

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

CRA No. AD-38 of 2020 (O&M)

Date of decision: 28.10.2022

Poonam

.....Appellant

Versus

State of Haryana and another

.....Respondents

**CORAM:HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MS. JUSTICE NIDHI GUPTA**

Present: Mr. Sarvjit Singh Khurana, Advocate,
for the appellant.

Ritu Bahri, J.

Complainant-appellant has come up in appeal against the judgment dated 22.11.2019 passed by the Additional Sessions Judge, Narnaul, whereby accused-respondent No.2 (Ravi Kumar) has been acquitted of the charges framed against him under Sections 376/323/506 IPC.

Brief facts of the case are that complainant-appellant made one complaint, Ex.P2, to the SHO, Women Police Station, Narnaul, to the effect that on 14.06.2008, her marriage was solemnized with Mohinder Singh and out of this wedlock-, two daughters were born. Her husband used to work in the Indian Army. He died on 06.06.2015 in a road accident. She stayed in her matrimonial home. After death of her husband, accused-respondent No.2, being cousin of her husband, started visiting her matrimonial home. On 25.02.2018, he proposed her for marriage and he had taken into confidence her in-laws as well. He established physical relations with her on the pretext of marriage. She was sexually exploited from 25.02.2018 to 27.08.2018. When she pressurized the accused-respondent No.2 for

marriage, he gave her beatings. On 27.08.2018, he left her matrimonial home. It was further stated that the complainant-victim got pregnant, but he (accused) asked her for abortion.

On the basis of the said complaint, FIR under Sections 323/376/506 IPC was registered against accused-respondent No.2. During investigation, statements of the witnesses were recorded and rough site plan was prepared. The victim was got medico-legally examined. Statement of victim under Section 164 Cr.P.C. was got recorded. Accused-respondent No.2 was arrested on 22.09.2018. On conclusion of investigation, report under Section 173 Cr.P.C. was submitted against the accused-respondent No.2 before the Area/Illaq 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 15.11.2018 passed by the Chief Judicial Magistrate, Narnaul.

Finding a prima facie case, charge under Sections 376/323/506 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 Mahesh Kumar (PW-1), L/Ct. Urvashi (PW-2), L/HC Saroj (PW-3), father of the victim (PW-4), Victim-prosecutrix (PW-5), L/SI Sharda (PW-6), L/HC Rekha (PW-7), Dr. Yogesh Yadav (PW-8), L/ASI Sushila Kumari (PW-9) and Dr. Himanshu (PW-10). Documents Ex.P1 to Ex.P10/B 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. He claimed to have married the victim on 25.02.2018 itself in a simple ceremony, attended by Jagroop Singh, Sanjay and Raja Ram. The marriage was performed by Krishan. He further pleaded that after the marriage, the victim and her father pressurized him to transfer the agriculture land, owned by his father. On refusal, he was falsely implicated. In defence, accused examined Krishan Kumar (DW-1), Ashok Kumar (DW-2), Gaj Raj (DW-3) and Jagrup (DW-4).

Trial Court, after hearing learned counsel for the parties and going through the evidence led by the parties, acquitted the accused-respondent No.2 of the charges framed against him. While acquitting the accused, it was observed that the accused had taken the plea that he had got married with the complainant on 25.02.2018 and it was a simple marriage. Krishan Kumar (DW-1), who was the priest, stated that five years prior to 25.02.2018, he was called by Gaj Raj (DW-3) to his house and did *roka* of the victim with the accused. At that time, father of the victim (PW-4) was also present. During his cross-examination, Krishan Kumar (DW-1) stated that by mistake, he had described the date of marriage in the month of March/2018. In fact, the marriage took place on 25.02.2018. Ashok Kumar (DW-2), real uncle of the victim (brother of her father), stated that second marriage of the victim with accused-respondent No.2 was performed in the month of February, 2017. He self stated that the marriage was performed on 25.02.2017 and thereafter, again stated that it took place on 25.02.2018. Gaj Raj (DW-3), who is father-in-law of the victim, stated that he did not witness the marriage of accused-respondent No.2 and the victim, but they both stayed in his house. He further stated that the reason for not making the

marriage public was that the victim was getting pension and other benefits from the Indian Army and MACT case was also pending qua the death of husband of the victim. Jagrup (DW-4), who is father-in-law of the sister of victim, also deposed about the factum of marriage. The above said evidence led by the defence, was consistent that marriage of the accused-respondent No.2 with the victim had taken place in the month of February, 2018. Moreover, the victim being 28 years of age having two children, could not be betrayed by the accused, to stay with her.

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. 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.

evidence to show that the victim and respondent No.2-accused were in relationship since February, 2018. The trial Court has rightly come to the conclusion that marriage of the victim was solemnized with accused-respondent No.2 after the death of her first husband. Even, uncle of the victim namely, Ashok Kumar (DW-2) and father-in-law of her sister, namely Jagrup (DW-4) had consistently stated that the marriage of victim and accused was solemnized. Once, the marriage was solemnized, there could not be any question that respondent No.2-accused had falsely exploited her physically on the pretext of marriage. This cannot be made a ground to reverse the finding given by the trial Court. Moreover, in the present case, there is no medical record to show that the victim was beaten by the accused-respondent No.2.

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.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

(NIDHI GUPTA)
JUDGE

28.10.2022
ajp