Sessions Judge (Exclusive Court for Heinous Crimes Against Women), Kurukshetra is upheld.

Case property, if any, be dealt with, and, destroyed after the expiry of period of limitation. The trial Court record, if any, be sent back.

(SURESHWAR THAKUR)
JUDGE

(N.S. SHEKHAWAT)
JUDGE

20.09.2022
mks

Whether Speaking/Reasoned: YES / NO

Whether Reportable: YES / NO