

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

**CRA-S-390-SB-2018 (O&M)
Date of decision:-5.10.2018**

Naveen

....Appellant

Versus

State of Haryana

....Respondent

CORAM : HON' BLE MR. JUSTICE H.S. MADAAN

Present : Mr.Shashikant Gupta, Advocate for
Mr.Kanhiya Soni, Advocate
for the appellant.

Mr.Gaurav Bansal, AAG, Haryana.

H.S. MADAAN, J.

Accused Naveen faced trial by learned Additional Sessions Judge(Exclusive Court), Bhiwani, who vide judgment dated 10.1.2018 convicted him for the offences under Sections 376(2)(n)/450 IPC and vide order 11.1.2018, he was sentenced as under:

Under Section	Sentence Awarded
376(2)(n) IPC	Rigorous imprisonment for ten years and to pay a fine of Rs.10,000/- and in default thereof, to further undergo rigorous imprisonment for one year.

450 IPC	Rigorous imprisonment for three years and to pay a fine of Rs.1,000/- and in default thereof, to further undergo rigorous imprisonment for three months
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Both the sentences were ordered to run concurrently.

The accused-convict – Naveen, who is appellant before this Court prays that the appeal be accepted, the impugned judgment of conviction and order of sentence passed against him be set aside and he be acquitted of the charge framed against him.

Briefly stated, the facts of the case, as per the prosecution story, are that on 8.8.2017, the prosecutrix (name withheld to protect her identity in view of Section 228-A IPC and as per the directions given by the Hon'ble Apex Court in case titled State of Karnataka Vs. Puttaraja, 2004(1) RCR(Cri.) Supreme Court, 113 (SC) and referred to as *the prosecutrix*) accompanied by Sagarmal son of Dhyan Chand, resident of Ward No.6, Bawani Khera, District Bhiwani went to Police Station Women, Bhiwani and submitted a written complaint there, alleging therein that she is aged about 28 years and resident of Ward No.6, Bawani Khera; that on 8.5.2017 at about 11:15 p.m., Naveen son of Satyawar, resident of village Khanak trespassed in her house and committed rape upon her by use of force; that on subsequent occasions also, he had been raping her repeatedly on the promise of performing marriage with her, however, when she asked him to marry her, he refused to do so, rather threatened that if she disclosed the incident to anybody, he would kill her.

On the basis of that complaint, formal FIR was registered.

Investigation in the case started. During the course of investigation,

accused was arrested in this case. Statements of witnesses were recorded. After completion of investigation and other formalities, challan against the accused was prepared and filed in the Court of learned Judicial Magistrate Ist Class, Bhiwani.

On presentation of challan in the Court of learned Judicial Magistrate Ist Class, Bhiwani, she supplied copies of documents relied upon in the challan to the accused free of costs as provided under Section 207 Cr.P.C. Then finding that the offence under Section 376(2)(n) IPC is exclusively triable by Court of Sessions, learned Judicial Magistrate Ist Class, Bhiwani committed the case to the Court of learned Sessions Judge, Bhiwani from where it was entrusted to the Court of learned Additional Sessions Judge(Exclusive Court), Bhiwani.

On receipt of case in the Court, learned Additional Sessions Judge(Exclusive Court), Bhiwani observing that prima facie charge for offences under Sections 376(2)(n)/450/506 IPC was disclosed against the accused, he was charge-sheeted accordingly, to which, he pleaded not guilty and claimed trial.

During the course of its evidence, the prosecution examined as many as eleven witnesses namely Laxmi Devi as PW1, Dharmender, Draughtsman as PW2, Constable Rajesh as PW3, HC Virender as PW4, SI Lok Ram as PW5, Illaqa Magistrate, Bhiwani as PW6, the prosecutrix as PW7, Dr.Rakesh Arora as PW8, Sagarmal as PW9, ASI Dharmli as PW10 and Dr.Priyanka Kadian as PW11.

With that the prosecution evidence got concluded.

Statement of the accused was recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing against

him were put to such accused but he denied the allegations contending that he is innocent and had been falsely involved in this case.

