

**CRM-41187-2015 in/and
CRA-D-1222-DB-2015**

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

**CRM-41187-2015 in/and
CRA-D-1222-DB-2015
Reserved on 15.05.2023
Date of decision:-25th May, 2023**

Om Parkash

.... Applicant

Vs.

State of Haryana and another

...Respondents

**CORAM: HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MRS. JUSTICE MANISHA BATRA**

Present: Mr. Amit Khatkar, Advocate for the applicant.

Mr. Pawan Girdhar, Additional Advocate General, Haryana.

Manisha Batra, J.

The present application has been filed by the applicant-complainant for grant of leave to file appeal against judgment of acquittal dated 06.07.2019 passed in Sessions case No.9 of 2015 titled as ***State Vs. Randeep***, registered vide FIR No. 379 dated 26.10.2014 at Police Station Sadar Hansi, under Sections 306, 376(2) (n), 417 and 506 of IPC.

2. The gravamen of the charges is that on 26.10.2014, the complainant 'O' (name withheld) had submitted a written complaint before SHO Police Station Sadar, Hansi alleging therein that his daughter 'N' (name withheld) who was 23 years old had gone missing from their house since 08.10.2014 and could not be found anywhere. He raised suspicion of her being abducted. A case under Section 346 of IPC was

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registered on the basis of this complaint. On 30.10.2014, on the basis of an intimation given by the complainant regarding presence of his daughter at Dera Sachha Sauda, Sirsa, a police party headed by SI Karamveer reached there and the victim was found there with one Mandeep. She was taken to the Magistrate and her statement under Section 164 Cr.P.C. was got recorded wherein she disclosed that she was having a love affair with accused Randeep and had left her house for Kurukshetra on his behest. She disclosed that she had stayed at a Hotel in Kurukshetra with him but subsequently accused had refused to perform marriage with her and then she had gone to the house of her friend Mandeep at Karnal. She was taken back to her house by her father. On 02.11.2014, police received an information regarding commission of suicide by the victim. The police party rushed at the spot which was the house of the complainant and the victim wherein the complainant informed that on the same day, he had gone to Dera Sachha Sauda, Sirsa where he had received information that 'N' had consumed some poisonous substance and had died. He also disclosed that the victim had disclosed to his wife that accused had been committing rape with her on giving promise to perform marriage with her and she was feeling cheated due to refusal on his part to marry with her and also that her life had been spoiled. The complainant also handed over a suicide note written by his daughter to the police. On the basis of his statement, offences under Sections 306, 376(2) (n), 417 and 506 of IPC. were added. Investigation proceedings were initiated. Postmortem examination of dead body of the victim and inquest proceedings were also got conducted. Viscera contents

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of body of the victim were sent for forensic examination. During investigation, the accused was arrested. He was interrogated and suffered disclosure statement admitting his involvement in the subject crime. After completion of necessary investigation and usual formalities, challan under Section 173 Cr.P.C. was presented in the Court for trial of the accused.

3. Copies of challan were supplied to the accused free of cost. The case was committed to the Courts of Sessions. On finding a prima facie case for commission of offences under Section 376 (2) (n), 306, 417 and 506 of IPC, the accused had been charge-sheeted accordingly. He pleaded not guilty to the charges and claimed trial.

4. To substantiate its case, the prosecution examined as many as 12 witnesses. **PW-1** Subhash Chander deposed about preparing scaled site plan Ex.P1 of the place where the accused had committed rape upon the victim. **PW-2** EASI Ram Narayan deposed about joining investigation proceedings on 05.11.2014 and about attesting Ex.P2 memo of disclosure statement of accused, Ex.P3 memo of demarcation of place of occurrence, Ex.P4 memo of taking photocopies of identity proof and extract of entries made in the register of Harsh Hotel, into custody. **PW-3** Parveen Kumar, owner of Harsh Hotel, Kurukshetra deposed about handing over Ex.P5 photocopy of extract of register containing entries regarding taking of a room in his hotel and Ex.P6 photocopy of identity proof of the accused. He also deposed about attesting memo Ex.P4. **PW-4** Mukesh Kumar, Judicial Magistrate, First Class, proved Ex.P7 application moved by ASI Karambir for recording statement of the victim

