

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

**CRM-A No. 1486-MA of 2018 (O&M)
Date of Decision: 13.02.2019**

Rekha Rani

..... Appellant

Versus

State of Haryana and another

..... Respondents

**CORAM: HON'BLE MR. JUSTICE JASWANT SINGH
HON'BLE MR. JUSTICE ARUN KUMAR TYAGI**

Present: Mr. Sushil Kumar Verma Advocate
for the appellant.

JASWANT SINGH, J.

1. Judgment of acquittal dated 05.02.2018 passed by Special Court, Fatehabad, stands challenged by the complainant by filing the present application under Section 378 (3) of the Code of Criminal Procedure by seeking grant of Leave to Appeal, whereby the accused/respondent stood acquitted of the charges under Sections 376 (2) (n) and 506 Indian Penal Code (IPC).

2. **Following facts emerge from the record.**

According to the case of prosecution, the husband of the complainant had died about 11 years back and appellant was living with her minor children. The respondent had promised to marry her and on this pretext she was ravished. Initially she was not knowing the fact that respondent/accused was married. However, later on she came to know the marital status of the respondent and she also came to know that respondent/accused was having three (03) kids out of his wedlock. In this manner, she had been cheated by the respondent/accused and committed

sexual intercourse with her on the pretext of marrying her. She was also extended the threats by the respondent and his accomplices that in case she would disclose the fact of cheating and raping her, then she would be done to death along with her children. On the basis of these allegations, the investigation was conducted and after completion of investigation, the report under Section 173 of Cr.P.C. was presented. However, during investigation the other accomplices of the crime against whom the allegations of threat were levelled by the appellant were found innocent. The Trial Court charge-sheeted the respondent/accused for commission of offence under Section 376 (2) (n) and 506 IPC.

In order to prove its case against the respondent/accused, the prosecution has examined the following witnesses namely:-

PW1 SI Jagdish Chander, PW2 Balwant Singh, Draftsman, PW3 Inspector Dinesh Kumar, PW4 complainant/prosecutrix/appellant, PW5 ASI Banwari Lal, PW6 HC Kashmir Singh, PW7 EHC Rajni Bala, PW8 HC Chiman Lal, PW9 Dr. Veena Batra, PW10 Dr. Nirpal Chand, PW11 ASI Damod Rani. Then on completion of prosecution evidence, the statement of respondent/accused under Section 313 Cr.P.C. was recorded in which all the incriminating circumstances appearing in the evidence of prosecution were put to him and he pleaded his innocence and false implication. Chance of defence was given to the respondent. In defence, he examined Inspector Pushpa Sihag, DW2 Manohar Lal, Ex Sarpanch, DW3 Narender Sharma.

3. The Trial Court on appreciation of the evidence led by the prosecution and the respondent, acquitted the respondent of the charges

framed against him vide judgment dated 05.02.2018. Hence, the instant application for grant of Leave to Appeal.

4. Counsel for the appellant has contended that appellant has fully proved her case by leading cogent and convincing evidence that the accused-Som Dass kept on committing rape on her on the pretext of marrying her and also by concealing the facts of his marriage (marital status). The Trial Court has given undue weightage to the defence's evidence. The sole statement of appellant was sufficient to prove the case of prosecution and there was no need of any independent corroboration to prove the offence of rape committed by respondent.

5. After hearing counsel for the complainant-appellant and perusing of judgment of acquittal, we do not find any merit in the application for the grant of Leave to Appeal.

6. On careful examination of statement of the appellant as reflected in the impugned judgment, there leaves no manner of doubt that she was living with respondent in live-in-relationship for approximate period of three (03) years. Minute examination of the evidence makes it clear that there is no conclusive piece of evidence to prove that the respondent committed forcible sexual intercourse with the appellant.

7. At this juncture, we refer to the law laid down in the case ***Prashant Bharti Versus State of NCT of Delhi*** reported in (2013) 9 SCC 293 as under:-

“Substantially similar facts were involved where plea taken by the complainant was that she was induced into a physical relationship by the accused on the assurance that he would marry her. In that case also, the facts revealed that the complainant/ prosecutrix was married to one "X" when she

had physical relation with the accused on the basis of false promise to marry her. It was held that in such a fact situation, the assertion made by the complainant/prosecutrix that the Appellant-accused had physical relations with her on the assurance that he would marry her, is per se false and, as such, unacceptable. She, more than anybody else, was clearly aware of the fact that she had a subsisting valid marriage with "X". Accordingly, there was no question of anyone being in a position to induce her into a physical relationship under an assurance of marriage. The facts clearly emerge that the complainant was in a relationship of adultery with the Appellant-accused, while she was validly married to her previous husband "X". In the aforesaid view of the matter, the assertion made by the complainant/prosecutrix, that she was induced to a physical relationship by "X", the Appellant-accused, on the basis of a promise to marry her, stands irrefutably falsified."