Accused did not lead any evidence in his defence.

After hearing arguments, learned trial Court convicted and sentenced the accused as mentioned above, which left him aggrieved and he has filed the present appeal.

I have heard learned counsel for the appellant – accused – convict, learned AAG for the State of Haryana besides going through the record.

The prosecutrix in this case is aged about 28 years, as such a mature woman. From the record, it comes out that she was having an affair with the accused, since according to her the accused had promised to marry her but later on he refused and he had been committing sexual intercourse with her on the pretext of marriage, which he ultimately refused. The facts and circumstances of the case show that she was a consenting party. The period during which the prosecutrix was allegedly raped by accused happens to be w.e.f. 8.5.2017 to 9.7.2017. She had lodged report with the police on 8.8.2017 i.e. after about a month. No satisfactory or plausible explanation for such delay has been furnished, which itself puts a big question mark over the credibility of the case of the prosecution. It is certainly not a case of accused having sexual intercourse with the prosecutrix against her wishes, since the medical evidence does not corroborate the version of the prosecutrix in that regard. If we see the written complaint submitted by the prosecutrix to the police, she has alleged use of force by the accused while having sexual intercourse with her on the first occasion i.e. on 8.5.2017,

whereas regarding subsequent occasions, she has not given the details thereof, rather the allegations are quite general lacking material details as to on which dates thereafter, the accused had sexual intercourse with her and the places where it was so done.

As regards such allegations of committing rape on subsequent occasions, it is stated that it was so done on the pretext of performing marriage with her, that means no use of force on the part of the appellant/accused is alleged.

PW11 Dr.Priyanka Kadian, who had medico legally examined the prosecutrix on 8.8.2017 did not find any mark of injury on inner side of thighs and no external injury or tenderness was seen, that means it is certainly not a case of sexual intercourse by use of force otherwise some signs or marks of external injury would have definitely been there.

In **Pratap Misra and others Versus State of Orissa, 1977 AIR(SC) 1307** , it has been observed that when in a rape case in terms of the medical evidence, no injuries had been found on the person of the prosecutrix or the accused, that led to the inference that the prosecutrix was a consenting party. In **Gokul Versus State of Uttar Pradesh, 2003 Cri.L.J. 1110** High Court of Allahabad in para No.9 has observed as under:

It is further pertinent, to find out that there is no physical evidence to support the contention of rape (forcible sexual intercourse) having been committed on her. She said that she had been dragged and thrown on the ground behind the bushes where the appellant forcibly did sexual act with her.

She , according to her, kept struggling to extricate herself from the clutches of the appellant, but all in vain. Her medical examination report states that she did not suffer any injury on any part of her body. She claimed that she suffered bruises and her bangles had been broken down, pricking in her wrists. But no abrasion or bruises were found on her body. The medical examination report completely negatives the application of any force on her, which would have been the case if she had forcibly been subjected to sexual intercourse. Moreover, her version is that two witnesses, namely, Shyam Lal PW2 and Chauda PW3 were attracted tot he scene who had witnessed the incident. They allegedly challenged the appellant who ran away. But these witnesses have not supported the prosecution case. Shyam Lal PW2 stated that prosecutrix had also gone to the market but he had turned back all alone without having witnessed anything in the way. When the Investigating Officer visited the spot he did not find any broken pieces of bangles. It may be relevant to state that under ordinary circumstances, it is not possible for a single man to rape an adult female in full possession of her sense without any resistance at all. When subjected to forcible sexual intercourse, the victim is likely to offer resistance resulting in some injury in the form of bruises, abrasions, etc., Indeed, that would offer physical evidence regarding the incident which is missing in the present case.

There is solitary statement of the prosecutrix in this case with regard to allegations of rape against the appellant. Though as per law conviction can be based upon solitary statement of the victim in a rape case, however, that statement should be blemish free and not surrounded by any suspicious circumstance. Here in the present case, certainly the testimony of the prosecutrix is not of that type.