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under Section 164 of Cr.P.C., Ex.P8 statement of victim as recorded under Section 164 of Cr.P.C., Ex.P-9 and Ex.P-10 order passed by him. **PW-5** EASI Subhash Chander deposed about joining investigation on 02.11.2014 and about attesting memo Ex.P-11 qua lifting cotton swab containing vomiting of the victim and one plastic bottle of insecticide mono-36, **PW-6** Sub Inspector Karamveer deposed about conducting investigation and testified in accordance with the prosecution version. Apart from the documents already proved in evidence, he proved Ex.P-12 application moved by the complainant on 26.10.2014, Ex.P-13 FIR, Ex.P-13/A endorsement made on the FIR, Ex.P-14 memo qua taking custody of the victim on 30.10.2014, Ex.P-15 memo qua handing over custody of the victim to her father on 30.10.2014, Ex.P-16 memo qua taking suicide note of the victim into custody, Ex.P-17 rough site plan of the place of occurrence, Ex.P-18 rough sketch plan of Harsh Hotel, Ex.P-19 memo qua taking the clothing etc. of the accused into possession after conducting his medico legal examination. **PW-7** Constable Amit Kumar tendered affidavit Ex.PW7/A and deposed about receiving different parcels containing viscera contents, articles lifted from the spot and occurrence, suicide note and diary from Moharrar Malkhana and depositing the same with FSL Karnal. **PW-8** complainant "O" deposed in support of the allegations made in the complaint originally filed by him as well as his subsequent statement Ex.P-24. **PW-9** "S" (name withheld), mother of the victim deposed that on 08.10.2014, her daughter had gone from their house without telling any one. On information given by the police on 30.10.2014, they had brought their daughter from Dera

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Sachha Sauda, Sirsa from where she had been traced. She stated that on 02.11.2014, she had gone to Village Pond with her buffaloes and on returning back, she found the victim to be vomiting. A small bottle was lying near her. The vomiting was emitting foul smell. She had called her brother-in-law and information was given to the police. She stated that her daughter had committed suicide because of the accused. Police had recovered suicide note from near the dead body of her daughter. She stated that the victim had disclosed to her once that the accused Randeep had called her on the pretext of marriage and threatened to kill her if she disclosed about this fact to anyone. **PW-10** Dr. Chander Shekhar deposed about conducting postmortem examination on the dead body of the victim on 03.11.2014 and proved report Ex.P-26. He further deposed about conducting medico legal examination of the accused on 04.11.2014 and proved Ex.P-25 and Ex.P-27 applications moved by the police for conducting postmortem examination and medico legal examination of the victim and the accused respectively and Ex.P-28 medico legal report of the accused. On seeing the chemical examination report Ex.P-22 and Ex.P-23, he stated that cause of death was asphyxia due to aspiration on account of consumption of poison which was aluminium phosphide. He also deposed about handing over underwear and pubic hair of accused to police and identified them as Ex.P-1 and Ex.P-2 respectively. **PW-11** EHC Raj Kumar tendered affidavit Ex.PW11/A affirming therein that on 02.11.2014, the case property i.e. insecticides kept in plastic bottle of Mono brand, bed sheet, swabs, pieces of cloth and viscera contents along with the pubic hair along with clothing of the deceased had been

