

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-A-208-2021(O&M)
Date of Decision: February 13, 2023

STATE OF HARYANA

....Appellant(s)

VERSUS

KARAN SACHDEVA

....Respondent(s)

CORAM: HON'BLE MR. JUSTICE G.S. SANDHAWALIA
HON'BLE MS. JUSTICE HARPREET KAUR JEEWAN

Present: Mr. Ankur Mittal, Addl. A.G. Haryana &
Mr. Saurabh Mago, AAG, Haryana.

HARPREET KAUR JEEWAN, J.

1. The State has filed an application under Section 378(3) Cr.P.C. seeking leave to appeal, challenging the findings of acquittal recorded by Addl. District & Sessions Judge, Fast Track Court at Sonapat, whereby the respondent-Karan Sachdeva was acquitted of the charges framed against him in FIR No.122 dated 13.04.2018 under Section 376 IPC registered at Police Station Murthal, Sonapat.

2.1 Prosecution story in brief is that, the prosecutrix (name withheld) used to reside along with her father and brother in L-215, Shastri Colony, Delhi. The prosecutrix is about 24 years old, she had studied up to B.A. and doing a job. The respondent-accused sent a friend request to her on Facebook in the year 2015 and they started talking to each other. They also used to talk to each other on phone. The accused called the prosecutrix at Connaught Place for watching a movie and as such she went

there on his request and after that accused had been frequently asking her to meet him. In December, 2015, accused came to the house of a friend of the prosecutrix and then he brought the prosecutrix to Kanak Hotel in Murthal, Sonapat. In the said hotel room, the accused promised the prosecutrix that he would perform marriage with her and she should trust her and asked the prosecutrix to have physical relationship. The prosecutrix insisted that she would have physical relationship only after getting married to the accused. The accused again insisted and upon his promise to get married to her, they developed physical relationship. Thereafter, for about 1 ½ year, the respondent had been making physical relations with her on the pretext of performing marriage with her. The prosecutrix asked the accused to disclose about their relation to his family members, upon which the accused called her at his residence and there also he made physical relationship with her. The accused also told his family members regarding performing marriage with her. However, on 26.01.2018, the accused refused to perform marriage with her and after that he stopped talking to the prosecutrix and even blocked her phone calls.

2.2 The prosecutrix reported the matter to the police and FIR was registered against the accused on 02.04.2018 in Police Station Sarai Rohilla, Delhi under Section 376 IPC, which was sent to SSP, Sonapat. Thereafter, formal FIR No.122 dated 13.04.2018 was registered in Police Station Murthal, Sonapat, under Section 376 IPC. The statement of the prosecutrix under Section 164 Cr.P.C. was got recorded and her medico legal examination was also conducted. After completion of the investigation, challan was presented against the respondent-accused under Section 376 IPC.

2.3 After compliance of the provisions of Section 207 Cr.P.C., regarding supply of the documents to the accused, charge under Section 376 IPC was framed and respondent-accused pleaded not guilty and claimed trial.

2.4 In order to prove the case, prosecution examined 17 witnesses, including prosecutrix, who appeared as PW-1 and the father of the prosecutrix appeared as PW-2 and both corroborated the prosecution case. PW-6 SI Veena, proved the original statement of the prosecutrix which was recorded by her in Police Station Sarai Rohilla, Delhi. PW-9 Sanjeev Kumar, Receptionist in Kanak Hotel, Murthal, Sonapat, testified that he could not bring the summoned record as it was burnt in the fire in their hotel on 01.05.2016 and FIR No.161 under Section 188/436 IPC was got registered regarding the same. PW-14 L/ASI Manisha, is the Investigating Officer and she proved all the documents prepared during the investigation. PW-13 Dr. Sambodha, CMO, HRH, Delhi, proved the MLR of the prosecutrix. PW-11 Dr. Ainaam Gupta, Sr. Resident FORTIS Shalimar Bagh, Delhi, testified that she conducted the medico legal examination of the prosecutrix on 27.04.2018 and after obtaining the report of the FSL Ex.PX, she gave the opinion that possibility of sexual intercourse cannot be ruled out. PW-15 Dr. Ramesh Kumar, MO, GH, Sonapat, stated about the medico legal examination of the accused and proved copy of the MLR Ex.PW-15/B. Ms. Jogindri, SDJM, Kharkhoda, Sonapat, PW-17 proved that she recorded the statement of the prosecutrix under Section 164 Cr.P.C.

2.5 The respondent-accused alleged false implication in his statement recorded under Section 313 Cr.P.C. but did not lead any evidence in defence.

