

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-14485-2018 in/and
CRM-A-723-MA-2018
Date of Decision:16.11.2023

R****

...Appellant

Versus

State of Haryana and another

... Respondents

CORAM: HON'BLE MRS. JUSTICE LISA GILL
HON'BLE MRS. JUSTICE RITU TAGORE

Present: Mr. Harsh Mehla, Advocate (Amicus Curiae)
for the appellant.

RITU TAGORE, J

1. Appellant-applicant 'R' (name is screened as per directions given in State of Karnataka Vs. Puttaraja, 2004 (1) R.C.R. (Criminal) 113), seeks leave to appeal against judgment dated 22.09.2017 passed in a Sessions Case No.80 of 2017 titled 'State vs. Sandeep' bearing FIR No.02 dated 11.01.2017, under Sections 452, 376 and 506 IPC registered at Police Station, Mohana, Sonipat, by learned Additional Sessions Judge/Special Judge, Sonipat, acquitting respondent-accused (Sandeep) from the charges framed against him.

2. Brief facts of the case are as follows:

That on the night between 14/15.12.2016, appellant-applicant 'R', along with her children, was sleeping on the *Chaubara* (roof top) of her house.

At that time, Sandeep alias Ninku, the accused allegedly trespassed into her house and committed rape upon her forcibly. On raising alarm, her father-in-law attempted to apprehend the accused, but he managed to escape but in the process, his mobile and *Parna* (cloth carried to informally cover the head and for other purposes) fell down at the spot. It is alleged by the complainant that while leaving the spot, accused threatened to kill her, if she dared to disclose the incident to anyone.

3. Based on the complaint filed by appellant-complainant, FIR for commission of offences punishable under Sections 452, 376 and 506 IPC, 1860 was registered at P.S.Mohana, Sonipat, against the accused. The police took up investigation, arrested the accused, interrogated him and prepared site plan of place of occurrence on his demarcation. The complainant and accused were subjected to medical examination including DNA examination. Statement of complainant under Section 164 Cr.P.C. was recorded along with statements of the witnesses. Upon completion of investigation, police submitted the final report under Section 174 Cr.P.C./challan against the accused.

4. The committal Court supplied copies of charge-sheet, free of cost to the accused, as provided under Section 207 Cr.P.C. and committed the case to Court of Sessions and also forwarded the accused for trial vide order dated 08.03.2017.

5. Learned Additional Sessions Judge/Special Judge, Sonipat, finding a *prima facie* case against the accused based on evidence on record, framed charges against him for commission of offences punishable under Section 376/452/ 506 IPC, to which he pleaded not guilty and claimed trial.

6. Prosecution examined 15 witnesses in oral evidence and also led documentary evidence as detailed in the impugned judgment and thereafter closed the evidence on behalf of the prosecution.

7. The accused was examined under Section 313 Cr.P.C. by putting all the incriminating evidence that appeared against him in the prosecution case to which he pleaded his false complicity and innocence, however, led no evidence to support his defence.

8. On assessment of evidence, learned trial Court observed that prosecution failed to prove the charge of criminal trespass and rape. Firstly, there was unexplained delay of one month in lodging the complaint against the accused. Secondly, complainant/victim herself did not support the allegations raised by her against the accused and even retracted from them. Even, her husband (PW3), to whom the complainant allegedly disclosed the incident, did not support the prosecution case. Based on these grounds, learned trial Court acquitted the accused of charges framed against him. Furthermore, it was observed that complainant knowingly tendered false and fabricated evidence against the accused, intending for it to be used in the proceedings. As a result, learned trial Court also issued direction to initiate proceedings under Section 344 Cr.P.C. against the appellant.

9. Aggrieved with findings of learned trial Court, applicant-appellant has filed the present application seeking leave to appeal for reversal of findings recorded in the impugned judgment and prayed for conviction of the accused for commission of offences charged against him.