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deposited in the Malkhana under his charge and that subsequently on 25.11.2014 and 22.12.2014, they were handed over to Constable Amit for depositing the same with FSL, Chemical Examiner, Karnal. He also deposed about the handing over an envelop containing the suicide note and diary of the victim to Constable Amit on 22.12.2014 for the purpose of forensic examination. **PW-12** Inspector Jagbir Singh deposed about conducting part investigation in this case and supported the prosecution version. Apart from the documents already proved in evidence, he proved Ex.P-29 inquest report. Apart from this, the learned Public Prosecutor tendered in evidence FSL reports Ex.P-20 as per which the writing made on the suicide note of comparison was found to be matching with the writing as made on the diary of the victim wherein she had written in Hindi as well as English language. Ex.P-21 as per which no semen could be detected on the pubic hair or underwear of the accused. Ex.P-22 and Ex.P-23 chemical examiner report as per which organo compound group of insecticide was found on the clothing, bedsheet and vomit sample of the victim which matched with the poison kept in the plastic bottle recovered from the spot as well as on the viscera contents of the deceased.

5. Statement of accused was recorded under Section 313 of Cr.P.C. wherein he abjured his guilt and pleaded innocence. However, no evidence in defence had been adduced.

6. On appraising the evidence produced on record and hearing the contentions raised by learned counsel for respondent No.2-accused, the learned trial Court vide judgment dated 06.07.2015 acquitted

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respondent No.2 of the charges as framed against him.

7. Feeling aggrieved, the instant application has been filed by the applicant-complainant 'O' seeking permission to grant leave against the judgment of acquittal of the respondent No.2-accused.

8. Sh. Amit Khatkar, learned Advocate for the applicant-complainant argued that the impugned judgment of acquittal was liable to be set aside as the findings as given by learned trial Court were not sustainable in the eyes of law. There was overwhelming evidence on record to prove that the victim was induced by the respondent No.2 to acts of sexual intercourse on the false promise of performance of marriage with her and had been subjected to rape. It was also proved that she had been criminally intimidated by respondent No.2. She was proved to have committed suicide as per the abetment made by the respondent. Learned trial Court committed a grave mistake in disbelieving the cogent and reliable evidence led by the prosecution. Contents of the suicide note left by the victim made it crystal clear that not only the victim was subjected to rape and threats by respondent No.2 but it was he, who was also responsible for her suicide. Learned trial Court had not appreciated the evidence produced on record in a proper manner. Respondent No.2 had admitted his relationship with the victim even in his statement recorded under Section 313 of Cr.P.C. Learned trial Court had committed a grave error in acquitting respondent No. 2 and did not apply its judicious mind. While concluding, it was urged that the application for grant of leave deserved to be allowed.

9. Learned Additional Advocate General, for respondent No.1-

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State has not contested the application as filed by the applicant.

10. Since the applicant-complainant has sought leave to file appeal against the judgment of acquittal of respondent No.2, therefore, before proceeding further and adverting to the arguments raised by learned counsel for the applicant, it would be proper to assess the position of law in this regard. It is well settled that while considering an application for grant of leave to file an appeal against the order of acquittal, the Court is required to seek answer to the question whether the findings of the trial Court were culpably wrong, manifestly, erroneous and demonstrably unsustainable. If the Court answers above questions in negative, no such permission should be granted and order of acquittal should not be disturbed. The appellate Court has full power to review, re-appreciate and reconsider the evidence upon which the order of acquittal is founded and the Code of Criminal Procedure does not put any limitation, restriction or condition on exercise of such power. However, the appellate Court must also bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principles of criminal jurisprudence that every person should be presumed to be innocent unless he is proved to be guilty by a competent court of law; secondly, the person having secured his acquittal, the presumption of his innocence is certainly not weakened but re-enforced, reaffirmed and strengthened by the trial Court. If two reasonable conclusions are possible on the basis of evidence available on record, the appellate Court should not disturb the findings of acquittal recorded by the trial Court.

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Keeping in view this principle of law in mind, let us consider the question as to whether the application filed by the applicant-complainant deserves to be allowed or not?