3 After hearing the Public Prosecutor, defence counsel and perusing the evidence on record, the trial Court acquitted respondent-accused by giving him benefit of doubt. The trial Court recorded following reasons for acquittal of the accused:-

- i The evidence shows that the prosecutrix was the consenting party as the prosecutrix went to Kanak Hotel at 12.30 PM to which she consented and admitted in the cross examination that they were in talking terms.
- ii The ingredients of Section 376 IPC are not fulfilled. The trial Court also placed reliance upon the decision of the Hon'ble Apex Court in ***Prashant Bharti Vs. State of NCT of Delhi 2013(3) RCR Criminal 399*** and the decision of this Court in ***Bidda alias Paramjit and another Vs. State of Punjab, 1990 (30 R.C.R. 190 P&H)***.
- iii No independent witness was joined by the Investigating Officer at the time of interrogation and recording disclosure statement of accused despite their best availability at the spot.
- iv Majority of the prosecution witnesses were not found trustworthy.
- v On the basis of testimony of only official witness, accused cannot be held guilty.
- vi The investigation by police officials was found to be tainted. There are inconsistencies between the oral and documentary evidence.

On the basis of aforesaid reasons, the trial Court found that the evidence of the prosecutrix is full of suspicion and the prosecutrix has failed to establish the case beyond the shadows of doubt.

4 The learned counsel for the state submitted that the trial Court has wrongly presumed that the prosecutrix was a consenting party. The trial Court has ignored that the consent of the prosecutrix was obtained by the accused on promise of marriage. From the very beginning, the accused never intended to perform marriage with the prosecutrix, as such the consent of prosecutrix was obtained on the basis of a false promise. Hence the act of sexual intercourse committed by the accused by giving fake promise of marriage to the prosecutrix and later on refusing to do so proves the offence of rape.

5 We have considered the aforesaid submissions and perused the paper book.

6. It is an admitted fact that the prosecutrix was major at the time of alleged occurrence. As per her own version, she was 24 years old, had studied upto B.A. and was doing a job. In the said background, we have considered the testimony of the prosecutrix who is the most material witness in this case. As per her version, she had accepted the friendship request given by the accused on Facebook. When she appeared as PW1, she has also stated that accused was senior to her in the college. She had started chatting on Facebook and they also exchanged their mobile numbers. Her testimony reveals that she received the friendship request in July, 2015, whereas, they have met each other in Connaught Place, Delhi, on 16.09.2016, where the accused proposed her for relationship which was accepted by her. As per her testimony, in December, 2015, she had also gone for an outing in night hours with the accused. She was not feeling well and then they stayed together at night in Kanak Hotel, Murthal and they developed physical relationship for the first time as the accused

assured her that he would perform marriage with her. It has further come in her statement that she had informed about her relationship to her father who had talked to the accused and thereafter, she had gone to the house of the accused where she met his mother but after that the accused stopped talking to her and accused informed her father that his family members had refused to perform his marriage with her. Finally, on 26.01.2018, the accused had refused to perform marriage with her.

7. The cross-examination of the prosecutrix reveals that she became graduate in the year 2013 and was working since 2014. At the time of her cross-examination, she was working as Associate Producer in India Today Group. She is a Press Reporter by profession in a big and famous group India Today. She admitted that her duty hours are not fixed and are flexible. The accused was her senior in college during her graduation. In the cross-examination, she has further admitted that she met the accused for the first time in 16.09.2015 in Connaught Place, Delhi. They watched a movie on that day. She has admitted that she was competent to understand her good and bad. She did not inform her father about her meeting with the accused at Connaught Place on 16.09.2015. With regard to her meeting at Murthal she stated in cross-examination that they started from Noida at about 10:00-10:15 PM for Murthal and they reached Murthal at around 11:30 PM. They had food at Murthal Dhaba and then they reached Kanak Hotel at about 12:30 AM (midnight) and after that accused dropped her Kashmiri Gate, Delhi at about 8:00 AM. She had also stated that she had visited the house of the accused 4-5 times. She had also visited the house of the accused with a gift on the birthday of son of

his brother. She has also admitted that they used to exchange gifts with each other.

8. The prosecutrix has also stated in her cross-examination that she visited in Oyo room in Delhi with the accused but she cannot tell about the name of hotel as these were booked through Oyo app. They stayed there together. She did not move any complaint against the accused in January, 2018. They had a fight then accused took her to the Police Station and she further admitted that on the same day, they went to watch a movie in Greater Kailash Delhi but they did not watch the complete movie. They also went for outing on the eve of New Year on 31.12.2017 and they stayed there in a hotel. She also admitted that in March, 2016, they went to Rishikesh for outing with the cousins and friend of accused for two days.

