

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

CRA-D No. 475-DB of 2015(O&M)

Date of Decision: June 30 , 2015.

Geetanjali Rautela

..... APPELLANT (s)

Versus

Rohan Jagdale and another

..... RESPONDENT (s)

**CORAM:- HON'BLE MR.JUSTICE HEMANT GUPTA
HON'BLE MRS.JUSTICE LISA GILL**

Present: Mr. Piyush Chhabra, Advocate
for the appellant.

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reports or not?
3. Whether the judgment should be reported in the digest?

LISA GILL, J.

Present appeal has been preferred by the complainant challenging the acquittal of respondent No.1 – Rohan Jagdale of the charges for offences punishable under Sections 376(2)(n) and 506 IPC vide judgment dated 22.01.2015 passed by the learned Additional Sessions Judge, Gurgaon.

Prosecutrix, who was 26 years of age at the time of occurrence, alleged in the written complaint submitted by her in March 2014 that she was introduced to respondent No.1 – Rohan in November, 2012 by a common friend Shrinath in some work related issue. She was working as a Freelancer having a

degree of Bachelor of Arts in English Literature. Respondent No.1 and the prosecutrix got acquainted and developed a liking for each other. Respondent No.1 – Rohan proposed to marry her in December, 2012 and assured her that he belongs to an influential and reputed family. Physical relations developed between them. She was made to talk with respondent No.1's mother in January, 2013. Accused assured prosecutrix that his parents would meet her in April, 2013 and marriage would only be a formality. Respondent No.1 however informed in March, 2013 that his parents would not come to Delhi as there is a huge difference of status between both the families and she was not worthy of becoming a member of his family. Prosecutrix confronted Rohan and told him that her parents would satisfy his parents. Respondent No.1 assured her to convince his parents and physical relations between the two proceeded. She alleged that she was induced to sexual relationship on false assurances of marriage by the said respondent. Prosecutrix became pregnant with respondent No.1's child in May, 2013. Respondent No.1 was in Chennai with his father at that time. On her revealing this fact, Rohan abused her and asked her to abort the child immediately. Though she was shocked to hear it and did request Rohan to inform his parents but he threatened to commit suicide and would leave a suicide note incriminating her. He convinced her to get the child aborted as it would be convenient to marry her then. She was convinced to take pills for abortion. Physical relations continued between the two on false assurances by respondent No.1 – Rohan, who even used to bring gifts etc. for her. When her parents came to know about the abortion in June, 2013, they told her to introduce them to Rohan. When her parents asked him for marriage, he

made an excuse that their horoscopes did not match. He again came to her house in September, 2013 and said that his parents were coming to fix the date of marriage. Physical relations continued at his rented accommodation at Gurgaon. Prosecutrix again got pregnant in November, 2013. She was asked by Rohan to abort the child to which she agreed again. He kept visiting her and asked for making preparation for wedding. A ring and a Lehanga (wedding dress) were also bought for her. However, she came to know on 21.01.2014 that Rohan's father was not coming to meet their family. On being confronted, respondent No.1 – Rohan fought with her and abused her. He called her at his place on 22.01.2014, misbehaved with her and threatened to ruin her life. It is alleged that respondent No.1 sent her a message on 23.01.2014 to take an appointment at Arya Samaj Temple for getting married even against the wishes of his parents. She waited for him several hours but he did not turn up and he is stated to be absconding since then. On the basis of abovesaid complaint, FIR No.108 dated 14.03.2014, under Sections 376/354/ 506 IPC was registered at Police Station Sushant Lok, Gurgaon. Respondent No.1 was arrested on 27.06.2014.

On completion of investigation, Challan/report under Section 173 Cr.P.C. was presented. Charge was framed against respondent No.1 – Rohan Jagdale on 01.08.2014 for the offences punishable under Sections 376(2)(n) and 506 IPC. Respondent No.1 pleaded innocence and claimed trial.

Prosecution examined as many as nine witnesses to prove its case. Respondent No.1 – Rohan Jagdale while denying the incriminating material put to him pleaded innocence and false implication in his statement recorded under

Section 313 Cr.P.C. It is stated that prosecutrix was pressurizing him for marriage by saying that she has connections with the police and advocates and that she would implicate him in a false case. He had never ravished her or threatened her. No evidence was led in defence.