11. The case of the prosecution was that on 08.10.2014, the victim 'N' had gone missing from her house and the applicant-complainant had moved a complaint in this regard on 26.10.2014 and a case under Section 346 of IPC was registered. Thereafter, on 30.10.2014, the applicant received an information from Police Station Sadar Hansi that his daughter was staying at Dera Sachha Sauda, Sirsa. As per the case further set up by the prosecution, applicant had gone there along with the police and had brought back his daughter who was found present with one Mandeep, who was claimed to be her friend. Her statement under Section 164 Cr.P.C. was got recorded on 30.10.2014. On 02.11.2014, when the applicant had gone to Dera Sachha Sauda, Sirsa to attend a Satsang, he received a telephonic message from his brother-in-law that victim 'N' had consumed some poisonous substance. On rushing back and reaching his house, he found his daughter to be dead. It was also alleged by the applicant in the complaint that his wife had handed over a suicide note left by the victim to him. Learned trial Court while considering the fact that the death of the victim was proved to have occurred due to consumption of insecticide of organo phosphorous compound group had disbelieved the version of the prosecution that it was respondent No.2 who had abetted commission of act of suicide by the victim, had acquitted him of charge under Section 306 IPC.

12. To establish charge under Section 306 of IPC, the

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prosecution examined PW-10, Dr. Chander Shekhar, who had conducted the post-mortem examination of the deadbody of the victim had deposed on the basis of the chemical examination reports Ex.P-22 and P-23 that the cause of death of the victim was asphyxia due to aspiration on account of consumption of poison which was aluminum phosphide. The testimony of this witness had gone unrebutted and unchallenged and proves that the victim had died due to consumption of insecticide of organo phosphorous compound group. Now, it has to be seen as to whether it was respondent No.2 who had abetted the commission of act of suicide by the victim and as to whether respondent No.2 had been repeatedly committing rape upon the prosecutrix. Before delving on this point, let us firstly discuss the relevant provisions of law. The term 'abetment' is defined under Section 107 of IPC. This Section reads as under:-

107. Abetment of a thing.—A person abets the doing of a thing, who—

Firstly — Instigates any person to do that thing; or

Secondly —Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or

Thirdly — Intentionally aids, by any act or illegal omission, the doing of that thing.

Explanation 1.—A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.

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Explanation 2.—Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitate the commission thereof, is said to aid the doing of that act.

13. The meaning of abetment as defined under Section 107 of IPC had been explained by High Court of Madhya Pradesh in ***Sanju @ Sanjay Singh Vs. State of Madhya Pradesh***, 2002(2) RCR (Criminal) 687, as to mean that a person abets the doing of a thing; if he firstly instigates any person to do that thing; or secondly, engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy and in the order to doing of that thing; or thirdly, intentionally aids, by any act or illegal omission, the doing of that thing. As far as the legal meaning of ‘instigation’ is concerned, in ***Ved Parkash Bhaiji Vs. State of Madhya Pradesh***, 1995 Criminal Law Journal 893, the High Court of Madhya Pradesh had held that a person is said to instigate another to an act when he actively suggests or stimulates him to the act by any means of language, direct or indirect, whether it takes the form of express solicitation, or of hints, insinuation or encouragement. The word ‘instigate’ means to goad or urge forward or to provoke, incite, urge or encourage to do that act. In ***Shankar Naiah Versus State of Andhra Pradesh***, 2002(3) RCR (Crl) 702, it was held by High Court of Andhra Pradesh that so far as the first two clauses of Section 107 IPC are concerned, it is necessary that the offence instigated should have been committed as explanation 2 in Section 107 shows that whoever either

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prior or at the time of commission of act, does anything in order to facilitate the commission thereof, is said to abet the doing of that act. In ***Sai Ram Versus State of U.P.***, AIR 1975 SC 125, the Hon'ble Apex Court held that in order to constitute abetment, the abettor must be shown to have intentionally aided the commission of the crime. Mere proof that the crime could have been committed without the interposition of the alleged abettor is not enough compliance with the requirement of Section 107 and merely because a person committed suicide by feeling insulted or humiliated due to the comments or utterances made by the accused, the accused cannot be said to be guilty of an offence under Section 306 of IPC. A co-ordinate Bench of this Court in ***Shunti @ Raja Versus State of Haryana***, 2008(2) RCR (Crl) 865 while considering the question of offence under Section 306 of IPC and its ingredients had observed as under:-

