

**In the High Court of Punjab and Haryana at Chandigarh**

**CRM-A-428-2022**  
**Reserved on: 16.9.2022**  
**Date of Decision: 27.9.2022**

XXXXXXXXXX

.....Applicant

Versus

State of Punjab and others

.....Respondents

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR**  
**HON'BLE MR. JUSTICE N.S.SHEKHAWAT**

Present: Mr. Gagan Oberoi, Advocate  
for the applicant.

Ms. Monka Jalota, Sr. DAG, Punjab.

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**SURESHWAR THAKUR, J.**

1. The prosecutrix is aggrieved from the verdict of acquittal, as made on 27.1.2021, upon Sessions Case No. 10 of 13.3.2020, by the learned Additional Sessions Judge (Fast Track Special Court), Ludhiana, wherethrough the accused became acquitted for the charges, as drawn against them for the commission of offences punishable under Sections 120-B, 376, 376(2)(g), and, under Section 506 of the IPC.

**Factual Background**

2. The genesis of the prosecution case, becomes embodied in complaint moved by the complainant/prosecutrix before the learned Illaqa Magistrate concerned, wherein, she alleges that accused Nos. 1 and 2 are the sons of accused No. 3, and, accused No. 4 is the close friend of accused Nos. 1 and 2, and, accused no.5 is the maternal aunt of accused nos.1 and 2.

Earlier accused no.1 was residing with his relatives, where the complainant was residing and accused nos.1 to 3 were good family friends. Earlier the complainant was married in the year 2008 and she was residing at Rajpura. On 7.2.2011, the complainant was coming from Rajpura to Ludhiana and when she reached at Sherpur Chowk, accused no.1 came near her and offered the lift to the complainant. Being known to each other, the complainant agreed to it. Thereafter, accused no.1 with a criminal conspiracy, asked the complainant that he has some work at Shivaji Nagar and after going there, he will drop her at her house. Accused no.5/Soma was also present there and she offered the complainant to have a cold drink and when the complainant consumed it, she became unconscious. After one hour, when the complainant came into her senses, she found herself and accused no.1 in naked condition and accused no.2 and 4 were having camera in their hands and were shooting the whole occurrence. Accused no.5 was also present there and accused no.1 has committed rape with the complainant and also made a video film of her rape. On this, the complainant started crying and weeping, then accused no.1 gave her cloth and threatened that in case she dared to disclose anything to any person regarding the said occurrence, then the complainant and her family members would face dire consequences as the accused are having links with anti social elements and higher police officials and rather they will also involve the complainant in some false case. Apprehending danger to her life, the complainant remained silent for some days. Thereafter, the accused persons in connivance with each other started blackmailing the complainant and on 16.2.2011 the accused persons again called the complainant at Shivaji Nagar and when the complainant did not agree to their illegal demands, the accused persons

threatened that they will put the said video film on internet and finding no way, the complainant again went to Shivaji Nagar. Thereafter, accused nos.1, 2 and 4 again committed rape with the complainant after giving some intoxicant substance and also confined the complainant for 20 days and during that period accused nos.1, 2 and 4 continuously committed rape with her. Thereafter, in the absence of the accused persons, the complainant ran away from the said place and escaped from their clutches and disclosed the whole occurrence to her parents. Thereafter, the complainant was medically examined and it was found that she got pregnant by accused nos.1,2 and 4. Thereafter, the complainant and her parents reported the matter to the police of PS Focal Point, Ludhiana, but the said police at the instance of the accused persons did not take any action and now, the accused persons are roaming freely and are threatening the complainant with dire consequences. It has been alleged that the accused persons have thus committed offences punishable under Sections 363, 376, 506, and, under Section 120-B of the IPC.

3. After recording pre-summoning evidence, the learned Illaqa Magistrate, after finding sufficient grounds to proceed against the accused persons for commission of offences punishable under Sections 363, 376, 506 and 120-B of the IPC, ordered to summon the accused persons. Accused Totti did not appear before the learned Magistrate despite his summoning through publication of proclamation u/S 82 of Cr.P.C. and later on, he was declared a proclaimed person on 5.9.2013 by the then learned JMIC.

### **Committal proceedings**

4. Since the offence punishable under Section 376 of the IPC, was

exclusively triable by the Court of Session, therefore, the learned committal Court concerned, proceeded to commit the case for trial to the Court of Session.

**Trial Proceedings**

5. Consequently, the learned trial Judge concerned, proceeded to draw charge(s) against the accused, for offences punishable under Sections 376(2)(g), and, under Section 506 of the IPC, and, also put the afore charges to the accused, to which they pleaded not guilty, and, claimed trial.

6. In support of the prosecution case, four prosecution witnesses stepped into the witness box, and, subsequently, the learned trial Judge concerned, proceeded to draw proceedings, under Section 313 of the Cr.P.C., but therein, the accused claimed false implication, and, pleaded innocence. The accused examined three witnesses in their defence.

**Submissions of the learned counsel for the applicant**

7. The learned counsel appearing for the aggrieved victim/prosecutrix has made a vigorous address before this Court, that the challenged verdict of acquittal, is a result of gross misappreciation, and, non-appreciation of the evidence, as existing on record. Thus, he argues that the instant application be allowed, and, the verdict of acquittal (supra), as made by the learned trial Judge concerned, be quashed, and, set aside.

**Statement of the prosecutrix**

8. Admittedly, the prosecutrix is a married lady. Moreover, she, at the relevant stage of hers being subjected to purported forcible sexual intercourse by the accused, had arrived at the age of meteing a valid consent to the accused. Therefore, the statement of the prosecutrix assumes prime importance, as such, her deposition has to be carefully read.