10. Learned Amicus Curiae while assisting the Court submitted that although the complainant (PW-2) and her husband (PW-3) have not supported

the prosecution version, but Raghubir Singh, father-in-law of the complainant (PW-14), an eye witness has supported allegations against the accused proving commission of offence punishable under Sections 376, 452 and 506 IPC. Medical evidence, statement of complainant recorded under Section 164 Cr.P.C. and other evidence collected during course of investigation, prove commission of said offences by the accused. Learned trial Court overlooked material evidence on record. Prayer is thus made to reassess the evidence. Learned counsel however, informed that proceedings so initiated against the complainant under Section 344 Cr.P.C. have been disposed of on acceptance of the complainant to pay a fine of Rs.500/-. Photocopy of certified order dated 20.04.2019 furnished in Court today is taken on record, subject to just exceptions. A prayer is made to decide the appeal in light of the facts and circumstances.

11. Heard. We have gone through findings of learned trial Court and the record with able assistance of learned Amicus Curiae.

12. Complainant (PW-2), initially alleged that accused committed the offence of criminal trespass by unlawfully entering into her house during intervening night of 14/15.12.2016, when she and her children were sleeping on the roof top (*Chaubara*) of her house, with intention to commit an offence of rape and he then forcibly committed rape upon her. Allegedly, when complainant (PW-2) raised alarm, her father-in-law (PW-14) responded to the same and attempted to apprehend the accused, however, he managed to escape. In the process, his mobile phone and *Parna* fell down at the spot. Subsequently, complainant disclosed the incident to her husband and reported it to police for initiating action against the accused.

13. To support the charge, prosecution apart from complainant (PW-2) and her husband (PW-3) examined: L-ASI Rani (PW-15), the investigating officer of the case. She proved the documents, rough site plan of place of occurrence (Ex.PW-15/A); MLR (Ex.PW-7/A) of victim; application (Ex.PW-10/A) moved for recording statement of victim under Section 164 Cr.P.C.; statement of victim under Section 164Cr.P.C. (Ex.PW-2/C); demarcation memo (Ex.PW-1/A); memo of recovery of blood slides of accused and one sealed parcel containing underwear of accused alongwith sample seal (Ex.PW-5/A); memo (Ex.PW-3/B); application (Ex.PW-2/B); scaled site plan (Ex.PW-4/A); crime scene report (Ex.PW-9/A); applications (Ex.PW-15/C and Ex.PW-15/D), collected by her during course of investigation of the case. LC-Reena (PW-1) and Sonu (PW-5) remained associated with investigating officer (PW-15) provided necessary corroboration to the statement of I.O. with respect to the steps taken by her in the investigation of the case. EASI Rajesh Kumar (PW-4) proved the scaled site plan (Ex.PW-4/A) along with its marginal notes (Ex.PW-4/B) of the place of occurrence, prepared on demarcation of the victim/complainant. EASI Vinod (PW-6) deposited the case property of this case with FSL. Dr.Tamanna (PW-7) proved MLR of the complainant (Ex.PW-7/B). ASI Rakesh (PW-8) proved the formal FIR (Ex.PW-8/A) and its endorsement (Ex.PW-8/B). Dr. Randeep Kumar (PW-9) proved the crime scene report (Ex.PW-9/A). Ms. Karuna Sharma (PW-10) proved statement of the complainant recorded under Section 164 Cr.P.C. (Ex.PW-2/C) and certificate (Ex.PW-10/B) alongwith zimini orders (Ex.PW-10/C to Ex.PW-10/E). ASI Kuldeep Singh, MHC (PW-11), retained the case property of the case with him.

Inspector Veer Bhan (PW-12) proved report under Section 173 Cr.P.C. Dr. Sunny (PW-13) proved the MLR of the accused (Ex.PW-13/B).

14. Complainant/victim appeared as PW-2, but did not support the allegations she had previously made against the accused in her complaint (Ex.PW-2/A) before the Police. She explicitly stated that accused on trial, did not commit rape upon her. She also claimed accused was not known to her and denied that any thing as mentioned in Ex. PW-2/A had happened with her. As a result, she was declared hostile/uncooperative and learned State counsel extensively cross-examined the complainant confronting her with details of her complaint (Ex.PW-2/A). However, she did not accept its contents and instead alleged that police had obtained her signatures on blank papers. Complainant/victim further deposed that her statement (Ex.PW-2/C) was made under pressure from the police and that accused had neither entered her house nor committed rape on her. She refuted the suggestion that she had reached a compromise with the accused, denying it to be a reason for not supporting her previous statement (Ex.PW2/C) made before the Police. However, when asked about voluntary nature of her statement made in the Court, she affirmed that she made statement voluntarily, without any pressure and coercion from any person or accused.