9. A reference to the medical examination is also material. The prosecutrix was got medico legally examined on 02.04.2018 at Hindu Rao Hospital Delhi. The Affidavit Ex.PW-13/A proved by PW-13 Dr. Sambodna, CMO, HRH, Delhi, indicate that the prosecutrix refused for internal examination and her urine pregnancy test was negative. Again on 27.04.2018, the prosecutrix was medico legally examined by PW-11 Dr. Ainam Gupta, Medical Officer, GH, Sonapat, who has testified in her affidavit Ex.PW-11/A that there was alleged history of sexual assault repeatedly, last episode on 16.09.2017. No evidence of external and internal marks of injury over body were found. On local examination, no fresh tear visualized on perineum, no bleeding/wound on perineum was present. On seeing FSL report Ex.PX, as per which human semen was detected on Ex.2(underwear). However, semen could not be detected on rest of the exhibits.

10. The medical evidence proved by PW-13 and PW-11 proves this fact that as per the history given by the prosecutrix, the last episode of sexual assault was on 16.09.2017 whereas the swabs which were taken by PW-11 on 27.04.2018 which was after a period of about 7 months of the last alleged episode of sexual assault. The fact that human semen was detected only on the underwear of the prosecutrix cannot be linked with the last episode of sexual assault which allegedly took place on 16.09.2017 as per the history given by the prosecutrix to the doctor. It is highly improbable that after a period of 7 months, the human semen would remain intact on the underwear and that could be detected by an expert on forensic examination, specially keeping in view the fact that there is nothing on record to suggest that the prosecutrix did not change her clothes or kept the said clothes intact which she was wearing at the time of last episode of sexual assault. This fact causes a serious doubt on the testimony of prosecutrix, especially in view of the fact when she was first taken for her medical examination on 02.04.2018, she refused for her internal medico legal examination.

11 The medical evidence also indicate that no external or internal marks of injury all over the body of the prosecutrix were found. There was no fresh tear visualised on perineum and no bleeding or wound was present on the perineum which also indicate absence of use of any force or assault to the prosecutrix.

12 In the light of the circumstances of the case, it is to be determined as to whether the relationship between the prosecutrix and the accused was a consensual relationship or the accused developed physical

relationship by making a false promise of getting married to the prosecutrix.

13 The offence of ‘Rape’ has been defined under Section 375 IPC. One of the essential ingredient to prove the said offence is that one of the act as mentioned therein should have been committed “*without the consent*” or “*against the will*” of the prosecutrix. Absence of the said ingredient is evident on record.

14 In view of the medical evidence on record and considering the peculiar facts of the present case that the prosecutrix is major, she is well educated and working, she had been visiting various places along with the accused and even stayed at night by booking a hotel, as such the testimony of the victim clearly indicate that it was a consensual relationship between the accused and the prosecutrix. Both are major, they had been talking to each other, going out for movies and staying out nights together at hotels. In such circumstances, it would be really unsafe to hold that there was any pressure on the prosecutrix or that her consent was obtained by any coercion or fraud. It was a long relationship. For the first time, in the year 2015, the friend request of the accused was accepted by the prosecutrix and the present FIR has been lodged on 02.04.2018 i.e. after a period of 3 years. It was a long friendly relationship of 3 years. Both the parties are young. The alleged act of developing physical relationship under the pretext of getting married with the prosecutrix happened in December, 2015 at Murthal but the present FIR has been registered after a period of about 2 ½ half years from the said incident. All these circumstances clearly indicate that it was a consensual relationship between the parties, which however did not last.

15 The prosecutrix has alleged that the accused has promised her to get married and under the said promise, the accused has performed the said act but later on the accused had refused to get married. We have also considered the question as to *whether the breaking of the compromise of getting married would constitute an offence under Section 375 IPC ?*

16 In “*Shambhu Kharwar Vs. State of Uttar Pradesh & Anr.*”, *2022 AIR (SC) 3901*, the appellant and respondent, both were adult, they were in consensual relationship for a period of four years. The respondent No.1 during the course of this period got married to someone else. Taking into consideration the facts, the Hon’ble Supreme Court held that the relationship between the parties was purely of consensual nature. Relevant portion reads as under:-

“10An offence is punishable under Section 376 of the IPC if the offence of rape is established in terms of Section 375 which sets out the ingredients of the offence. In the present case, the second description of Section 375 along with Section 90 of the IPC is relevant which is set out below:-

“375 Rape- A man is said to commit “rape” if he-

[...]

under the circumstances falling under any of the following seven descriptions

Firstly...

Secondly-Without her consent

[...]