“Each and every case of suicide is not necessarily a result of abetment. Right from the day when human being is born, suicides have been committed. In the present days, a convenient mode has been adopted by the relatives and the investigating Agency to name accused as abettor in each case of suicide. It is incumbent upon the Investigating Officer and the person carrying out inquest proceedings to find out the history of medical record and behaviour of the victim a few days before the suicide.”

14. In ***Sharad Biridhi Chand Sarda Versus State of Maharashtra***, AIR 1984 SC 1622, the Hon'ble Apex Court observed that the victim of suicide may also be victim of self expectation that have, not

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been fulfilled. The sense of disappointment and frustration may have much in common with that experienced by the person, who seeks revenge through suicide.

15. In the instant case, the allegation of abetment has been constituted against respondent No.2 on the first ingredient of Section 107 of IPC that he instigated the victim to commit suicide by giving false promise of marriage and subjecting her to commit sexual intercourse with him and then by refusing to marry her. The case of the prosecution mainly rested upon the testimonies of PW8 'O' i.e. the applicant-complainant, father of the victim and PW-9 'S', i.e. the mother of the victim. On a careful assessment of evidence lead by these witnesses, we are however, of the opinion that the same cannot be considered to be sufficient, cogent, convincing and reliable for the purpose of coming to a conclusion that it was respondent No.2 who had abetted the suicide by the victim. PW-8 'O' though deposed that the victim had committed suicide as respondent No.2 had refused to marry her after giving false promise of marriage and committed rape upon her but it was not his version that at any point of time the victim had disclosed to him that respondent No.2 had sexually abused her on the promise of marriage and had then refused to marry her. His evidence thus falls in the category of hearsay and cannot be stated to be admissible on this point. Then mother of the victim deposed that the victim had disclosed to her once that respondent No.2 had called her on the pretext of performing marriage and had threatened to kill her family members if she disclosed about this fact to anybody and also stated that the victim had died because of respondent

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No.2. However, it was not stated by this witness at all that the victim had disclosed to her that respondent No.2 had sexually abused her. She did not disclose about the exact date, month and year when the aforementioned information had been divulged by the victim to herself. She simply stated that her daughter had disclosed about respondent No.2 to her on the same day when she had returned back. Nothing can be gathered from the statements of PW-8 and PW-9 to show that there was any instigation on the part of respondent No.2 qua the deceased to commit suicide.

16. Further though, in his statement recorded under Section 313 Cr.P.C., respondent No.2 undoubtedly, admitted the fact that he knew the victim but it was denied by him that he was having any relationship with her and stated that he only used to talk to her on phone as a friend. At this juncture, it is also relevant to mention here that the prosecution version was that the victim had eloped with respondent No. 2 on 08.10.2014 and had stayed with her at Hotel on that date and to prove this fact, the prosecution brought evidence on record Ex.P-5, photocopy of extract of register maintained by the authorities of Harsh Hotel, Kurukshetra, as per which respondent No.2 had got booked a room in the above said hotel on 08.10.2014 and Ex.P-6, copy of voter identity card of respondent No.2, which was deposited by him with the above said hotel on 08.10.2014. PW-3 Parveen Kumar, an employee of this hotel deposed that respondent No.2 had got booked a room in his hotel for two persons, however, he had no knowledge as to who that other person was. In her statement Ex.P-8 as recorded under Section 164 of Cr.P.C. victim had stated that

