

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

**CRA-AD-63-2021
DECIDED ON : 15th JULY 2022**

GURSHARAN KAUR

... APPELLANT

VERSUS

STATE OF PUNJAB AND ANOTHER

... RESPONDENTS

**CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH
HON'BLE MR. JUSTICE SANDEEP MOUDGIL**

Present: Mr. H.K. Aurora, Advocate, for the appellant

SANDEEP MOUDGIL, J

The appellant has preferred the present appeal against the impugned judgment dated 11.12.2020, passed by the Ld. Addl. Sessions Judge (Fast Track Court), Amritsar (for brevity 'Trial Court'), whereby, the accused-Kuldeep Singh (respondent No.2 herein) was acquitted of the charges framed against him under Sections 238 and 376 of IPC.

2. The factual matrix of the case, as referred to in the impugned judgment, are that the present FIR had been lodged on the basis of application (Ex.P5), which was moved by the complainant/victim with the allegations that she was 28 years old and have two sisters and one brother. Her father is a labourer and she used to study in the Sant Longowal Institute of Engineering and Technology at Longowal, District Sangrur, during 2011 to 2013, where, she came into contact with accused-Kuldeep Singh, who, without her wishes used to talk to her. Thereafter, in the year 2015, when after completion of her studies, she got a job in the Amritsar, then the said accused-Kuldeep Singh, after getting her mobile number, started calling to

her from some other contact and allured her that he can get her a good job with good salary and asked the prosecutrix/complainant to meet him. The prosecutrix/complainant has further stated that she met the accused-Kuldeep Singh near the Golden Temple at Amritsar and the accused-Kuldeep Singh then took her to many places around the Golden Temple and thereafter, at around 6:00/7:00 P.M., the said accused-Kuldeep Singh took her to in the Hotel Shivam, situated on Queens Road, Amritsar, where the accused served her with some snacks and cold drinks. Due to intake of said food, she felt drowsiness and asked the accused-Kuldeep Singh to allow her to go back to home, but the accused-Kuldeep Singh asked her to take some rest there and thereafter, he committed rape upon her in the room of the aforesaid Hotel. The said act was done when she was unconscious and against her wishes and without her consent. The next day, both the prosecutrix/complainant and accused-Kuldeep Singh left the Hotel and the prosecutrix/complainant went back to her house at Phagwara. The prosecutrix/complainant, thereafter, had made call to the accused and used harsh words against him, but the accused ignored her. After some time, the prosecutrix/complainant came to know that she has become pregnant from accused-Kuldeep Singh and when she told the said fact to him, he took her to a private hospital in the area of Raikot, District Ludhiana, where, the prosecutrix/complainant told the concerned nurse that she is pregnant for about six months. The accused compelled the prosecutrix/complainant to abort and then he left her. Thereafter, the prosecutrix/complainant disclosed the whole story to her family members and thereafter, she gave birth to a child, who was already dead in her womb. Thereafter, an application was moved to the police, and

then FIR in question came to be registered.

3. On registration of the FIR, the police investigated the case and accused-Kuldeep Singh was arrested. After completion of the investigation, challan was presented. On commitment of the case, charges under Sections 328, 376 of IPC were framed against the accused, to which he pleaded not guilty and claimed trial.

4. In order to prove its case, the prosecution examined as many as 15 witnesses, produced material documents and objects, which were exhibited. While recording the statement of accused-respondent No.2 under Section 313 Cr.P.C., he denied all the allegations in toto, reiterated his innocence and false implication in the case. He, however, led no evidence/witness in his defence.

5. On consideration of the material on record and submissions made by learned counsel for the parties, learned Trial Court vide impugned judgment dated 11.12.2020, held that the prosecution has failed to prove its case beyond all shadows of doubt and to prove the point of determination and acquitted the accused-respondent No.2 from the charges framed against him.

6. Being aggrieved by and dissatisfied with the aforesaid impugned judgment of acquittal, the present application for grant of leave to appeal has been filed by the applicant/appellant.

