

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

Criminal Appeal D-1628-DB of 2014

Date of Decision: January 25, 2016

Sanjana

.....Appellant

Versus

State of Haryana and another

.....Respondents

**CORAM: HON'BLE MR. JUSTICE T.P.S.MANN
HON'BLE JUSTICE DR. SHEKHER DHAWAN**

Present: Mr. Balraj Singh Dhull, Advocate
for the appellant.

T.P.S.MANN. J.

The prosecutrix has filed the present appeal for challenging the judgment dated 20.8.2014 passed by learned Additional Sessions Judge (Special Court for Heinous Crime Against Women), Hisar, whereby, respondent No.2-Vishal Phogat stood acquitted of the charges under Sections 376, 366, 323, 201 and 506 IPC.

According to the prosecution, accused-Vishal Phogat had committed rape with the prosecutrix after promising to marry her. The accused had made her life miserable and he even started blackmailing her. He had been threatening her with dire

consequences. After taking her to different places, he used to exploit her physically. He even started visiting her house and made physical relations with her at gun point. He snatched her phone and destroyed the evidence collected by her. He had been beating her and she had suffered fracture of her hand. She had made two complaints against the accused but she was pressurized to withdraw the same. Whenever she asked the accused to marry her, he used to avoid the issue on one pretext or the other. While visiting her house, he would threaten her parents and beat her. He had even taken her to Jaipur, where, he had sexual intercourse with her. On the complaint submitted by the prosecutrix in the office of Superintendent of Police, Hisar, FIR No. 172 dated 27.2.2013 under Sections 366, 376, 323, 506 and 201 IPC was registered against the accused at Police Station Civil Lines Hisar.

Having heard learned counsel for the appellant and on going through the impugned judgment of acquittal, this Court finds that while getting the FIR registered, the prosecutrix had alleged that the accused was known to her for the last two and half years, who had been raping her on promise to marry. He had even taken obscene photographs and started blackmailing her. He had raped her at gun point and also beaten her, whenever, she raised the issue of marriage. During one of the said incident, he even fractured her hand. However, after the completion of the

investigation and presentation of challan followed by commitment of the case and framing of charges and prosecution examining thirteen witnesses, the prosecutrix made another complaint Ex.P5 dated 9.1.2014, wherein, she levelled different allegations against the accused regarding the commission of unnatural offence, insertion of key in her vagina, three pregnancies due to rape committed by the accused and miscarriages caused by the accused. At the same time, she did not give any reason for not mentioning all these mis-deeds and brutalities allegedly committed by the accused with her in her initial complaint on the basis of which the FIR was registered. It may also be noticed that when she was produced before the Judicial Magistrate soon after the registration of the FIR, she did not make any statement as her throat was sore. Instead, she had placed on record her statement Ex.P2. She was again produced before the Judicial Magistrate on the following day, when she got recorded her statement but no allegations of commission of unnatural offence etc., as mentioned in complaint Ex.P5 dated 9.1.2014 was found levelled therein. She had also moved the High Court for cancellation of the anticipatory bail of the accused but even in the said petition, she did not level any such allegations. She even approached the Hon'ble Supreme Court for transfer of the case to Delhi but no mention was found to have been made of the allegations as contained in complaint dated 9.1.2014. What she stated before

the Hon'ble Supreme Court was that the accused had promised to marry her and by giving false promises had been sexually exploiting her.

According to the prosecution, the accused had promised to marry the prosecutrix and after obtaining her consent under the garb of said promise, he had been indulging in sex with her. There is no allegation that he had refused to marry her. In her statement recorded under Section 164 Cr.P.C., she had stated that after six months of their relationship, when she raised the issue of marriage, he started beating her but he did not refuse to marry her and that is sufficient to establish that their relationship had turned sour.

According to the prosecutrix, in her very first meeting, the accused who resided in the same sector had committed rape with her after taking her in a vehicle to a secluded area. He had shown a pistol and asked her to remove her clothes herself. The accused had left her there after threatening to kill her entire family in case she disclosed about the incident to any person. Subsequently when the accused started visiting her house, he offered to marry her after admitting his mistake. Offer to marry is different from promise to marry. As per the prosecutrix herself, there was no love affair between her and the accused but she was forcibly raped by him after showing a pistol and it was only thereafter that the accused had offered to marry her. Therefore,

there was no question of obtaining consent of the prosecutrix after promising to marry her.

As per the initial version, the prosecutrix had consensual relationship with the accused. The behaviour of the accused towards her changed after six months of their relationship. However, there is no material to show that the accused had refused to marry her. The prosecutrix was nineteen years of age at that time and continued to have physical relations with the accused under fear as he used to blackmail her and even beat her. According to the prosecutrix, the accused used to beat her even in the presence of her parents. However, her parents never made any complaint nor they stopped him from coming to their house in order to protect their daughter. It has come in the testimony of PW3 ASI Balwan Singh that parents and sister of the prosecutrix did not corroborate the allegations levelled by her against the accused.

According to the prosecutrix, she was raped by the accused in the month of April 2011 and, thereafter, he again approached her to apologize for his conduct and asked her to marry him. However, no complaint regarding rape was made by the prosecutrix.

As regards the physical assault by way of giving beatings by the accused and the prosecutrix even suffered a fracture in her hand, the prosecution relied upon the Police

Information Report dated 19.10.2011 prepared by Central Medical Centre, Hisar but no mention of any fracture had been made in the said report.

As regards the commission of unnatural offence, it would be appropriate to refer to the medico-legal report Ex.P24 where mention was made about the prosecutrix giving history to the doctor that there was physical relation between her and the accused since August 2012 and the said episode was consensual. No history of commission of unnatural offence with her by any person or miscarriages having been suffered by her was given by the prosecutrix to the doctor. Subsequently, when the prosecutrix was again taken for her medico-legal examination on 24.2.2014, the doctor opined that abortion and putting foreign body in vagina after one and half years was not possible. The prosecutrix was referred to the surgeon for further examination and as per medical opinion Ex.P19 "it was unlikely that any anal intercourse occurred".

In order to show that the accused had taken the prosecutrix on 8.6.2011 to Jaipur, the prosecutrix examined PW23 Sokat Panwar, owner of Hotel Mosaic, Jaipur. However, the witness did produce the original guest register on the ground that the same had been destroyed but he deposed that the police had taken photocopy of his record, in which, the entry was made at Serial No. 4340 dated 8.6.2011. He, however, expressed his

ignorance to identify the accused person in the Court. He also expressed his inability to state as to whether any female stayed in his hotel on 8.6.2011 with the accused. Even otherwise, the name of the women accompanying the accused was also not specified in the record.

In view of the above, no case is made out for any interference in the impugned judgment of acquittal passed by the trial Court, which is based on proper appreciation of the material/evidence available on the record.

The appeal is without any merit and, accordingly, dismissed.

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

January 25, 2016
amit rana

**(SHEKHER DHAWAN)
JUDGE**