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she had stayed with respondent No.2 in a hotel at Kurukshetra. The date, month and year when she had stayed with him and name of the hotel had however, not been disclosed by her in the said statement. No other evidence could be produced by the prosecution to prove that the victim had stayed with respondent No.2 in Harsh hotel in Kurukshetra after she had gone missing from her house on 08.10.2014. However, even if it is assumed for the sake of arguments that the victim was having an affair with respondent No.2 and he had made promise to marry her, had stayed with her in a hotel and then refused to do so, still no inference can be drawn that respondent No.2 had abetted the suicide by the victim by instigating her to do so. No evidence has come on record to prove that respondent No.2 had any intention to either provoke, instigate or induce the victim to end her life. Refusal to marry cannot be stated to be an instigation on the part of the victim which would have driven her to commit suicide. The offence of abetment depends upon the intention of a person who abets and not upon the acts done by the person who was allegedly abetted. Since the prosecution failed to produce any convincing, reliable and direct incriminating evidence on record to prove that he had instigated the victim thereby making abetment to commit suicide by her and therefore, it is observed, that learned trial Court committed no error in acquitting respondent No.2 of charge under Section 306 of IPC and hence no permission to file leave to appeal against acquittal of respondent No.2 under this section can be granted.

17. The respondent No.2 had also been acquitted of charge under Section 417 of IPC which provides punishment for committing the

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offence of cheating as defined under Section 415 of IPC. The essential ingredients for commission of offence punishable under this Section are:-

- (i) There should be fraudulent or dishonest inducement of a person by deceiving him.
- (ii) (a) The person so deceived should be induced to deliver any property to any person, or to consent that any person shall retain any property; or
(b) The person so deceived should be intentionally inducing to do or omit to do anything which he would not do or omit if he were not so deceived; and
- (iii) In cases covered by (ii) (b) the act or omission should be one which causes or is likely to cause damage or harm to the person induced in body, mind, reputation or property.

18. Applying the aforementioned ingredients to the peculiar facts and circumstances of the present case, we are of the considered opinion that the applicant has failed to make out a case for granting him permission to challenge the findings recorded by learned trial Court as to acquittal of respondent No.2 under this Section. The allegations against respondent No.2 are that he cheated the applicant by giving false promise to marry her and committed rape upon her and ultimately refused to perform marriage with her. The victim, who was a major, had left her house on 08.10.2014 at her own and willingly. She was recovered from the custody of one Mandeep and not from respondent No.2-accused as on 30.10.2014. The statements of her parents with regard to the fact that

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respondent No.2 had refused to perform marriage with their daughter are based on hearsay. As already discussed, the credibility of the suicide note relied upon by the prosecution to be that of the victim has also not been established beyond doubt. It is well settled that there is distinction between mere breach of a promise and not fulfilling a false promise. The court is required to examine that false promise of marriage by the accused was made at an early stage and that the consent involved was given after wholly understanding the nature and consequences of sexual indulgence by a female. There must be adequate evidence to show that at the relevant time i.e. at initial stage itself the accused had no intention whatsoever of keeping his promise to marry the victim. In the instant case, first of all it has not been proved that the victim had been subjected to rape by respondent No.2. However, even if it is assumed that the acts of sexual intercourse were committed by respondent No.2 with the victim, still she was 23 years of age and had adequate intelligence and maturity to understand the significance and morality associated with the act she was consenting to. She is presumed to be conscious of the fact that her marriage might not take place. Therefore, it is difficult to impute to respondent No.2, any knowledge of the fact that the victim had consented as a consequence of a misconception of fact, that had arisen from his promise to marry her. No evidence had been produced on record to conclusively prove that respondent No.2 never intended to marry the victim. Therefore, in our opinion, there is no basis for raising the allegation of 'false promise of marriage'. As such, no case for holding respondent No.2 guilty for commission of offence punishable under

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Section 417 of IPC had been made out.