Further, in case of ***Alok Kumar Versus State, 2010 (4) JCC 2385*** also the plea of inducement to have physical relation on the assurance of marriage was taken and the FIR was quashed as it was observed as under:-

" 6. From the allegations made by the complainant, it is apparent that when the complainant started 'live-in-relationship' with the petitioner, the petitioner had not even divorced his previous wife though it seems was living separate from her. The complainant was having a child while the petitioner was also having a child. 'Live-in-relationship is a walk-in and walk-out relationship. There are no strings attached to this relationship, neither this relationship creates any legal bond between the parties. It is a contract of living together which is renewed every day by the parties and can be terminated by either of the parties without consent of the other party and one party can walk out at will at any time. Those, who do not want to enter into this kind of relationship of walk-

in and walk-out, they enter into a relationship of marriage, where the bond between the parties has legal implications and obligations and cannot be broken by either party at will. Thus, people who chose to have 'live-in-relationship' cannot complain of infidelity or immorality as live-in-relationships are also known to have been between married man and unmarried woman or between a married woman and an unmarried man."

And lastly in case ***Deelip Singh @ Dilip Kumar Versus State of Bihar, (2005) 1 SCC 88*** it was held that:-

“consent given by a woman believing the man's promise to marry her would fall within the expression “without her consent” only if it is established that from the very inception, the man never really intended to marry her and the promise was a mere hoax. Since it is a case of obvious consent of the prosecutrix, who was aware that no marriage had taken place, no case under section 376 IPC is made out.”

8. As such, by taking into consideration the statement of the appellant-complainant and also by taking into mind the above referred laws laid down by Hon’ble Apex Court, it can safely be concluded that no offence of rape is proved by the prosecution against the respondent. The other evidence available on the record in the shape of ocular as well as medical evidence has rightly been ignored by the Trial Court. Since, the respondent did not commit the sexual intercourse with the respondent without her consent and force and even if the respondent had made false promise to marry her and whereupon she consented to sexual intercourse with him, it would not vitiate her consent for the sexual intercourse which she had given fully understanding to the nature and implications of the act

involved therein. Further, it is also unbelievable that the appellant was not knowing the marital status of the respondent because complainant herself admitted that her husband had died about 11 years back and we can presume that she at the time of alleged crime was running about 27-28 years of age and she might also got recorded the age of respondent in the array of parties before this Court in the instant appeal as 49 years and at this age, it cannot be said that the respondent was unmarried. It is also highly improbable on the part of the appellant that she never took the steps to find out the marital status of the respondent before entering into live-in-relationship, even at the time of having sexual intercourse, she did not dare to find out the marital status of the respondent and in the absence of taking such kind of steps by her, we have arrived at an irresistible conclusion that she performed the sexual intercourse with the respondent being a consenting party and was knowing well the marital status of the respondent. Consent to have sexual intercourse with her cannot be said to have given under misconception of fact. As such, essentials elements to prove the offence of rape and cheating are missing.

9. That apart, the scope of the Appellate Court, while dealing with the appeals against acquittal, is settled. Though there is no embargo on the Appellate Court to reverse the decision based on the evidence upon which the acquittal is based, generally the order of acquittal based on presumption of innocence of the accused, is further strengthened by acquittal. The Appellate Court, while considering an appeal against acquittal, has to consider whether there are compelling and substantial reasons for reversing the order or acquittal. The Appellate Court can reverse

the order of acquittal if the view taken by the Court is palpably erroneous and it could not have been taken by the Court of competent jurisdiction and is taken against well settled canon of criminal jurisprudence. Merely because the Appellate Court, on re-appreciation and re-evaluation of the evidence, is inclined to take a different view, interference with the judgment of acquittal is not justified. If the view taken by the Trial Court is a possible view, even if two views are equally balanced, it need not result in interference by the Appellate Court in the judgment of the Trial Court of acquittal. The Appellate Court will have to see whether there is perversity in the decision, if the conclusions are contrary to the evidence on record, or the Court's entire approach is patently illegal or it is based on erroneous understanding. If the order of acquittal is to be reversed, the Appellate Court must examine and discuss the grounds given by the Trial Court to acquit the accused and must give cogent reasons to overturn the findings. Thus, while considering the order against acquittal, generally the Appellate Court should not interfere where view taken by the Trial Court is not unreasonable or perverse. With this legal position in mind, we have considered the view taken by the Trial Court is a possible view and it does not require any interference by this Court.

10. In view of the above discussion, this Court is of the opinion that the Trial Court while appreciating the entire evidence in its proper perspective, had rightly held that the prosecution had failed to prove its case against the accused/respondent beyond any reasonable doubt. Thus, no case is made out for any interference in the impugned judgment.

11. We are of the view that the acknowledged consensual physical relationship does not constitute the offence of rape. In view of the above, no fault can be found with the impugned judgment passed by the learned Trial Court while acquitting the accused/respondent of the charges against him.

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

(JASWANT SINGH)
JUDGE

February 13, 2019
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(ARUN KUMAR TYAGI)
JUDGE

<i>Whether Speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>