As regards the report of FSL, PW11 Dr.Priyanka Kadian, Medical Officer, who had medico legally examined the prosecutrix admitted in her cross-examination that medical examination of the prosecutrix was conducted after about one month of the alleged occurrence and the clothes have been changed by the prosecutrix within one month many times and she has taken bath also. She conceded that it is highly probable that the clothes taken by her at the time of examination were not worn by the prosecutrix at the time of alleged occurrence. Therefore, report from FSL detecting human semen on Ex.P1 i.e. underwear of the prosecutrix does not help the prosecution much in advancing its case.

The cross-examination of the prosecutrix is very revealing in which she stated that she was married with Raj Kumar 14-15 years back and she had got three children, eldest being son aged about 15 years, then another son aged about 14 years and youngest daughter aged about 11 years. She further admitted it as correct that she has lodged a criminal case against Narender under Section 376 IPC for not marrying her and making physical relations with her and Narender lived with her for about two years. She stated that SHO Police Station, Bawani Khera got them exchanged the garlands and directed them to get married in a

Mandir near Delhi. It is difficult to understand how a married woman having teenage children can possibly marry the accused during subsistence of her first marriage with Raj Kumar since the prosecutrix has nowhere stated that she had been divorced by her first husband. It being so, there was no occasion for the appellant to have sex with the prosecutrix on the promise of getting married with her. The complainant added another angle to the story when in her cross-examination, she stated that SHO Bawani Khera got her and the accused exchanged the garlands and directed to get married in a Mandir near Delhi. SHO could not have got the illegal act done asking the prosecutrix and the accused get married during subsistence of first marriage of the prosecutrix. Even if it was so done that does not confer the status of wife of the accused upon the prosecutrix. The admission on the part of the prosecutrix that she had been residing with one Narender for two years and then she had lodged a complaint against him goes to show that she is in habit of lodging such type of complaints and rather indulging in blackmailing, as it comes out that she had been residing with live-in relationship with the appellant, which though not has been given social approval so far but is a known fact. If we see statement under Section 164 Cr.P.C. of the prosecutrix in which she had stated that accused Naveen had been on visiting terms with her; on 8.5.2017, he came to her and had sexual intercourse with her, which she opposed stating that he could do after marriage, then accused stated that he was ready to marry her; that he resided in her house for three months but subsequently refused to marry her.

As already discussed, the prosecutrix a married woman had

been indulging in wrongful activities, keep the appellant in her house, of course in a live-in relationship when during the subsistence of her marriage with Raj Kumar and then lodging FIR. How could the accused be punished for not doing what could not be legally done by him, that is of marrying of the prosecutrix during subsistence of her first marriage with Raj Kumar. If we see further cross-examination of the prosecutrix, that further damages the case of the prosecution. She stated that accused Naveen lived with her for more than three months in Bawani Khera and her parents were her next door neighbour, her real uncle was also their neighbour. She stated that her parents were in the knowledge of the fact that she and accused Naveen were living together as wife and husband and her parents were happy with her relations with accused Naveen. Even the Investigating Officer PW10 ASI Dharmli Devi has admitted in her her cross-examination that accused and the prosecutrix remained in live-in relationship for about two months in the house of the prosecutrix. Thus the offence of rape on the part of the accused was not established on record.

The prosecution had failed to prove its charge against the accused beyond a shadow of reasonable doubt but the trial Court by misappraisal of evidence and misinterpretation of law wrongly convicted the accused for the offences under Sections 376(2)(n) and 450 IPC. No proper reasoning has been given while coming to the conclusion that charge for offences under Sections 376(2)(n) and 450 IPC stood proved against the accused.

Thus, I find that the judgment of conviction and order of sentence passed by the Court below are not sustainable, the same are set

aside by way of acceptance of this appeal. The appellant is acquitted of the charge for which he has been held guilty and convicted vide the impugned judgment.

The appeal stands allowed accordingly.

The appellant – Naveen, who is stated to be in custody is ordered to be released forthwith, if not required in any other case.

Necessary intimation be sent to the quarter concerned.

5.10.2018
Brij

(H.S.MADAAN)
JUDGE

Whether speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No