

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

**Criminal Misc.No.24353 of 2017 in/and
Criminal Appeal No. D-487-DB of 2017**

Date of Decision : August 04, 2017

Sapna Mishra

.....Applicant/appellant

Versus

State of Haryana and others

.....Respondents

**CORAM : HON'BLE MR JUSTICE T.P.S. MANN
HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU**

Present : Ms. Swati Batra, Advocate as Legal Aid Counsel
for applicant/appellant.

T.P.S. MANN, J.

The prosecutrix has filed the present application (CRM 24353 of 2017) under Section 378(3) Cr.P.C. and Criminal Appeal No.D-487-DB of 2017 for challenging the judgment dated 16.2.2017 passed by Additional Sessions Judge, Gurugram, whereby Neeraj and his father Hari Om stood acquitted of the charges under Section 376(2)(n) and 216 IPC.

According to the prosecution, the prosecutrix presented application before lady ASI Saroj Bala, Police Station Women, Sector 51, Gurgaon, wherein she mentioned that she was a student and residing in the house of Neeraj accused. She had met Neeraj who promised to marry her. Accordingly, he developed physical relations

with her. He had taken her to Solitaire Hotel, Gurgaon about 1½ months ago and committed rape upon her. After that, he also took her to several other places and committed rape upon her. On 10.1.2015, she became pregnant but Neeraj started saying that he would not marry her. She also stated that she was 19 years old and, accordingly, sought taking of legal action against Neeraj.

During investigation of the case, the prosecutrix was medico-legally examined at General Hospital, Gurgaon and her statement under Section 164 Cr.P.C. recorded by the Ilaqa Magistrate. She named Hari Om, father of accused Neeraj to have helped his son in providing food and clothing to him. On those, allegations, Section 216 was introduced in the FIR. Hari Om accused was arrested on 25.12.2015, whereas Neeraj accused was granted interim anticipatory bail from the High Court and he was formally arrested on 15.1.2016. His medical examination was also got conducted.

Having heard learned counsel for the applicant/appellant and on going through the impugned judgment of acquittal, this Court finds that when the prosecutrix made her statement under Section 164 Cr.P.C. which was brought on record as Ex.P3, she had stated that she knew Neeraj for quite some time for the last four years and had an affair with him. When her mother went to jail in some case, Neeraj projected himself to be a nice person and gained her

confidence. She was not having good condition in her house. She did not have father and after her mother went to jail, she and her brother almost became orphans. Neeraj told her that he loved her and wanted to marry her. During this period Neeraj kept her nicely. He developed physical relations with her and confided with her that he would marry her. When she told him that she was pregnant, he refused to marry her. His mother gave her beatings and pushed her saying that her son could not have done anything like this and it was the prosecutrix who was in the wrong. The prosecutrix also stated that her own mother would shunt her out of the house.

From the above, it is made out that the prosecutrix was major and a mature girl when she had physical relations with Neeraj accused. Mere promise by Neeraj accused to marry her did not indicate that the accused had obtained her consent by fraud or misrepresentation. Rather, it was a consensual relationship between the prosecutrix and Neeraj accused. She was a tenant in the house of Neeraj accused in the beginning of her relationship with him. She had remained in contact with Neeraj accused since 2014 which means that it was she who was herself interested in developing physical relations with Neeraj accused. She was aware about what she was indulging in and being major knew about the morality and complications attached to the act and, hence, Neeraj accused cannot be held liable. Under these circumstances, it cannot be said that

**Criminal Misc. No.24353 of 2017 in/and
Criminal Appeal No.D-487-DB of 2017**

-4-

Neeraj accused had committed the offence under Section 376(2)(n) IPC. Natural corollary of the acquittal of Neeraj accused would absolve Hari Om accused of the charge under Section 216 IPC.

In view of the above, Criminal Misc. No.24353 of 2017 filed by the prosecutrix for leave to appeal is declined and Criminal Appeal No.D-487-DB of 2017 is dismissed.

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

**(MAHABIR SINGH SINDHU)
JUDGE**

August 04, 2017
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Whether speaking/reasoned : YES/NO

Whether reportable : YES/NO