

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

CRM-A No.1186-MA of 2014(O&M)

Date of Decision: May 11 , 2015.

State of Haryana

..... APPELLANT (s)

Versus

Sewak

..... RESPONDENT (s)

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

Present: Mr. Vivek Saini, AAG, Haryana
for the appellant-State.

None for the respondent.

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.

State of Haryana has impugned judgment dated 01.10.2013 passed by learned Additional Sessions Judge, Hisar acquitting the accused of the charges for offence punishable under Section 376 IPC.

A written complaint (Ex.P1) by the prosecutrix was received on 08.07.2011 at police station City, Hisar. She stated that she was studying in class 9 when accused Sewak used to meet her and expressed his desire to marry her. She also developed a liking for him and started meeting him. Physical

relations developed between them which continued till the submission of the complaint. Brothers of the accused were stated to be advocates. When they used to go to court, their mother used to be at home, accused Sewak used to call her at his residence. Some time back, he had taken her to Vaishno Devi and got married with her. They came to Hisar. Father of the prosecutrix was a Peon at Narnaul consumer court. Their families did not know anything about all this but the accused revealed about their marriage to his own family. Now he wanted to get married somewhere else. When she objected then both the accused and his mother used unparliamentary language for her and refused to keep her. In these circumstances, she prayed for action to be taken. Formal FIR No.557 dated 08.07.2011 (Ex.P44) was registered on this complaint. Prosecutrix was medico legally examined on 08.07.2011 itself by PW3 Dr. Neha. Accused Sewak was subsequently arrested and medico-legally examined by Dr. Rajender Singh PW4, Medical Officer, General Hospital, Hisar. There was nothing to suggest that accused was in capable of performing sexual intercourse as per report, Ex.P14.

On completion of investigation, challan/report under Section 173 Cr.P.C. was submitted and charge was framed on 08.10.2011 to which the accused pleaded innocence and claimed trial.

Prosecution examined thirteen (13) witnesses to support its case. Accused while denying the incriminating material put to him, pleaded false implication and innocence in his statement under Section 313 Cr.P.C. No witness was examined in defence though Ex.D1 to D4 were placed on record.

Learned trial court on appreciation of the evidence on record

concluded that the prosecution has failed to prove its case beyond reasonable doubt against respondent-accused Sewak thereby, acquitting him of the charges against him. State aggrieved of this verdict has preferred this appeal.

Learned counsel for the State submits that learned trial court has grossly erred in acquitting the accused. It is argued that even if it is found that there was an element of consent on the part of the prosecutrix, it would not be relevant. Furthermore, consent if any had been given by prosecutrix on an express promise on the part of the accused to marry her. In such a situation it cannot be said that it was out of free will of the prosecutrix that consent was given. If prosecutrix is induced to give consent on the basis of a false promise, accused cannot escape the rigors of Section 376 IPC. It is vehemently urged that prosecutrix has clearly deposed about the commission of the offence by the accused before the trial court. Her testimony is not that of an accomplice, thus no corroboration of her statement is required in this situation. Accused can be convicted on the sole testimony of the prosecutrix. It is thus prayed that impugned judgment dated 01.10.2013 passed by learned Additional Sessions Judge, Hisar be set aside and respondent-accused Sewak be convicted as charged and be suitably sentenced in accordance with law.

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

It is a matter of record that at the time of alleged incident in the year 2011, prosecutrix was above 18 years of age. She has stated herself to be a student of B.A. Ist year at the time of occurrence. There is no document on record to indicate the date of birth of the prosecutrix though she herself claimed

to be 22 years old whereas, according to her mother, PW2 Sunita she would be about 24 years old. PW2 Sunita has deposed that she got married about 26 years ago to the father of prosecutrix. Prosecutrix was born two years after their marriage. In the present case, question to be determined is whether consent of the prosecutrix had been obtained on a false promise of marriage by the respondent-accused.

