

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

CRA No. AD-84 of 2022 (O&M)

Date of decision: 25.07.2022

Meenakshi

.....Appellant

Versus

Varun Kumar and another

.....Respondents

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

Present: Ms. Anamika Mehra, Advocate,
for the appellant.

Ritu Bahri, J.

Complainant-appellant (Meenakshi)) has come up in appeal against the judgment dated 16.08.2021 passed by the Fast Track Special Court, Chandigarh, whereby accused-respondent No.1 (Varun Kumar) has been acquitted of the charges framed against him under Sections 376 (2) (n) IPC.

Brief facts of the case are that complainant-appellant made one complaint, Ex.D76, to the SHO, Govindpuri, Delhi and subsequent complaint, Ex.P1, to SSP, Chandigarh to the effect that in May, 2013, she met the Varun Kumar-accused at a Coaching Centre, where he proposed her for marriage and introduced her to his family members. She accepted the proposal. It was alleged that accused made forcible physical relations with her at his friend's place on 29.07.2013. Thereafter, in the month of October, 2013, he made forcible physical relations with her at Mohali. In 2014, he

took a rented accommodation and introduced her as his wife to the landlord.

Their relationship was to the knowledge of mother of the accused. The accused also invited her at his house in the absence of his mother and sister. He talked about their marriage to his parents. His father agreed for their marriage, but mother refused. When the complainant asked him to break the relationship, accused-respondent No.1 stated that he would marry her and continued with relations. It was alleged that between September, 2014 to March, 2015, accused worked in Amritsar, but maintained physical relations with her whenever he visited Chandigarh. Thereafter, he shifted to Gurgaon in April, 2015 without informing her. On 03.11.2015, she visited Delhi, whereupon he took her to Gurgaon and stayed there for one week. The accused maintained relations with her to the knowledge of his family members. On asking of accused, she shifted her job to Delhi in March, 2016. She lived with him at Gurgaon as well. It is alleged that accused forcibly administered her abortion pills. On 24.01.2017, she had to visit Gynecologist. Thereafter, on 18.02.2017, he got engaged to another girl and stopped talking to her. When she finally asked him to solemnize marriage, he refused to do so. Consequent upon making a complaint to the police, accused and his family members pressurized her emotionally to withdraw the same and promised to perform marry. But subsequently, they did not fulfill their promise. It was alleged that she was cheated for four years by the accused and his family members on false promise of marriage. In her subsequent complaint Ex.P1, she reiterated the averment of rape on false promise of marriage.

On the basis of the said complaint, FIR under Section 376 (2) IPC was registered against accused-respondent No.1. During investigation, statement of victim under Section 164 Cr.P.C. was got recorded. Rough site

plan of the place of occurrence was prepared. Accused-respondent No.1 was arrested. On conclusion of investigation, report under Section 173 Cr.P.C. was submitted against the accused-respondent No.1 before the Illaqa Magistrate. Copies of challan were supplied to him free of costs as envisaged under Section 207 Cr.P.C. Since offence under Section 376 IPC was exclusively triable by the Court of Sessions, the case was committed to the Court of Sessions vide order dated 30.11.2017 passed by the Chief Judicial Magistrate, Chandigarh.

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

In order to prove its case, the prosecution examined Victim (PW-1), Dr. Sumit Gupta (PW-2), HC Sunil Kumar (PW-3), Dr. Jyotsna Singh (PW-4), SI Prem Singh (PW-5), HC Yash Pal (PW-6), ASI Inderjit Singh (PW-7) and SI Sarita Roy (PW-8). Documents Ex.P1 to Ex.P20 were also tendered in prosecution evidence.

After conclusion of the prosecution evidence, statement of accused-respondent No.1 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 examined Raj Rani, Warden from Model Jail, Burail, Chandigarh as (DW-1) and tendered into evidence documents Ex.D1 to D84 and Ex.DW1/A.

Trial Court, after hearing learned counsel for the parties and going through the evidence led by the parties, acquitted the accused-respondent No.1 of the charges framed against him. While acquitting the accused,

in *Maheshwar Tigga vs. State of Jharkhand*, 2020 (4) RCR (Criminal) 469. It was found that accused-respondent No.1 and the prosecutrix were in relationship for a period of four years and consent given by the prosecutrix was a conscious and informed choice made by her after due deliberation for a long time. She had chosen to participate in the sexual activity being fully conversant of circumstances and being conscious of its consequences. It was further observed that the relations between them were the result of their liking and affection for each other and not solely based on promise of marriage as alleged. The consent given by the prosecutrix for sexual intercourse with accused-respondent No.1, with whom she was deeply in love, cannot be said to be given under misconception of fact. Trial Court observed that the nature and manner of allegations, coupled with the messages exchanged between them, which were exhibited during trial, made it apparent that their love for each other grew and matured over a sufficient period of time and the passion of youth ruled over their mind and emotions. Delay of four years in lodging the FIR, after one month of engagement of accused-respondent No.1 with another girl, on the pretext of promise to prosecutrix raised serious doubt about the truth and veracity of allegations levelled by her. Failure of accused-respondent No.1 to fulfill his promise could not be construed to mean that the promise itself was false. The prosecutrix was aware of obstacles in their relationship, but still engaged in sexual relations.

