

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

1. CRA-AD-143-2015

Promila

..... Appellant

Versus

State of Haryana and another

..... Respondents

2. CRM-A-301-MA-2016

State of Haryana

..... Applicant

Versus

Naveen

..... Respondent

Date of decision: 12.04.2016

**CORAM: HON'BLE MR. JUSTICE T.P.S. MANN
HON'BLE MR. JUSTICE RAMENDRA JAIN**

1. *Whether Reporters of the local papers may be allowed to see the judgment?*
2. *To be referred to the Reporters?*
3. *Whether the judgment should be reported in the digest?*

PRESENT: Mr. Harish Bhardwaj, Advocate
for the appellant (in CRA-AD-143-2015).

Mr. Kapil Aggarwal, Addl. A.G. Haryana
for the applicant (in CRM-A-301-MA-2016).

RAMENDRA JAIN, J.

By this common judgment, the above titled appeal bearing

No. CRA-AD-143-2015 and leave to appeal bearing No. CRM-A-143-MA-2016 are being disposed of as both have arisen out from one and the same judgment of acquittal of respondent-Naveen dated 01.09.2015, passed by the learned Additional Sessions Judge-cum-Judge, Special Court for Heinous Crime Against Women, Hisar. For brevity, the facts are being extracted from CRA-AD-143-2015.

2. Respondent No. 1-Naveen was booked and tried under Sections 363, 366, 376 of the Indian Penal Code (IPC) and Section 6 of the Protection of Children from Sexual Offences Act, 2012 on the allegations that on 18.08.2014, he enticed away the minor daughter (prosecutrix) aged about 17 years and studying in 10+2 of the appellant-Promila, from her lawful guardianship with an intent to force her to illicit intercourse under the pretext of marrying her and then committed rape with her under the threat of harming her family.

3. However, in his defence he took the plea that he was into love affair with the prosecutrix and that her family members were against their marriage being of different caste. On 17.08.2014, the prosecutrix herself called him near her house and persuaded him to elope with her by disclosing about her leaving the house permanently by writing a suicide note, whereupon he persuaded her to go back home and not to take any wrong step, but she handed over a writing to him that she had come of her own choice. Finally, on account of his persuasion, she returned home. The present false case was got lodged against him under the pressure of her family members.

4. On appreciation of evidence led by the prosecution, the trial Court did not find itself convinced with the same, and, thus, acquitted respondent No. 1-Naveen vide impugned judgment dated 01.09.2015.

5. Being aggrieved, complainant-Promila (mother of the prosecutrix) has preferred CRA-AD-143-2015, whereas the State has filed CRM-A-301-MA-2016.

6. Learned counsel for the appellant as well as learned State counsel contended that the impugned judgment is based on surmises and conjectures. Learned trial Court has ignored the vital part of the prosecution evidence while acquitting respondent No. 1. Trial Court has wrongly and illegally held the testimony of prosecutrix as unworthy of credence on the ground that she has suppressed the genesis of occurrence by giving undue weight to the defence evidence led by respondent No. 1. It has wrongly arrived at the conclusion that the prosecutrix was a consenting party to the entire episode.

7. After giving our thoughtful consideration to the submissions made by learned counsel for the appellant as well as learned State counsel, we find no merit in both the cases for the reasons to follow.

- (i) The prosecutrix as PW-1 in her cross-examination admitted that she was having friendship with respondent No. 1 for the last two years and even they used to exchange SMS. She also admitted about her accompanying respondent No. 1 with her own free will and consent in a car as he had promised to marry her.

The prosecution has failed to prove that respondent had ever duped or cheated the prosecutrix by not marrying her, because after his arrest, he had no occasion to perform marriage with her.

- (ii) The appellant-complainant as PW-2 has not been able to satisfy as to how her daughter could be kidnapped by respondent No. 1, while studying in her room, when she herself was working in the kitchen and her husband was watching television. It does not appeal to reason that respondent No. 1 could abduct the prosecutrix without any noise or hue and cry, if she herself was not agreeing to it.

Even otherwise, testimony of the appellant-complainant is based on hearsay as she herself did not witness the occurrence. The story put forth by the prosecutrix that she had gone with respondent No. 1 under the pretext of marriage has been belied by her own writing Mark-DC got compared by respondent No. 1 from DW-7 Sh. S.C. Gupta, Handwriting and Finger Print Expert with her standard hand-writing.

- (iii) Admittedly, the prosecutrix had been talking with respondent No. 1 since last two years. The script of call discussions Mark-DD in between her and respondent No. 1 was also got compared from the

sample voice of the prosecutrix through DW-8 S.Neeru, Assistant Director, Cyber and Audio Video Forensic Truth Lab Bangalore, who vide her report Ex. DT opined that the said script contains the voice of the prosecutrix.

The deposition of various false facts by the prosecutrix has made her testimony completely doubtful and unworthy of any credence. She testified that she never studied in Shree Ram Public School, Bond Kalan, whereas contrary to it her mother (appellant-complainant) had deposed that she had studied in a school affiliated to Shree Ram Public School. To the contrary, the school record of the prosecutrix pertaining to Shree Ram Public School including her School Leaving Certificate has been produced by respondent No. 1 in his defence to show that the prosecutrix was not a truthful witness.

- (iv) Human semen found on the vaginal swabs of the prosecutrix were not subjected to Deoxyribonucleic Acid (DNA) examination and, thus, the prosecution has failed to prove on record that the same was of the respondent.

8. We have gone through the impugned judgment and in view of discussion above, we found no illegality or perversity in the findings

of the Court below that the prosecutrix herself had left her home to join respondent No. 1. There was no enticement from the side of respondent No. 1 to her and that prosecutrix was ever raped by him.

9. The appeal (CRA-AD-143-2015) filed by the complainant-appellant as well as the application under Section 378 Cr.P.C. (CRM-A-301-MA-2016) filed by the State being completely devoid of any merit are dismissed.

**(T.P.S. MANN)
JUDGE**

**(RAMENDRA JAIN)
JUDGE**

April 12, 2016

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