15. Davender (PW-3), the husband of complainant was also confronted with his statement (Ex.PW-3/A) given to police regarding the alleged occurrence. However, he did not support the same, stating that he never made any such statement (Ex.PW-3/A) to police. Instead, he claimed that police obtained his signatures on blank papers. PW-3 stated that although he knew the accused, he did not commit rape upon his wife. Furthermore, neither his wife

(complainant) nor his father (PW-4) disclosed any facts about the alleged occurrence. He categorically denied handing over the mobile phone and *Parna* of accused to the police as documented in memo (Ex.PW-3/B). He negated the suggestion that his wife (complainant) had lodged the complaint (Ex.PW-2) with the police concerning the occurrence. PW-3 asserted that police officials obtained his signatures on complaint (Ex.PW-2/A) under duress. He denied having deposed falsely due to compromise with the accused and his family members.

16. Raghubir Singh (PW-14), father-in-law of victim supported the prosecution version and also deposed that witnesses (PW-2 and PW-3) had given their statements under pressure from the accused and his family members.

17. However, in our considered opinion learned trial Court adequately dealt with the plea of threat raised by father-in-law of the complainant (PW-14) by correctly considering the fact that neither the complainant or her husband filed any application during pendency of trial alleging that accused or his family members had ever threatened or pressurized them to depose in favour of the accused by retracting from their initial allegations made to Police. Such situation was never ever brought to notice of learned trial Court at any stage either. Moreover, statement of Raghubir Singh (PW-14) is clearly self-contradictory and unsubstantiated by any evidence on record. He initially deposed that he saw accused committing rape on the complainant but later stated that complainant (PW-2) disclosed the incident to him. However, there was no mention by the complainant that she disclosed the incident to her father-in-law; instead, she denied that such an incident occurred. Additionally, husband of complainant (PW-3) also denied being informed of the incident by

his father. Learned trial Court considering the conflicting statements of the material witnesses and lack of corroboration from other attending circumstances and supporting evidence correctly refused to rely upon the statement of Raghbir (PW-14). Learned trial Court found that neither the complainant nor her husband gave any inculpatory statement against the accused substantiating the charges against him.

18. Learned trial Court also dealt with other evidence appearing on record, such as recovery of a mobile phone and *Parna* allegedly belonging to the accused. Learned trial Court observed that the said recovery is shrouded in doubts for the following reasons: firstly, it was affected after 27 days of the alleged occurrence, whereas per prosecution's claim both articles had fallen at the spot when accused allegedly made an attempt to escape from the spot. Secondly, husband of the complainant (PW-3), a witness to recovery, did not support the recovery in question. Learned trial Court also observed that I.O. failed to connect the said mobile and a *Parna* with the accused by bringing any evidence of ownership in this regard. It was also noted that Sonu (PW-5) an associate of I.O. admitted that during the investigation no material was collected regarding the ownership of a mobile and a *Parna*. The crime scene report (PW-9/ A) also failed to establish any incriminating circumstance against the accused linking him with the commission of offences. Dr. Randeep Kumar (PW-9) who visited the place of occurrence and prepared crime scene report (Ex.PW-9-A), admitted that he collected nothing from the spot during inspecting the spot on 11.01.2017 which was a month after the occurrence.

19. Statement of Dr. Tamanna (PW-7) also failed to provide any support to version of the complainant. She testified that no injury was found

present on the person of complainant during her medico-legal examination. Complainant was referred for ultrasound and gynaecological examination but no such report is on record. No medical evidence has been proved on record to indicate commission of offence punishable under Section 376 IPC by the accused. Additionally, Dr. Tamanna stated that victim did not disclose the name of offender to her.

20. Furthermore, complaint against accused was filed after unexplained and inordinate delay of one month from alleged occurrence, making complainant's narrative highly doubtful.

21. In grounds of appeal, averment has been raised by appellant-complainant that she deposed before the learned trial Court under pressure and duress from the family of accused. However, she has conveniently not revealed the name of the family member(s), who allegedly issued any threat to her, nor any date and time of alleged threat has been given by her. No document such as complaint made to the Police or before the learned trial Court has been placed on record to substantiate her allegation of threat from the accused and his family members. Rather during her testimony, when asked about any pressure from accused or any person, she vehemently denied the same. Even her husband negated threat of any sort from the accused or his family members. It appears that appellant-complainant took the plea of threat by accused/his family members merely to evade proceedings under Section 344 Cr.P.C. initiated against her by the trial Court.