7. Learned counsel for the applicant/appellant has argued that the learned trial Court has failed to appreciate the prosecution evidence, especially the direct evidence produced against respondent No.2 and erroneously acquitted the accused. The testimony of the

prosecutrix/complainant coupled with her statement under Section 164 Cr.P.C. was sufficient enough to convict the accused. The trial Court did not appreciate the fact that the accused has committed the rape upon the prosecutrix/complainant on 22.12.2017 in Hotel Shivam, situated at Queens Road, Amritsar, without her wishes and consent, by administering some intoxicant in snacks and cold drink. Even it is also proved on record that the prosecutrix/complaint gave birth to a child, who died in her womb and through DNA test report also, it has been proved that the said child was fathered by the accused-respondent No.2, which is a conclusive evidence that sexual intercourse took place between the accused and the prosecutrix.

8. Even the medical evidence also supported the case of the prosecution and clearly shows that intercourse took place. Learned counsel for the appellant further submits that from the medical as well as oral evidence led by the prosecution, it is fully proved beyond reasonable doubt that sexual intercourse took place between the accused and the prosecutrix. Thus, as per Section 114-A of the Indian Evidence Act, when the prosecutrix denied the factum of consent, it has to be believed by the Court that said sexual intercourse was without her consent and the accused was liable to be convicted for the offence of rape. Learned counsel has further submitted that the accused has been wrongly acquitted by the trial Court on minor discrepancies and contradictions and committed a grave error while recording a wrong finding that since during the inquiry held by the police before the registration of the FIR, the accused had never denied from marrying the victim, therefore, the allegations that the accused refused to marry the prosecutrix stands falsified and, as such, the prosecution has failed

to prove that the accused had committed the sexual intercourse with the prosecutrix without her consent. Therefore, leave to appeal against the impugned judgment may be granted.

9. We have considered the submissions made by the counsel for the applicant-appellant and with the able assistance of her counsel, have gone through the judgment passed by the trial Court.

10. Before adverting to the facts of the case, it would be worthwhile to refer to the scope in acquittal appeals. It is well settled in catena of judgments that an Appellate Court has full power to review, re-appreciate and consider the evidence upon which the order of acquittal is founded. However, the Appellate Court must bear in mind that in case of acquittal, there is prejudice in favour of the accused, firstly, the presumption of innocence is available to him under the Fundamental Principle of Criminal Jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent Court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reaffirmed and strengthened by the trial Court.

11. In the present case, there are several discrepancies and material contradictions in the statements of the prosecutrix, which render her version doubtful. The entire story of the prosecution is based upon the statement of the prosecutrix that she was studying in the Sant Longowal Institute of Engineering and Technology and passed MBA from there and the accused used to follow and harass her during the said period and under this fear, the prosecutrix started talking with him. After completion of her studies, the prosecutrix returned to her house at Phagwara and thereafter, she started

doing her job at Amritsar, where, on 22.12.2017, she met the accused after he persuaded her that he can get her adjusted in a good job with handsome salary, which would be more than the salary, she was drawing at that time.

12 The prosecutrix met the accused near Golden Temple in Amritsar and accused took her to places around the Temple, where, they kept roaming till 6:00/7:00 P.M. Thereafter, accused took her to Hotel Shivam at Queens Road, Amritsar. She had further stated that near the Golden Temple, the accused served with some snacks and cold drink and after about 15/20 minutes she felt drowsy and asked the accused-Kuldeep Singh to allow her to go back, but accused told her that she should take some rest and took her to Shivam Hotel, where, accused committed rape with her without her wishes and consent and thereafter, next day, they went to their respective homes. Thereafter, the prosecutrix became pregnant from the loins of accused and when this fact was disclosed to the accused, he took her to Raikot, District Ludhiana, where, the prosecutrix was compelled to abort, but as the accused could not arrange the demand of Rs.50,000/- raised by the Doctor at Barnala, the prosecutrix disclosed the whole story to her family.

At this stage, on 03.08.2018, a complaint was moved for registration of FIR. However, in the meantime, the prosecutrix gave birth to a dead child on 06.09.2018. Subsequent thereto, prosecutrix got recorded her statement under Section 164 Cr.P.C. before the Magistrate, after registration of the FIR.

It is also evident on the file that the learned counsel for the accused during cross-examination has specifically asked the question about the long association between the accused and the prosecutrix. He also asked

her during the cross-examination that she has given her Aadhar Card at the time, when they went to get a room for stay in the Hotel Shivam. The answer to those questions was in affirmative. The main stress in the arguments of the learned counsel for the accused was that there was long association in the form of love affair between the accused and the prosecutrix, therefore, there was no question of committing sexual intercourse against the wishes of the prosecutrix. He has also stated during his arguments that the prosecutrix had voluntarily gone with the accused.