19. So far as the allegations against respondent No.2 of committing rape upon the prosecutrix are concerned, the offence of rape is defined under Section 375 of IPC, as per which a man is said to commit rape if he does any of the acts mentioned in clauses (a) to (d) of this section against her will, without her consent or when her consent is obtained by putting her or any person in whom she is interested, in fear of death. Offence of rape is also said to be committed when the female is under 16 years of age, is unable to communicate consent while the acts shown in clauses (a) to (d) of this section are done as against her. On a bare perusal of contents of this Section, it is explicit that a consciously sexual relationship does not fall under the definition of rape. In her statement, Ex.P-8 recorded under Section 164 of Cr.P.C., the victim had not levelled any allegations against respondent No.2 to the effect that he had committed rape upon her at all. It was her only claim that he had promised to perform marriage with her and had subsequently refused to do so. When she was recovered on 26.10.2014, her medico-legal examination was not got conducted. More so, she was not recovered from the custody of respondent No.2. Rather she was found staying with one Mandeep, who was claimed by her to be her friend, when the police had gone to Dera Sachha Sauda, Sirsa after coming to know about her presence there as discussed above. The record of Harsh Hotel did not prove that the victim had stayed with respondent No.2 in that hotel as on 08.10.2014. A casual reference was made by PW-8 in his sworn

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statement that respondent No.2 had committed rape upon the victim on the promise of marriage without explaining at all as to how he had come to know about this fact. As already discussed, his statement was hear-say in nature. The victim was not proved to have shared any such information with him. The testimony of PW-9 is not on a better footing because she did not utter even a single word to the effect that the victim had been subjected to rape by respondent No.2. Therefore, in our considered opinion, the statements of both these witnesses did not help the prosecution at all in connecting respondent No.2 with the offence punishable under Section 376(2)(n) of IPC.

20. To prove the allegations as levelled against respondent No.2, the prosecution had heavily relied upon the evidence as to leaving a suicide note by the victim prior to her death. The prosecution case is that the victim had written a suicide note just prior to her death and the same was recovered from the spot of occurrence wherein she had levelled allegations of committing rape upon her by respondent No.2. However, on a minute scrutiny of statements of PW-6 Sub Inspector Karamveer, Investigating Officer, PW-8 and PW-9, we are of the opinion that their statements did not inspire any confidence for proving that in fact some suicide note was recovered from the spot. PW-6 stated that the suicide note had been handed over to him by the complainant when he had reached at the place of occurrence. PW-8 stated that his wife had handed over a suicide note left by the victim when he had reached home from Dera Sachha Sauda, Sirsa and he had given the same to the police, but PW-9 falsified their version by stating that the police officials had

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recovered the suicide note from the spot and she did not notice any paper or suicide note left near the victim. She did not even know as to from where the said suicide note had been recovered. In view of the inconsistent statements of these witnesses as to the manner of recovery of suicide note from the spot of occurrence, a doubt has reasonably been created that in fact no such suicide note had been recovered.

21. Then, as per the prosecution case, the suicide note along with one diary containing the writing of the victim had been sent to FSL Madhuban for the purpose of proving that the handwriting on the said note was of the victim. Learned Public Prosecutor laid much stress on the FSL report Ex.P-20 as per which there were similarities in the writing made in the diary and the writing made on the suicide note which were significant and sufficient. On being considered collectively they led to the opinion that the person who had written the suicide note had also written the diary. Interestingly, neither original suicide note nor the said diary were proved in evidence before the learned trial Court and the learned trial Court had also recorded that suicide note had not been produced before her. But while going through the trial Court record, we have found a sealed cover and on opening the same, not only the original suicide note but a diary have also been found kept therein. It appears that sealed cover containing these documents had never been shown to the learned trial Court during the trial probably due to negligence on the part of the concerned Ahlmad. However, despite that, as already discussed even it has not been proved beyond doubt that the victim had left any suicide note at all. Further even it is not proved beyond doubt that this

