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

CRA-AD-49-2020

Date of decision: 20.09.2023

RAHILA

...Petitioner

Versus

STATE OF HARYANA AND OTHERS

...Respondents

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE KULDEEP TIWARI**

Present: Mr. Saleem Ahmed, Advocate
for the appellant.

Mr. Pradeep Parkash Chahar, Sr. DAG, Haryana

SURESHWAR THAKUR, J. (ORAL)

1. The instant appeal is directed against the verdict of acquittal made on 29.10.2019, upon CIS No.410 of 2018 by the learned Addl. Sessions Judge, Nuh.
2. The genesis of the prosecution case is embodied in FIR No.34 of 12.04.2018, which became registered under Sections 365, 342 376-D, 506 of the IPC. The contents of the FIR are *ad verbatim* extracted hereinafter.

“Application against Harish and other unknown persons for forcibly taking me to Taj Guest House near barrier Bhiwadi and committing rape. I am resident of village Madhi and illiterate. On 03.04.2018 at 3.00 PM I was going from Punhana to my village Madhi and was waiting for a transport. At this time a swift white colour car came in which Harish, who is from my village was present. On his inquiry as where I was going, I revealed when Harish offered me a lift and made me sit in the vehicle in which another person unknown to me was already sitting. When we starting moving and reached Badkali chowk, they stopped the vehicle and both these

men went away and came back after half an hour with a bottle of pepsi and a glass and we all drank the said pepsi. After consuming pepsi I became unconscious and later found myself confined in a room. I told these persons as where they has brought me when they said that we can rest for some time and then they will take me to village Madhi. Now Harish and unknown person bolted the door of the room and committed rape upon me. The next morning they threatened me that if I revealed anything to anyone they will kill me and my husband. When I came out of the room I could identify this place came in my knowledge that this room was in the guest house named Taj Guest House Bhiwadi. I was highly frightened and these two men now put me in the same vehicle and dropped me at the bus stand on Delhi-Alwar Road. I somehow reached home and under the freighting state I revealed everything to my husband and now reported the matter to the police.”

3. Undoubtedly the victim-prosecutrix is a married lady, and, also at the relevant time had given birth to one child.

4. Initially, the FIR in respect of the relevant penal incident became lodged after a delay of 10 days occurring since its taking place, and, a report being made to the police concerned. The above period of delay is immense, and, unless a valid tangible explanation thereto, thus became purveyed by the prosecution, thereupon the narrations as embodied therein would *per-se* be deemed to be ingrained with vices of concoction, and, premeditation, thereby rendering them to be doctored as well as untruthful.

5. On a reading of the entire record, it is discernible that no valid explanation emanated on behalf of the prosecution, thus in explication of the above occurrence of the delay of 10 days, since the happening of the crime event, and, a report being made in respect thereof rather to the police.

6. Therefore, but obviously the prosecution version as encapsulated in the FIR becomes tainted or coloured with vices of

concoction, and, premeditation, and, thereby *prima-facie* no aura of truth can be assigned thereto.

7. Be that as it may, the deposition of the prosecutrix, in case it is bereft of any vice of any gross improvements or embellishments vis-a-vis her previously recorded statement in writing, thereupon this Court may become leaned to assign truth thereto.

8. Moreover, as stated (*supra*), since the prosecutrix was a married lady, and, when as also inferred (*supra*), that there is an immense unexplained delay in the lodging of the FIR in respect of the crime event, before the police agency. Therefore, even the above inference, is required to be borne in mind, while proceeding to make a conclusion whether the deposition of the prosecution is truthful, and, confidence inspiring.

9. In the above regard, though the prosecutrix in her examination-in-chief attributes criminality to the accused. However, she also has voiced in her examination-in-chief, that the crime site was not secluded rather was a guest house in whose vicinity, other rooms were also occupied, but at the relevant time. Therefore, the above fact, does generate an inference, that the prosecutrix could well, throughout the perpetration(s) of sexual intercourse, upon her, at the instance of the accused, rather through hers raising hues, and, cries, thus invite the attention of the neighbours residing in the rooms adjacent to the room where the penal incident took place. However, in the above regard, the prosecutrix has deposed, that she was unable to do so, as she was under a threat purveyed to her by the accused, and/or, she was under intoxication. In the latter regard there is no medical report tendered into evidence, thus supportive of the above fact.

10. The above explanation also appears to be spurious, as the MLR prepared by the doctor in respect of the victim, does not suggest, that there

were any injuries on her person, thereby exemplifying, that there was no resistance by her to the sexual intercourse, as became made upon her by the accused. Therefore, the forcible sexual intercourse(s), as become attributed by the victim to the accused, are to be construed to be completely consensual.

11. The prolonged period of stay of the prosecutrix with the accused, in the guest house, inasmuch as, for 24 hours, and, when for the entire duration, she was evidently accompanied by her son, does also beget a conclusion, that thereby the prosecutrix was a consensual partner in the perpetration of sexual intercourse(s), upon her at the instance of the accused.

12. Cumulatively thereby this Court, is of the firm conclusion, that the victim-complainant was a consensual partner in the sexual intercourse(s) which she allegedly entered into with the accused. Therefore, this Court does not deem it fit, and, appropriate to interfere with the impugned verdict of acquittal. Resultantly, the appeal is dismissed, and, the verdict of acquittal, as made by the learned trial Court concerned, is affirmed, and, maintained. The personal and sureties bonds, if any, as become furnished by the accused, are ordered to be forthwith cancelled, and, discharged. The case property be dealt with, in accordance with law, but after the expiry of the period of limitation for the filing of an appeal.

(SURESHWAR THAKUR)
JUDGE

20.09.2023

Ithlesh

Whether speaking/reasoned:-
Whether reportable:

Yes/No
Yes/No

(KULDEEP TIWARI)
JUDGE