Learned trial court on appreciation of the evidence on record and taking into consideration the entire facts and circumstances of the case, concluded that the prosecution has miserably failed to prove its case against respondent No.1-accused thereby, acquitting him of the charges framed against him. Aggrieved therefrom, complainant has filed the instant appeal.

Learned counsel for the appellant vehemently contends that a false promise of marriage had been held out by respondent No.1 due to which physical relations developed between the two. She had become pregnant twice. It is on the pretext of marriage that she was forced into the the sexual relations with the accused. Consent which was procured due to misconception of fact is no consent in the eyes of law. Furthermore, it is strongly urged that respondent No.1 has not taken any defence of consent, he has only pleaded false implication. Therefore, acquittal of respondent No.1 is illegal and unsustainable.

Reference was made to a judgment of Hon'ble Supreme Court in **Ganga Singh v. State of Madhya Pradesh, 2013(7) SCC 278** to urge that if the appellant has not taken defence of consent, trial court was in error to record the findings of consent on the part of the prosecutrix in respect to physical relations between the prosecutrix and the accused.

Learned counsel further submits that testimony of the prosecutrix is trustworthy and there is no question of acquitting the accused once she has

specifically averred that she was induced into sexual relations under false promise of marriage.

We have heard learned counsel for the appellant and gone through the file.

It is an admitted fact that prosecutrix is an educated person duly employed. She came into contact with respondent No.1 in December, 2012 as per her own version. Physical relations developed between them. Respondent No.1 disclosed that his parents are not amenable to their relationship. Prosecutrix allegedly became pregnant in May, 2013. She resorted to abortion allegedly on the persuasion of respondent No.1 – Rohan. Relations were resumed between the two yet again despite the said circumstances. She further admits that she voluntarily proceeded to respondent No.1's residence at Gurgaon.

It is noted that prosecutrix refused to get herself medically examined. She has admitted that after the registration of FIR, she was taken to the Government Hospital, Gurgaon for medical examination but she refused for the same. It is also not disputed that there is no evidence on record to show the factum of any abortion leave alone two abortions having been carried out. A perusal of the facts and circumstances reveals that there is no evidence on record to prove the charges against the accused respondent. Doubtlessly, accused can be convicted on the sole testimony of the prosecutrix in a given set of circumstances. However in the instant case, it would not be safe and justified to convict the accused on the sole testimony of the prosecutrix which has been closely scrutinized in the factual matrix of this case.

Reliance by the learned counsel for the appellant on Ganga Singh's

case (supra) is not tenable. Prosecutrix in Ganga Singh's case (supra) had complained that she had been raped by the accused in the said case when she had gone to answer the call of nature. Accused had caught hold of her, gagged her and raped her. Trial court acquitted the accused while holding that the prosecutrix appeared to have given her consent as there was no injury and she made no attempt to resist. High Court set aside the acquittal of the accused and convicted him keeping in view the evidence on record. It is in these peculiar circumstances that it was observed by the Hon'ble Supreme Court that in the absence of defence of consent, the trial court was in error in recording the finding that there was consent on the part of the prosecutrix to sexual intercourse. Present case on facts is clearly distinguishable and Ganga Singh's case (supra) has no relevance herein.

In the instant case, even if the testimony of the prosecutrix PW2 is accepted it clearly reveals that she was very well aware of the facts and circumstances of the case. She opted to continue her relationship with respondent No.1 being fully cognizant of the circumstances and the moral quality of her acts, the inherent risk/consequences involved as well as the pros and cons. Trial court while relying upon various judgments rendered by the Hon'ble Supreme Court has rightly acquitted respondent No.1 of the charges against him.

It is the settled position of law that there has to be strong, substantial and compelling grounds to interfere in the acquittal of the accused. Merely because another view is possible in the facts and circumstances cannot be a ground for interference.

Learned counsel for the appellant is unable to point out any

illegality or infirmity in the impugned judgment dated 22.01.2015 passed by the learned Additional Sessions Judge, Gurgaon.

Consequently, this appeal is dismissed.

(HEMANT GUPTA)
JUDGE

(LISA GILL)
JUDGE

June 30 , 2015.
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