9. Though, in her examination-in-chief, she has assigned an incriminatory role to the accused qua the offences (supra). However, despite hers in her examination-in-chief, rather completely corroborating her previously recorded statement, in writing, yet may not completely convince this Court, that her above deposition is completely truthful, and/or is confidence inspiring. Necessarily her deposition, as comprised in her cross-examination, is also to be read. A reading of her deposition, as carried in her cross-examination, is but essential, as then it can be determined whether she has improved or embellished, upon her previously made statement, in writing or has therein contradicted her version, as spelt in her examination-in-chief.

**Reading of the cross-examination of the prosecutrix**

10. A reading of the cross-examination of the prosecutrix reveals, that she has therein admitted, that there was some property dispute between Bachan Singh, and, this father Jaswant Singh. The above admission does squarely prove the plea of accused Soma, that she has been falsely implicated by the prosecutrix but for wreaking vendetta, upon her. Moreover, even insofar as the involvement of accused Sukhdev Singh, father of accused Happy and Jaggi, is concerned, the prosecutrix has not assigned, qua accused Sukhdev Singh, qua his committing any forcible sexual intercourse, upon her. Therefore, obviously there is hence a completest false implication of accused Sukhdev Singh qua charges (supra).

11. Though, evidence did emerge that there was a love affair inter se accused Happy with the prosecutrix, but yet the prolonged silence of the prosecutrix since the year 2011 upto 2013 about the above fact, does have its inevitable fatal consequence qua the story propounded by the

prosecutrix. The reason becomes comprised in the factum, that the prosecutrix, as above stated, being a married lady, besides obviously, when she had, at the relevant stage, arrived at the lawful age of consent, thus she was not expected to omit to promptly report the incident(s) to her parents or to the police or even to her husband. However, she has done so. The absence of the above omission, does make deep inroads into the truthfulness of the version, as propagated by the prosecutrix. Conspicuously, also when the relevant delay is immensely prolonged. The purported reason, for the happening of the delay becomes comprised in the relevant incident, being videoclipped, thus on pretext of viralization(s) thereof, hers succumbing to the sexual overtures of the accused, besides hers also omitting earlier to make reportings, also appears to be feeble, as the said video clips never became collected, nor became adduced into evidence. Moreover, though she speaks about hers in sequel to hers being subjected to repeated sexual intercourse(s) by the accused, rather developing pregnancy, but even the said fact is not supported by any tangible medical evidence, as comprised in the DNA test concerned. Therefore, when no DNA test became conducted at the relevant stage, and, its pronouncing that the accused concerned, is the biological father of the child, who was born from the womb of the prosecutrix, therefore, it cannot be concluded that, in sequel of the alleged sexual intercourse(s) held amongst the accused, and, the prosecutrix, rather resulted in the prosecutrix developing pregnancy, and, thereafter hers delivering a boy/girl, fathered by the accused concerned. Even if the accused had refused to undergo a DNA test, yet therefrom also no adverse inference can be drawn against the accused. The reason thereof becomes embodied in the hereinafter drawn conclusion, that the sexual

intercourse(s), if any which became entered into amongst the concerned, were completely consensual.

12. Moreover, the prosecutrix has alleged that she was falsely confined by accused Happy for a number of days, and, also that then he proceeded to continuously commit forcible sexual intercourse, upon her. However, yet the prosecutrix not immediately protesting against such acts committed, upon her during her confinement by the accused, nor hers making any attempt during the above prolonged duration of her stay in the company of the accused, to free herself, from his clutches, does foster an inference, that she was a consensual partner to the sexual intercourses, if any, which became entered into by her with the accused Happy. The further fortified reason for making the above inference emerges from the further fact, of the prosecutrix admitting in her cross-examination, that the accused used to move out from the house where he had kept her, but yet even on such occasions, the prosecutrix omitted to invite the attention of the neighbours, through hers raising hue and cries, nor she through cell phones or other modes rather intimated either her husband or her parents about the accused unlawfully detaining her, and, besides his then committing repeated sexual intercourse(s), upon her. Thus, even the above omissions, do create a firm inference, that the prosecutrix has invented a story of co-accused Happy repeatedly subjecting her to forcible sexual intercourse(s). Therefore, even the sexual intercourses, if any, which became entered into, by accused Happy with the prosecutrix, are to be concluded to be with her completest consent. In consequence, when there is no medical evidence, in support of the offence(s) concerned, thus, it is aptly concluded by the learned trial Judge concerned, that all the accused were amenable for a verdict of

acquittal being made upon them. Moreover, even the verdict of acquittal, as made, in respect of co-accused Totti, and, Jaggi, rather is not legally infirm, as the prosecutrix did not seek the DNA test of the above, but had only untenably sought the DNA testing of accused Happy. Thus, the above factum also leaves the above co-accused free from inculcation. Moreover, the asking by the prosecutrix, qua a DNA test, being conducted only in respect of accused Happy, is but for the reason that there was proven enmity against his father one Sukhdev Singh.

**Final order**

13. Consequently, this Court does not find any merit in the application, seeking leave to appeal, and, the same is hereby dismissed. The impugned verdict of acquittal, as made by the learned trial Court, is maintained, and, affirmed. The case property, if any, be dealt with, in accordance with law, after the expiry of the period of limitation for the filing of an appeal.

14. Records be sent down forthwith.

**(SURESHWAR THAKUR)**  
**JUDGE**

**(N.S.SHEKHAWAT)**  
**JUDGE**

**September 27, 2022**  
**Gurpreet**

**Whether speaking/reasoned : Yes/No**  
**Whether reportable : Yes/No**