

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

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**CRM-A-2269-MA-2017 (O&M)**

Date of Decision: 24.01.2020

'X' (Prosecutrix)

....Appellant

Versus

State of Haryana and another

.....Respondents

**CORAM: HON'BLE MR. JUSTICE RAJAN GUPTA  
HON'BLE MR. JUSTICE KARAMJIT SINGH**

Present: Mr. Jasdev Singh Mehndiratta, Advocate,  
for the applicant/appellant.

Mr. Pradeep Prakash Chahar, Asstt. Advocate General, Haryana.

Mr. Rakesh Nehra, Advocate,  
for respondent No.2.

**KARAMJIT SINGH, J.**

The present application has been filed by the applicant/prosecutrix under Section 378 (3) of the Code of Criminal Procedure for grant of leave to appeal against judgment of acquittal dated 17.08.2017 passed by Additional Sessions Judge, Rohtak. The name of the prosecutrix is concealed in the headnote of this judgment and she is described as 'X'.

Briefly, the facts of the case are that on 03.09.2016, FIR No.54 under Sections 376(2)(n) and 506 of the Indian Penal Code (for short, 'IPC') was registered at Police Station Women, Rohtak, on the basis of the complaint lodged by prosecutrix (applicant) alleging that she was resident of Village Ranila, District Bhiwani and in January 2016, she became friend with

respondent No.2-Sumit. On the asking of respondent No.2, she met him once or twice in Mansarowar Park. Thereafter, they used to talk with each other on phone. After one month, respondent No.2 asked the prosecutrix to give her mother's gold chain for enabling him to sell the same and use it's sale proceeds for getting admission in an academic course. He also assured the prosecutrix that after performing marriage with her, he would give her another gold chain, in lieu of that. On promise of marriage, prosecutrix gave her mother's gold chain to respondent No.2, which he sold for Rs.30,000/- and kept the money with him. On 16/17.04.2016, respondent No.2 took her to Goodwill Hotel at Sector 14, Faridabad, where he forcibly committed rape upon her. Respondent No.2 also threatened the prosecutrix that in case she informed about this incident to anybody, he would defame her in the society and among her friends. Thereafter, respondent No.2 again committed rape upon her, 3-4 times in the same very hotel by blackmailing and extending threat to her. On 03.06.2016 also, he committed rape upon her and thereafter, changed his phone number so that she could not approach him on phone. On this, prosecutrix revealed the matter to her family members and her father had contacted father of respondent No.2, who asked to wait for three/four months. Prosecutrix alleged that respondent No.2 repeatedly and fraudulently committed rape upon her on the pretext of promise of marriage. The statement of the prosecutrix under Section 164 Cr.P.C was recorded by the police on 04.09.2016. The accused was arrested by the police on 21.09.2016. On completion of investigation by the police, report under Section 173 Cr.P.C. was submitted before the Court. Thereafter charges were framed for commission of offences punishable under

Sections 376 (2) (n) and 506 IPC against the accused to which he had pleaded not guilty.

In order to prove its case, prosecution examined as many as nine witnesses. The prosecutrix, while appearing in the witness-box as PW3, proved her complaint (Exhibit P2) and statement under Section 164 Cr.P.C. (Exhibit P3), PW4-Dharmender Kumar, employee of the concerned hotel, proved documents (Exhibit P4 to Exhibit P16) regarding visits of the prosecutrix and respondent No.2 on different dates in hotel Goodwill, Sector 14, Rohtak. PW5-Wazir, uncle of the prosecutrix, stated that Parmod, father of the prosecutrix, died in 1997 and in 2016, prosecutrix was residing in hostel as she was studying in B.Sc. Ist year in M.K.J.K. College, Rohtak. PW8-Dr. Priti of General Hospital, Rohtak, who medico legally examined the prosecutrix on 03.09.2016, proved her MLR (Exhibit P-23), PW6-Dr. Vijay Dhull, who medico legally examined respondent No.2 on 21.09.2016 in Civil Hospital, Rohtak, proved his medical report (Exhibit P-18), PW9-SI Bimla Devi proved the complaint (Exhibit P2) moved by the prosecutrix on 03.09.2016. She also proved the FIR (Exhibit P25) and request (Exhibit P22) for conducting medico legal examination of the prosecutrix. She also proved the entire investigation carried out by her in this case and also deposed regarding arrest of respondent No.2. She proved documents (Exhibit P-3 to P-22 and Exhibit P27 to Exhibit P30). PW1-EASI Samit Kumar proved the scaled site plan (Exhibit P1), which was prepared by him. PW2-Inspector Garima, proved the challan, which was prepared by her and presented in the Court against respondent No.2. PW7-Constable Lalit corroborated the statement of the Investigating Officer and