Learned trial court while concluding that promise on the part of accused to marry the prosecutrix was not false from its inception with an intention to seduce her to sexual act, has observed as under:-

“12. In the present case there is nothing on record to show that the consent given by the prosecutrix to the accused for sexual intercourse was on the basis of any fraud, allurement or practice of deception. Admittedly the families of the accused as well as prosecutrix were not aware about their relationship. Though in her application Ex.P1 the prosecutrix has stated that the accused had informed his family about the ceremonial marriage performed by them in “Vaishno Devi” but there is nothing on record to prove the same. No photographs of the said marriage have been placed on record. Learned counsel for the accused has submitted that the parents of the accused were not aware about his relationship with the prosecutrix and therefore, they had fixed his engagement with some other girl but the accused was ready and is still willing to marry the prosecutrix but his offer had now been declined by the prosecutrix herself. Learned counsel has further submitted that due to previous litigation between the two families the parents of the accused were not willing to accept the prosecutrix as their daughter in law. In proof of his submissions learned counsel has drawn the attention of the court towards Ex.D1 which is copy of order dated 21.9.2013 passed by Hon'ble Punjab and Haryana High Court in RSA No.277 of 2010 filed by Smt. Roshni mother of the accused

against Amar Singh and Chandro Devi grandparents of the prosecutrix. Ex.D3 is the copy of summoning order passed by learned Chief Judicial Magistrate, Hisar on 26.4.2013 whereby Amar Singh, grandfather of the prosecutrix was summoned in a criminal complaint filed by the brother of the accused. Ex.D4 is copy of FIR No.492 dated 15.9.2003 registered against Amar Singh, grandfather of the prosecutrix on the complaint made by Anil Kumar brother of the accused. A perusal of the afore mentioned documents shows that a dispute is in existence between the two families regarding a piece of land which has been illegally occupied by the family of the prosecutrix. There is no allegation that the accused had allured the prosecutrix in order to take revenge from her. The prosecutrix must have also been aware about the said litigation and the underlying enmity between the two families. The fact that she continued to maintain relationship with the accused clearly shows that she was in love with him as admitted by her. In the light of litigation between the families it is quite possible that the family of the accused may have pressurized him to sever his relationship with the prosecutrix. In similar circumstances, in case titled Uday Versus State of Karnataka 2003 (2) RCR(Criminal) 99, the Hon'ble Apex Court acquitted the accused on the ground that there was no evidence to prove that the accused never intended to marry the prosecutrix.

13. Prosecution has placed on record letters written by the accused to the prosecutrix as Ex.P3 to Ex.P5 which clearly shows that the accused was in love with the prosecutrix. The prosecutrix has stated in her application Ex.P1 that she found the promise of the accused to be true. The relationship of the prosecutrix with the accused continued for several years and there is nothing on record to show that the accused had ever betrayed her trust earlier. The prosecutrix has also admitted in her cross examination that the accused had sent a message to her that he was willing to marry her. The evidence on record clearly suggests that the accused had

honorable intention but thereafter he succumbed to the pressure of his parents and continued to love the prosecutrix, but due to change in the circumstances, the prosecutrix herself refused to marry the accused.”

On minutely going through the record of this case, there is nothing on record which points to consent being given by the prosecutrix under a misconception of any fact. It is confirmed by PW10 Mahipal Singh, the Incharge Police Post 12 Quarter, Hisar that the prosecutrix and the accused were neighbours and their houses are adjoining, front portion of wall of the house is double storied and the back portion of the accused's house is at a height of 5-6 feet from the roof of the house of the complainant. She admittedly developed a liking for the accused, had physical relations with him out of her own free will and volition. She went to Vaishno Devi with him while telling her parents that she was going with a friend. PW2 Sunita, mother of the prosecutrix has admitted that her daughter never revealed her relationship to her. Sunita PW2, clearly states that no Panchayat was convened to resolve the issue nor anyone visited the house of the accused prior to 08.07.2011 or thereafter which is in clear contradiction to the stand of the prosecutrix. Hon'ble Supreme Court in **Deepak Gulati v. State of Haryana, 2013(3) RCR(CrL.) 96** has observed that there is a distinction between a mere breach of promise and fulfilling a false promise. Court has to examine whether a false promise of marriage was made and whether consent involved was given after wholly understanding the nature of consequences of sexual indulgence.

Learned counsel for the appellant is unable to point out any perversity, infirmity or illegality in the impugned judgment rendered by the trial

court. It is clear that the prosecutrix was above 18 years of age at the time of alleged occurrence and she had consented to physical relations with the accused out of her own free will which was not procured on the basis of false promise. Possibility of another view cannot be a ground to set-aside the acquittal of respondent-accused. Learned counsel for the State is unable to point out any strong, substantial or compelling reasons which would persuade us to interfere in the well reasoned judgment dated 01.10.2013 rendered on a proper appreciation of the evidence.

Consequently, this appeal is dismissed.

(HEMANT GUPTA)
JUDGE

(LISA GILL)
JUDGE

May 11 , 2015.
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