22. Having considered all facts and circumstances, it is held that learned trial Court meticulously considered all the facts and circumstances and correctly dealt with the prosecution evidence. It is rightly observed by learned

trial Court that material witnesses did not support allegations of charge against the accused. Additionally, other evidence collected during course of investigation, failed to substantiate the prosecution case beyond reasonable doubt leading to rightful acquittal of the accused.

23. Learned trial Court after assessing the evidence, came to a definite conclusion that complainant-victim (PW-2) intentionally tendered false testimony that can be used during the case proceedings. Consequently, learned trial Court ordered initiation of proceedings against her under Section 344 Cr.P.C.

24. A photocopy of order dated 20.04.2019 passed in CRM-482-2017 titled as State Vs. Seema reveals that complainant pleaded guilty and agreed to pay fine of Rs.500 in the proceedings initiated against her under Section 344 Cr.P.C. It is thus apparent that complainant filed the instant appeal solely to evade Section 344 Cr.P.C proceedings. It is also noteworthy that this application seeking leave to appeal/ appeal has been filed on behalf of complainant by the same counsel who was representing her before the learned trial Court. After filing of this application seeking leave to appeal on 08.01.2018, none had appeared on behalf of applicant, on various occasions till 11.02.2019 when the matter was adjourned at request on behalf of learned arguing counsel for the applicant-appellant on the ground that he is not available. Perusal of the file reveals that thereafter again none appeared on behalf of the applicant on two occasions and on 13.01.2020, notice of the application seeking condonation of delay of 42 days was issued by the Co-ordinate Bench necessarily being unaware of order dated 20.04.2019 which already stood passed in CRM No.482 of 2017. It was noted on 17.04.2023 that

notice could not be issued to respondents as process fee has not been filed. However, it was directed that needful be done within the next two weeks and pursuant thereto, fresh notice be issued to the respondents for 08.08.2023. Learned counsel for the applicant was directed to be notified of the said order. However, on 08.08.2023, none again appeared on behalf of the applicant-appellant and Mr. Harsh Mehla, Advocate on the Legal Aid Panel was appointed as Amicus Curiae to assist this Court. It is learned Amicus who while assisting us in the matter produced photocopy of order dated 20.04.2019 passed in CRM No.482 of 2017. Keeping in view the facts and circumstances as above, it is apparent that prosecution has indeed failed to prove its case beyond reasonable doubt by leading cogent and reliable evidence. Furthermore, complainant has clearly pleaded guilty in the proceedings under Section 344 Cr.P.C. while agreeing to pay the fine of Rs.500/-.

25. It is a settled position that an order of acquittal is not to be interfered with lightly because presumption of innocence of the accused is further strengthened by acquittal. Interference is called for only under compelling circumstances, where impugned findings are perverse, unreasonable and convincing material on record is ignored unjustifiably by the trial Court. Reference in this regard can be made to judgment of Hon'ble the Supreme Court in '**Mahamadkhan Nathekhan vs. State of Gujarat' 2014 (14) SCC 589.**

26. There is a delay of 42 days in filing of this application seeking leave to appeal. As the matter has been adjudicated upon on merits, question of delay in filing the application is rendered academic. Application is disposed of accordingly.

27. Learned counsel/amicus curiae is unable to point out any infirmity, illegality or irregularity or any compelling or substantial ground, calling for interference for setting aside judgment dated 22.09.2017 passed by learned Special Judge, Sonipat which has been rendered on proper appreciation of facts and evidence.
28. No other argument was raised.
29. Keeping in view the above discussion, judgment dated 22.09.2017 passed by learned Special Judge, Sonipat acquitting the accused of charges framed against him, is upheld. Consequently, application seeking leave to appeal is dismissed. Pending miscellaneous applications, if any, is/are disposed of accordingly.
30. We record our appreciation for assistance rendered by learned Amicus Curiae.

(LISA GILL)
JUDGE

(RITU TAGORE)
JUDGE

November 16, 2023
Rimpal

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No