

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

**CRA No. AD-675 of 2019 (O&M)
Date of decision: 27.07.2022**

Manpreet @ Sonia

.....Appellant

Versus

State of Haryana and another

.....Respondents

**CORAM:HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MRS. JUSTICE ARCHANA PURI**

Present: Mr. Tarun Dhingra, Advocate,
for the appellant.

Ritu Bahri, J.

CRM-30020-2019

In view of the averments mentioned in the application, same is allowed and delay of 63 days in filing of the appeal is condoned.

CRA-AD-675-2019

Complainant-appellant (Manpreet @ Sonia) has come up in appeal against the judgment dated 28.02.2019 passed by the Additional Sessions Judge (Exclusive Court for Heinous Crime against Women), Kurukshetra, whereby accused-respondent No.2 (Neeraj Bawa alias Riki) have been acquitted of the charges framed against him under Sections 376 (2) (1), 323 and 506 IPC.

Brief facts of the case are that on 16.11.2017, complainant-appellant made a complaint/application to SI Ramandeep Kaur to the effect that she was disabled and divorcee and was residing in a rented house for the last 10 years. About one year prior to the registration of the case,

accused-Neeraj Bawa alias Riki @ simran Singh Dhillon (respondent No.2) started chatting with her on Facebook account and proposed her for marriage. Thereafter, he started visiting her house and told that he was unmarried. He assured her that he would get affixed her artificial leg and on the pretext of marriage, he kept on making physical relations with her. The accused-respondent deposited some amounts in her account on different dates, details of which are given as under:-

<u>Amount</u>	<u>Date</u>
Rs.5000/-	06.06.2017
Rs.5000/-	20.06.2017
Rs.5000/-	02.08.2017
Rs.5000/-	04.08.2017
Rs.5000/-	16.08.2017
Rs.1000/-	04.09.2017
Rs.5000/-	13.09.2017
Rs.5000/-	15.09.2017
Rs.1500/-	21.09.2017.

Subsequently, complainant-appellant came to know that accused-respondent No.2 was married and he had cheated her. When she refused to maintain any relation with him, he gave beatings and threatened her. As per complainant, accused-respondent used to come to her house under the influence of liquor and committed rape upon her after giving severe beatings. On 13.11.2017, he came to her house and allured her that he would get divorce from his wife and thereafter, marry her. On her refusal, he gave beatings and committed rape upon her. Thereafter, she became unconscious. Accused-respondent No.2, after breaking her almirah, took away valuables, including chain, ear rings, and Rs.20,000/- to Rs.22,000/- in cash.

On the basis of the aforesaid complaint, FIR under Sections 376 (2) (1), 323 and 506 IPC was registered against the accused. He was apprehended on 21.11.2017. On conclusion of investigation, report under

Section 173 Cr.P.C. was submitted against the accused-respondent No.2 before the Illaqa Magistrate. Copies of challan were supplied to them free of costs as envisaged under Section 207 Cr.P.C. Since offence under Section 376 (2) (1) IPC was triable exclusively by the Court of Sessions, the case was committed to the Court of Sessions.

Finding a prima facie case, charge under Sections 376 (2) (1), 323 and 506 IPC was framed against accused-respondent No.2, to which, he pleaded not guilty and claimed trial.

In order to prove its case, the prosecution examined SI Mukesh Kumar (PW-1), EHC Kuldeep (PW-2), ASI Jeet Singh (PW-3), ASI Gurminder Singh (PW-4), P/SI/SHO Surender (PW-5), C1 Rajesh Kumar (PW-6), Dr. Manoj Ranga, Medical Officer (PW-7), SI Ramandeep Kaur, IO (PW-8), prosecutrix-complainant (PW-9), Dr. Mehak Sharma, Medical Officer (PW-10), Uncle of victim (PW-11), Dr. Bahadur, Medical Officer, LNJP Hospital, Kurukshetra (PW-12). Documents Ex.P1 to Ex.P28 were also tendered in prosecution evidence.

After conclusion of the prosecution evidence, statement of accused-respondent No.2 under Section 313 Cr.P.C. was recorded, wherein entire incriminating evidence was put to him. However, he denied the same and pleaded false implication. In defence, accused tendered into evidence photographs Ex.D1 to D5, statement of uncle of victim Ex.D1, photocopy of comments on Facebook with photo Mark D1 to D22, list of articles of parlour Mark D23, photocopy of treatment report of victim Mark D24 and chart showing amounts deposited by accused in the account of victim Mark D25.

