

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Criminal Misc. A-1060-MA of 2017

Date of Decision : September 28, 2017

Union Territory, Chandigarh

....Applicant

VERSUS

Madan Mohan

...Respondent

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

Present : Ms. Ashima Mor, Advocate
Additional Public Prosecutor, Union Territory, Chandigarh.

T.P.S. MANN, J.

The Union Territory of Chandigarh has field the present application under Section 378(3) of the Code of Criminal Procedure for the grant of leave to appeal against the judgment dated 31.1.2017 passed by the learned Additional Sessions Judge-cum-Judge, Special Court, Chandigarh, whereby the accused, respondent herein, stood acquitted of the charges under Sections 376 and 420 IPC.

According to the prosecution, the prosecutrix came in contact with the accused in the month of February, 2013 at Chandigarh Railway Station. They developed friendly relations besides exchanging their mobile numbers. The accused used to talk to her on her mobile and told her that he was not married and employed in Railways as an electrician. After 4/5 months, the accused proposed to marry her and stated that he wanted to talk to

her parents regarding their marriage. Accordingly, he visited her house in the month of August, 2013 and met her parents. Her parents agreed to her marriage with the accused. In the month of November, 2013, the accused came to her house when her parents and brothers were not present there. Without her consent and on the pretext of marrying her, he developed physical relations with her. He also took her to Amritsar for seeking blessings of Guru Sahib in the month of August, 2014 and in the Guest House, where they stayed, he again made physical relations with her. Thereafter, she had been asking the accused many times to marry her but on one pretext or the other, he avoided her requests and continued to have physical relations at Guest House of Delhi, Panipat etc. till June, 2015. In July, 2015, she strongly objected to the accused about his behaviour and asked him about their marriage. He fixed date of marriage in the month of August, 2015. But, thereafter, he stopped responding to her calls. On 6.9.2015, she alongwith her parents visited his house, where he avoided to come in front of them. The relatives of the accused threatened to kill them if the matter was reported to the police. On 9.9.2015, when she and her parents again contacted the accused on his mobile, he refused to marry her, besides, threatening to kill her and her parents if she made any complaint against him.

After hearing learned Additional Public Prosecutor for the Union Territory, Chandigarh, and on going through the impugned judgment of acquittal, this Court finds that the prosecutrix was a mature woman, being of the age of 22 years. After meeting the

accused at the Railway Station, she became friendly with him. They had been talking to each other on mobile. A couple of months later, he came to her house but at that time her parents and brothers were not there in the house and without her consent and on the pretext of marrying her, he developed physical relations with her. In her statement under Section 164 Cr.P.C., the prosecutrix mentioned that the accused met her at the Railway Station in February, 2013. She had entered the train without ticket and the accused was sitting besides her. Later on, the accused started visiting her house and would also take her for outing. He even made physical relations with her and, that too, in her house when her mother would not be at home. He made physical relations with her many a time. He even took her to Amritsar where he made physical relations with her. Thus, it stands established that the prosecutrix met the accused in the year 2013 and remained with him in relations till 2015. She went with him on her own without any kind of pressure or force upon her by him. Her stay with him without any complaint, controversy and quarrel depicted her own consent and willingness in enjoying sexual relations with him. She could not claim ignorance of the consequences of the sexual relations of her in a society where the women have physical relations only after marriage and not before that.

While deposing before the trial Court PW1, the prosecutrix stated that she went with the accused to Amritsar and Delhi without disclosing anything to her parents. Rather, she had told

her parents that she was going with her friends. The mother of the prosecutrix, while stepping into the witness box as PW2, deposed that the prosecutrix took permission from her when the accused took her to Delhi and Amritsar. In her cross-examination, the prosecutrix admitted that she did not want to marry the accused without consent of her parents whereas on the other hand, she deposed about the accused telling her that he would solemnize marriage with her at Amritsar. If the prosecutrix herself did not want to solemnize the marriage with the accused without the consent of her parents, she had no reason to accompany the accused to Amritsar on his assurance of marrying her at Amritsar.

In view of the above, it cannot be said that the prosecution had led cogent and convincing evidence to hold the accused guilty of the charges against him.

The application is without any merit and, therefore, dismissed. Leave to appeal is declined.

(T.P.S. MANN)
JUDGE

(MAHABIR SINGH SINDHU)
JUDGE

September 28, 2017
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Whether speaking/reasoned : YES / NO

Whether reportable : YES / NO