13. The learned Trial Court has considered specifically the moot point that whether any sexual intercourse had taken place with the prosecutrix after administering intoxicant to her. Rather during arguments, it became evident that the sexual intercourse had taken place between the prosecutrix and the accused. Even from the DNA test (Ex.PZ), it was clear that the prosecutrix had given birth to a child of the accused. Therefore, there remains no question to disbelieve that sexual intercourse has actually taken place. The only question in such a situation left with the trial court for consideration was as to whether the sexual intercourse had taken place with or without the consent of the prosecutrix.

14. This Court is sanguine of the legal proposition that where the victim states that she has been subjected to sexual intercourse against her consent, presumption as to be drawn that rape has been committed upon her. However, in the present case the factual matrix is to be examined in the peculiar circumstances particularly arising out of the allegation that prosecutrix was intoxicated in the market first and thereafter under the influence of such intoxication when she felt drowsy she was taken to the

hotel by the accused. In the light of the fact that what happened in the hotel right from the entry therein, is very material for examination in the case in hand. During investigation, statement of the owner of the hotel was recorded, wherein, he was cited as a witness. As per his statement before the Court while appearing as PW-13, he has stated that he is the owner of the hotel under the name and style of Hotel Shivam Residency, Queens Road, Amritsar, and he also produced the Tourist Visitor Register, having the entry of the arrival of the prosecutrix and accused in the said hotel on 22.12.2017 at 06:45 PM as also the photocopies of the Aadhar Cards of the prosecutrix and accused, which were given by them at the relevant time. The booking of the room was got made online by OYO App. The owner of the said hotel also suffered statement to the police during investigation on 05.10.2018. Lady Investigating Officer, who appeared as PW-15 before the Court, stated that she has taken the photocopies of the said documents from Shivam Hotel and as per her investigation the accused and the Prosecutrix had affixed their signatures in the entry register. She further admitted that during investigation, it had come on record that there were continuous phone calls being exchanged between the accused and the prosecutrix.

15. During cross-examination, when the Aadhar card was put to the prosecutrix, she denied the same to be of her. This fact clearly gives an inference that the victim had intentionally denied the knowledge of the said fact. From the evidence of the owner of the Hotel and the investigation, it becomes clear that when the prosecutrix entered the said hotel on the date of occurrence, she was in her senses and was not under intoxication in any manner. Moreover, there was no ground available to the owner to depose

against the prosecutrix and being an independent and natural witness, his evidence is of utmost importance. Further the conduct of the prosecutrix in the hotel was also of utmost importance, as she herself provided copy of her Aadhar card to the hotel owner at the time of check-in to the said hotel.

16. Consequently, this very fact falsifies her story of being intoxicated before entering into the hotel, moreover, the booking of the said hotel was also done online. Thus, it shows that she was having the knowledge of going to the Hotel and she herself accompanied the accused to the hotel out of her own free will. Therefore, the story putforth by the proesuctrix about giving her some intoxicated substance before her arrival to the hotel, stands falsified. Further, the story of giving intoxicant to the prosecutrix in a shop is also not acceptable, as the shop was located in a thickly populated area, and she did not resist if the accused was taking her to the hotel against her wishes. Rather, she was in her full senses, when she reached in the hotel. Hence, such a conduct of the prosecutrix shows that she was a consenting party to what had happened in the said hotel on the day of occurrence.

17. Moreover there were frequent phone calls between the prosecutrix and the accused and this fact is sufficient to infer that both were in relationship and, thus, there remains nothing to hold that there was consensual sexual intercourse between both of them. More so, the matter was reported to the police by the complainant after a gap of 8 ½ months from the date of alleged occurrence. Further the complainant is not an illiterate person who will not understand the consequence of visiting Hotel, if she was not consenting for accompanying the respondent No.2 to a Hotel room.

18. We, therefore, do not find any ground to interfere with the well reasoned findings recorded in the judgment dated 11.12.2020, passed by the learned Trial Court as the prosecution has miserably failed to prove its case against respondent No.2 and he has been rightly acquitted of the charges framed against him.

19. Accordingly, the present appeal, being devoid of merits, fails and is hereby dismissed.

(SANDEEP MOUDGIL)
JUDGE

(AUGUSTINE GEORGE MASIH)
JUDGE

15th JULY, 2022

Sham

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No