Trial Court, after hearing learned counsel for the parties and going

through the evidence led by the parties, gave findings that as per MLR Ex.P24 conducted by Dr. Mehak Sharma (PW-10), the prosecutrix had given the history of sexual assault on 14.11.2017 at about 12.30 A.M. at her residence. However, as per complaint Ex.P22, the accused had committed sexual assault upon her on 13.11.2017. Even prior to her medical examination by Dr. Mehak Sharma (PW-10), the prosecutrix was hospitalized with the history of assault, at home, on 14.11.2017 at about 7.00 P.M., but there was no mention of any sexual assault in the said MLR either on 13.11.2017 or 14.11.2017. At the time of her medical examination, the prosecutrix was conscious, however, during her cross-examination, she stated that she was unconscious/semi conscious at the time of medical examination. Trial Court further observed that there was no forensic evidence to support the claim of the prosecutrix as the clothes or swabs taken from her body were not found to be having human semen. As per deposition of Ramandeep Kaur, Investigating Officer (PW-8), the allegation that the accused had decamped with her valuable articles or cash, was found to be false during investigation. Complainant-prosecutrix (PW-9) stated that on 13.11.2017, accused-respondent No.2 came to her house under the influence of liquor and make promise that he would get divorce from his wife and thereafter, perform marriage with her. But, when she did not oblige, he gave beatings and committed rape upon her. However, in her statement Ex.P23, recorded under Section 164 Cr.P.C., the complainant, though alleged that on 13.11.2017, the accused was under the influence of liquor and he gave severe beatings to her, but she did not allege that he committed rape upon her. Prosecutrix (PW-9) had alleged that the accused had misrepresented her by not telling that he was married. However, during

cross-examination, she admitted the photographs Mark D1 to Mark D22 on the Facebook of the accused, wherein, photographs of the accused with his wife and daughter had been commented upon by the prosecutrix herself clearly acknowledging that the accused was already married and having one small daughter. Even, in her complaint Ex.P22, she had given separate mobile numbers of the accused and his wife. Hence, she already knew that accused-respondent No.2 was married. The very foundation of the allegations that the accused had misrepresented himself to be unmarried, was not found to be proved on record. As per prosecutrix, accused-respondent No.2 used to deposit amounts ranging from Rs.1000/- to Rs.5000/- in her account despite her refusal to accept this amount. However, during cross-examination, she stated that she did not withdraw any amount from her account and it was the accused, who had withdrawn the said amount. This testimony of the prosecutrix was taken to be highly doubtful. Photograph Ex.D5 shows her friendly relationship with the accused. Finally, the trial Court observed that the prosecutrix was 40 years old lady. She was a divorcee having grown up children, who were residing with her previous husband. She was residing alone in the house. The accused was aged about 30 years. He was also married having one daughter. Both of them are matured persons. Defence of the accused was that out of sympathy, he used to help the prosecutrix being a good friend. He used to give her money as well. Subsequently, she, in connivance with one Rakesh Saini, another friend of victim, got a false case registered against him. Mark D25 is the chart showing amounts deposited by the accused in the account of the prosecutrix. Photographs of the prosecutrix with aforesaid Rakesh Saini are proved on record as Ex.D1 to Ex.D4. He further stated that at the

time of her accident, Rakesh Saini and his family helped her as a friend. Rakesh Saini had also come to the Court. During her cross-examination, the prosecutrix had refused to disclose, as to whether Rakesh Saini used to accompany her on each and every date of hearing. Alleged uncle of victim (PW-11), during cross-examination, admitted that he came to the Court with a family friend namely, Rakesh Saini and that he was not having any blood relation with the victim. Trial Court further observed that the conduct of the victim and her alleged uncle (PW-11) lends credence to the defence of the accused that aforesaid Rakesh Saini had some role in helping the victim and registration of case against the accused, after relationship of the victim became sour with the accused. With these observations, trial Court acquitted accused-respondent No.2 of the charges framed against him.

Heard.

In the present case, the prosecution was not able to prove that the accused-respondent No.2 had ever cheated the complainant-prosecutrix by not disclosing that he was married. It was a mutual relationship between the parties and when this relationship became sour, the present FIR was got registered against the accused. No medical evidence was led to show that on 13.11.2017, the complainant-prosecutrix was physically assaulted and rape was committed upon her. As per MLR Ex.P24, conducted by Dr. Mehak Sharma (PW-10), victim-prosecutrix had given the history of sexual assault on 14.11.2017 at her residence. It is contradictory to her claim in the complaint Ex.P22, wherein she had stated that accused committed sexual assault upon her on 13.11.2017. Further, as per the allegations levelled in the complaint Ex.P22, after committing rape, the accused had taken away her valuables and some cash. However, during investigation, all these

allegations were found to be false, as stated by SI Ramandeep Kaur, Investigating Officer (PW-8).

In view of the above, the prosecution has miserably failed to lead any cogent and convincing evidence to substantiate the allegations levelled against the accused-respondent No.2. In the absence of any cogent and convincing evidence, scope of interference in the impugned judgment is very limited. Accordingly, having examined the impugned judgment, no illegality, much less perversity has been found therein warranting interference by this Court. The evidence has been appreciated in the right perspective.

Dismissed.

(RITU BAHRI)
JUDGE

(ARCHANA PURI)
JUDGE

27.07.2022
ajp

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