proved disclosure statement (Exhibit P20) suffered by respondent No.2, while in police custody, on 22.09.2016. After recording of the prosecution evidence, the statement of respondent No.2 under Section 313 Cr.P.C. was recorded, wherein, he denied entire incriminating evidence appearing against him. However, he had not led any evidence in his defence.

On appreciation of evidence and after hearing arguments advanced by learned counsel for the parties, the learned trial Court acquitted respondent No.2 vide its judgment dated 17.08.2017.

Aggrieved by the aforesaid judgment, applicant/prosecutrix has filed the present application for grant of special leave to file appeal against the aforesaid judgment.

Learned counsel for the appellant contended that there is more than sufficient evidence available on the record to prove that respondent No.2-Sumit established physical relations with the prosecutrix by making a false promise to marry her. Hence, it was not a case of consensual physical relations. The testimony of the prosecutrix is corroborated by the medical evidence to prove charges of rape and criminal intimidation against respondent No.2.

On the other hand, learned counsel for respondent No.2 argued that the prosecutrix was more than 18 years of age and of her own involved in physical relationship with respondent No.2. It was also pointed out that there were contradictions in the statements of the witnesses creating doubt regarding the prosecution story. It is further contended that the delay in lodging of FIR has not been explained, which further demolished the case of the prosecution.

Learned counsel for respondent No.2 further contended that the appeal filed by the prosecutrix deserves to be dismissed, as the similar appeal filed by the State has already been dismissed by the Co-ordinate Bench of this Court on 04.10.2018. Copy of the said order, produced by learned counsel for respondent No.2, has been placed on record.

We have considered the submissions made by learned counsel for the parties and also gone through the record.

It is not disputed that at the time of the alleged occurrence, prosecutrix was studying in B.Sc Ist year. At the time of her medico legal examination on 21.09.2016, the prosecutrix disclosed her age as 19 years. Even, while appearing in the witness box, she stated that her date of birth is 06.04.1997, meaning thereby that the prosecutrix was more than 18 years of age at the time of alleged occurrence. She was grown up and educated girl and can very well understand the repercussions of such like relationship. The prosecutrix admitted in her testimony that she was aware about the rights and wrongs of her life and regarding the act done by her, as she was major at the time of alleged occurrence. The prosecutrix in her statement recorded under Section 164 Cr.P.C stated that she got befriended with respondent No.2-Sumit in January 2016 and thereafter, she met him on four occasions in Mansarowar Park. The prosecutrix also stated in the court that she used to call him daily during the night time on his mobile phone. She also deposed in the Court that both of them went to hotel Goodwill in the month of April, 2016 and she handed over her identity proof to the receptionist of the said hotel and she stayed through out the night in the said hotel. She along with respondent No.2

also went to restaurant for dinner and again came back to the hotel. She also talked to her mother on phone, from the said hotel. She also admitted that she used to cover her face while visiting the hotel Goodwill. She also admitted that prior to complaint (Exhibit P2) dated 03.09.2016 she had not told anything regarding her relationship with the accused, to anyone including her relatives and the employees of the hotel.

From the aforesaid circumstances, it could be easily assessed that the prosecutrix developed physical relations with respondent No.2 of her own free will and consent, without any pressure or threat from his side.

The delay on the part of the prosecutrix in lodging the report with the police regarding the alleged occurrence, further weakens the case of the prosecution. Moreover, the application moved by the State for leave to file the appeal against the impugned judgment has already been dismissed by the Co-ordinate Bench of this Court, vide order dated 04.10.2018.

In the light of the above discussion, we do not find any merit in the application for leave to file the appeal and the same stands dismissed.

**(RAJAN GUPTA)**  
**JUDGE**

**(KARAMJIT SINGH)**  
**JUDGE**

**24.01.2020**

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|-------------------------------|---|--------|
| Whether speaking/non-speaking | : | Yes/No |
| Whether reportable            | : | Yes/No |