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suicide note was in the handwriting of the victim. This is so because the diary claimed to have been containing the writing of the victim was not at all proved to have been handed over by her parents to the Investigating Agency at any point of investigation or during trial. Though, there is a memo qua taking the suicide note into custody by the police but neither any memo regarding taking any diary into custody of the police, has been placed on record, nor PW-8 nor PW-9 uttered even a single word to the effect that they had handed over a diary containing handwriting of the victim to the Investigating Officer. Even, the Investigating Officer did not say so. It has remained unexplained as to from where this diary was taken in custody by the police. This diary had not even been shown to PW8 and PW9 during the trial so as they could identify the writing of their daughter on the same. As such, it emerges that the report Ex.P-20 did not help the prosecution in any way to prove that the suicide note and even the diary in question were in fact written by the victim. Hence, even the contents of the same cannot be taken into consideration as these documents have not been proved to be admissible in evidence in either way. In such circumstances, it has not been proved beyond doubt that the victim had left any suicide note making allegations against respondent No.2 of his having ravished her repeatedly or abetting her suicide and further in view of the fact that the statements of PW-8 and PW-9 have also not inspired any confidence in this regard. The findings given by learned trial Court holding respondent No.2 not guilty for commission of offence punishable under Section 376 (2) (n) of IPC were well reasoned and in our opinion, the same do not require any interference and hence no

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leave deserves to be granted to the applicant to challenge those findings.

22. Further, the respondent no.2 had also been chargesheeted for commission of offence punishable under Section 506 of IPC on the allegations that he had been extending threats to the victim. On going through the evidence produced on record, it clearly appears that the allegations that the victim had been criminally intimidated by the respondent No.2 had not been proved at all. In his statement Ex.PA, there was no allegation that respondent No.2 had extended any threat to the victim and had criminally intimidated her. Even PW-8 complainant, in his sworn deposition did not say that the victim had been criminally intimidated by respondent No.2. PW-9 'S' deposed that once the victim had disclosed to her that the respondent No.2 had threatened to kill her family members if she disclosed anything about him to them. For the purpose of proving an offence under Section 506 of IPC, the prosecution was required to prove:-

1. that the accused threatened the victim with injury to her person, reputation or property;
2. the accused did so with the intent to cause alarm to her;
3. that he did so to cause the victim to perform any act which she was not legally bound to do.

23. The gist of the offence under Section 506 of IPC is to the effect, which the threat is intended to have upon the mind of the person so threatened. It is necessary that the threat given is real and the person giving the threat meant it. An offence under this Section by spoken words

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cannot be made out unless it is proved that those words were uttered with specific intention. Empty threats do not mean that any case of criminal intimidation had been made out. In this case, even it has not been proved as to on which particular date, month and time, the victim had been threatened by respondent No.2 and what were the actual words used by him, therefore, in our opinion, the provision of Section 506 of IPC were not proved to have been attracted and the learned trial Court had rightly acquitted the respondent No.2 of that charge and hence no ground to grant permission to file appeal against acquittal of respondent No.2 under that Section has been made out.

24. Taking the above discussed circumstances into consideration, we are of the opinion that the learned trial Court had rightly appreciated the evidence produced on record and committed no error in acquitting respondent No.2. On reading of entire material, we find that there is no perversity in the findings recorded by learned trial Court and there is no compelling reason to interfere with its judgment. Accordingly, it is held that no ground has been made out to grant leave to appeal to the applicant. Findings no merit in the application, the same is dismissed.

25. Since the applicant-complainant had also filed criminal Appeal No. D-1222-DB of 2015, titled as ***Om Parkash Vs. State of Haryana and another*** against judgment of acquittal even prior to the filing of the present application, therefore, in view of the dismissal of this application, the said appeal also stands automatically dismissed.

As the sealed envelope in which suicide note and diary were

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kept, had been unsealed by this Court, therefore, a direction is given to the office to reseal the same. The trial court record be sent back after due compliance.

(RITU BAHRI)
JUDGE

(MANISHA BATRA)
JUDGE

25th May, 2023
pooja saini

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No