

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

CRM-A No. 344 of 2019

Date of Decision: 27.03.2019

Rekha Rani

..... Appellant

Versus

State of Punjab and another

..... Respondents

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

Present: Ms. Ashmeet Kaur, Advocate for
Mr. Satnam Singh Gill, Advocate
for the applicant/appellant-complainant.

JASWANT SINGH, J.

1. Present application has been filed under section 378 (3) of the Code of Criminal Procedure, 1973 (in short “the Code”) for grant of Leave to Appeal against the judgment dated 10.12.2018 passed by learned Sessions Judge, Sangrur.

2. Tersely put the facts of the prosecution case are that the prosecutrix-'X' got recorded her statement on 27.10.2017 while the police party on patrolling duty in the manner that house of Gurdeep Singh alias Jyoti was adjacent to her house. Gurdeep Singh alias Jyoti (respondent No. 2 herein) was visiting to her house and while her mother was away to meet her relative and her brother was away to school. At about 11.00 A.M., Gurdeep Singh alias Jyoti entered in her house and find her alone, he caught hold her and she was made to lay on the bed. She made attempts to get her free from the clutches of the accused/respondent.

Gurdeep Singh alias Jyoti-respondent No. 2 forcibly committed sexual

intercourse with her against her wishes and consent. He also extended threat to her life that in case she would disclose this episode to anybody, she and her family would be done to death. On arrival of her mother, this episode was disclosed by her to her mother. Initially due to honour of the family and especially the fact that Gurdeep Singh alias Jyoti may cause harm to the family, the matter was not highlighted. However, the accused/respondent started come to her house in the night and used to commit sexual intercourse without her consent and wish by putting her in fear. On the intervening night of 25/26.10.2017 at about 12.00/1.00 O' clock midnight, Gurdeep Singh alias Jyoti came to her house and had rape against her wish and consent. This matter was narrated by her to her mother in the morning and now it has been decided to lodge the report against the respondent.

3. On appearance before the trial Court, the respondent was supplied the copies of challan and he was also charge-sheeted for commission of offence under Sections 376 (2) (n) and 506 of Indian Penal Code (IPC). To strengthen its case against the respondent/accused, the prosecution has examined as many as nine (09) witnesses, which are as under:-

***Prosecutrix** as PW-1, **Raj Kaur** as PW-2, Lady Sub Inspector **Harsimarpreet Kaur** as PW-3, ASI **Ajaib Singh** as PW-4, Head Constable **Lakhwinder Singh** as PW-5, Lady Constable **Kulbir Kaur** as PW6, **Dr. Ravinder Nath**, Medical Officer, Civil Hospital, Sangrur as PW-7, Mrs. **Arushi Goyal**, Judicial Magistrate 1st Class, Sangrur as PW-8, **Dr. Neha Goel**, Medical Officer, Civil Hospital, Sangrur as PW-9.*

4. On completion of prosecution evidence, the statement of accused under Section 313 Cr.P.C. was recorded by the trial Court in which all the incriminating circumstances appearing by way of evidence of prosecution against the respondent/accused were put to him and he pleaded his innocence and false implication.

5. On the basis of weak evidence produced by the prosecution against the present respondent, he has been acquitted of the charge for commission of offence under Sections 376 (2) (n) and 506 of Indian Penal Code (IPC).

6. It has been contended by learned counsel for applicant-appellant that the impugned judgment of the trial Court is wrong both on facts and law. The evidence of the prosecutrix was not properly appreciated by the trial Court and the trial Court has wrongly passed the judgment of acquittal. The defence's evidence has been wrongly given undue weightage by the trial Court. At last, he has prayed that applicant be granted leave to file the appeal against the judgment of acquittal.

7. We have heard the counsel for applicant-appellant and have also gone through the paper-book very carefully with his assistance.

The trial Court, on the basis of the testimony of key witnesses/prosecutrix-'X', has rightly observed that on account of the fact that prosecutrix was major and educated girl, respondent-accused could never allowed to have sexual intercourse with her against her wish and consent. It is also crystal clear on record that she was chatting with the respondent/accused on mobile despite the fact that prosecutrix was knowing well that accused was married man and having three children.

Prosecutrix-'X' remained in touch with the respondent-accused for a sufficient long time about two years even after commission of rape, itself goes to show that the sexual intercourse committed by the respondent on her was with her consent. During cross-examination, she had categorically admitted that the photographs that of her with accused vide (Ex. DA1 to DA24), when she was in regular relationship with accused and she also travelled with accused in his car and also got clicked the photographs with accused, are cogent and convincing evidence to prove that there was no chance for the accused to commit sexual intercourse with her against her wish and consent. Further, the trial Court has rightly observed that on account of past conduct of the family of the prosecutrix, whereby her family is facing criminal cases besides herself, are also ample evidence to disapprove the case of prosecution.

It is a settled position that there have to be strong, cogent and compelling reasons to set aside acquittal of the accused. Hon'ble Supreme Court in case of *Mahamad Khan Nathekhani Vs. State of Gujarat, 2014 (5) Recent Apex Judgments (R.A.J.) 502: (2014) 14 SCC 589*, while reiterating the basic principles, has specifically held that in case of acquittal, there is a double presumption of innocence in favour of the accused, it stands reinforced, reaffirmed and strengthened by acquittal by the trial Court.

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.

8. 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 kind of interference in the impugned judgment.

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

(JASWANT SINGH)
JUDGE

March 27, 2019
'dk kamra'

(ARUN KUMAR TYAGI)
JUDGE

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