Learned counsel for the appellant has argued that the appellant is a victim and she was involved in an emotional relationship with respondent No.1 for the last four years. She trusted him for the future relationship as parents of respondent No.1 were agree for their marriage.

Heard.

At the very outset, reference can be made to the judgment dated 28.09.2020 passed by Hon'ble the Supreme Court in **Maheshwar Tigga vs. State of Jharkhand**, Criminal Appeal No.635 of 2020 (arising out of SLP (Crl.) No.393 of 2020). In that case, both prosecutrix and accused were residing in the same village and were known to each other. The letters, exchanged between them, made it apparent that their love for each other grew and matured over sufficient period of time. It was observed that the physical relations that followed was not isolated or sporadic in nature, but regular over years. Delay of four years in lodging the FIR, at opportune time of seven days prior to the marriage of appellant (in that case) with another girl, raised serious doubts about truth and veracity of allegations levelled by the prosecutrix. Ultimately, the appellant was acquitted by observing that the consent given by the prosecutrix was conscious and it was spread over long period of time coupled with conscious positive action not to protest. In para no.14 of the judgment, it was further observed as under:-

“14. Under Section 90 IPC, a consent given under a misconception of fact is no consent in the eyes of law. But, the misconception of fact has to be in proximity of time to the occurrence and cannot be spread over a period of four years. It hardly needs any elaboration that the consent by the appellant was a conscious and informed choice made by her after due deliberation, it being spread over a long period of time coupled with a conscious positive action not to protest. The prosecutrix in her letters to the appellant also mentions that there would often be quarrels at her home with her family members with regard to the relationship, and beatings over to her.”

Recently, Hon'ble the Supreme Court in **Sonu @ Subhash Kumar vs. State of Uttar Pradesh and another**, Criminal Appeal No.233 of 2021 (arising out of SLP (Crl.) No.11218 of 2019), decided on 01.03.2021, had

allowed an appeal, whereby accused had been charge-sheeted for commission of offence under Section 376 IPC. As per FIR, the victim had developed friendship with the accused and he had assured that he would marry her. It was alleged that she had been physically exploited for 1½ years. Attempt was made by the father of accused to get them married. However, after 1½ years, accused went back to his home town at Jhansi and made a phone call that he wished to perform the Court marriage. The victim reached at Jhansi and on reaching the residence of accused, she was informed by the father of accused that he did not wish to marry her. Father of the accused also told that he had no desire to meet her and he offered her some money. Then, he asked her to leave their house. Hon'ble the Supreme Court observed that there was no allegation that promise to marry given to the victim, was false at the inception itself. Rather, it was subsequent refusal to marry the victim, which gave rise to registration of the FIR. The charge-sheet was quashed on the ground that false promise to marry was never given at the initial stage of the relationship. The prosecutrix and the accused had initially developed friendship and they continued with their physical relationship for 1½ years. Even, an attempt was made by the family members of the accused for their marriage. However, after 1½ years, the relationship fell apart and this was made a ground to register the FIR. Finally, the appeal filed by the accused was allowed.

In the facts of the present case as well, there was sufficient evidence to show that the victim and respondent No.1-accused were in relationship since October, 2013, as was evident from the messages exchanged between them. They were in love for a period of four years.

consent given by the prosecutrix was conscious and she had chosen to participate in the sexual activity being fully aware of the circumstances. Despite the fact that mother of accused-respondent No.1 had objected to their relationship, she continued to be in relationship with him. Once, prospect of their marriage was no feasible, he had shifted to Amritsar and thereafter, to Gurugram and had also changed his contact number. Text message Ex.D75A, shows that it was the prosecutrix, who had triggered the accused to develop physical relations with her despite knowledge of the fact that accused and his family were looking for a matrimonial alliance for him. Further, text messages Ex.D2, Ex.D3 and Ex.D35 shows that accused-respondent No.1 had informed the prosecutrix that his parents were looking for a match for him. All these facts clearly shows that accused-respondent No.1 did not have any intention to deceive the prosecutrix. In February, 2017, he got engaged and thereafter, the prosecutrix moved a complaint alleging that she was raped by the accused on the promise of marriage.

In the present case, the prosecution was not able to prove that the accused-respondent No.1 had ever cheated the her. It was a mutual relationship between the prosecutrix and respondent No.1 and when he got engaged to another girl, the present FIR was got registered against him.

In view of the above, this Court is of the view that the prosecution has miserably failed to lead any cogent and convincing evidence to substantiate the allegations levelled against the accused-respondent No.1. 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

appreciated in the right perspective.

Dismissed.

(RITU BAHRI)
JUDGE

(ARCHANA PURI)
JUDGE

25.07.2022
ajp

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