Explanation 2-Consent means an unequivocal voluntary agreement when the woman by words, gestures or any form of verbal or non-verbal communication, communicates willingness to participate in the specific sexual act:

Provided that a woman who does not physically resist to the act of penetration shall not by the reason only of that fact, be regarded as consenting to the sexual activity.

xxx

90. Consent known to be given under fear or misconception- A consent is not such a consent as is intended by any section of this Code, if the consent is given by a person under fear of injury, or under a misconception of fact, and if the person doing the act knows, or has reason to believe, that the consent was given in consequence of such fear or misconception, or..."

11. In **Pramod Suryabhan Pawar v. State of Maharashtra**, a two Judge Bench of this Court of which one of us was a part (D.Y. Chandrachud J.), held in **Sonu @ Subhash Kumar v. State of Uttar Pradesh**, observed that:

“12. This Court has repeatedly held that consent with respect to Section 375 of the IPC involves an active understanding of the circumstances, actions and consequences of the proposed act. An individual who makes a reasoned choice to act after evaluating various alternative actions (or inaction) as well as the various possible consequences flowing from such action or inaction, consents to such action...

[...]

14. [...]Specifically in the context of a promise to marry, this Court has observed that there is a distinction between a false promise given on the understanding by the maker that it will be broken, and the breach of a promise which is made in good faith but subsequently not fulfilled....

[...]

16. Where the promise to marry is false and the intention of the maker at the time of making the promise itself was not to abide by it but to deceive the woman to convince her to engage in sexual relations, there is a "misconception of fact" that vitiates the woman's "consent". On the other hand, a breach of a promise cannot be said to be a false promise. To establish a false promise, the maker of the promise should have had no intention of upholding his word at the time of giving it. **The "consent" of a woman under Section 375 is vitiated on the ground of a "misconception of fact" where such misconception was the basis for her choosing to engage in the said act.**

[...]

18. To summarise the legal position that emerges from the above cases, the "consent" of a woman with respect to Section 375 must involve an active and reasoned deliberation towards the proposed act. To establish whether the "consent" was vitiated by a "misconception of fact" arising out of a promise to marry, two propositions must be established. The promise of marriage must have been a false promise, given in bad faith and with no intention of being adhered to at the time it was given. **The false promise itself must be of immediate relevance, or bear a direct nexus to the woman's decision to engage in the sexual act.**

(emphasis supplied)

12. In the present case, the issue which had to be addressed by the High Court was whether, assuming all the allegations in the charge-sheet are correct as they stand, an offence punishable under Section 376 IPC was made out. Admittedly, the appellant and the second respondent were in a consensual relationship from 2013 until December 2017. They are both educated adults. The second respondent, during the course of this period, got married on 12 June 2014 to someone else. The marriage ended in a decree of divorce by mutual consent on 17 September 2017. The allegations of the second respondent indicate that her relationship with the appellant continued

prior to her marriage, during the subsistence of the marriage and after the grant of divorce by mutual consent.

13. In this backdrop and taking the allegations in the complaint as they stand, it is impossible to find in the FIR or in the charge-sheet, the essential ingredients of an offence under Section 376 IPC. The crucial issue which is to be considered is whether the allegations indicate that the appellant had given a promise to the second respondent to marry which at the inception was false and on the basis of which the second respondent was induced into a sexual relationship. Taking the allegations in the FIR and the charge-sheet as they stand, the crucial ingredients of the offence under Section 375 IPC are absent. The relationship between the parties was purely of a consensual nature. The relationship, as noted above, was in existence prior to the marriage of the second respondent and continued to subsist during the term of the marriage and after the second respondent was granted a divorce by mutual consent.”

17 We have analysed the evidence on record in the light of the aforesaid decisions. No different view is possible than the view taken by the trial Court. As per the decision of the Hon’ble Supreme Court of India in Sidhartha Vashisht @ Manu Sharma Vs. State (NCT of Delhi) 2010 AIR SC 2352, the principles were laid down dealing with the compromise particularly against the order for acquittal wherein it has been held that the order of acquittal is to be interfered only when “there are compelling and substantial reasons” for doing so. In the present, there is no such evidence or material which has been misread or ignored by the trial Court.

18 In view of the ratio of the aforesaid decision and the facts of the present case, we are of the considered opinion that the prosecution has failed to prove the essential ingredients of the offence defined under Section 375 IPC and no different view is possible other than the view taken by the trial Court.

19 Having found from the testimony of the victim that it was a consensual relationship between the parties and the medical evidence having been found to have raised no reference to force, we are of the

considered opinion that the trial Court has rightly appreciated the evidence on record while giving benefit of doubt to the accused.

20 In view of the above reasons, we do not find any ground to interfere with the findings recorded by the learned trial Court. As such, the present appeal is dismissed.

Pending applications, if any, also stand disposed of.

(G.S. SANDHAWALIA)
JUDGE

(HARPREET KAUR JEEWAN)
JUDGE

13.02.2023

sangeeta

Whether reasoned/speaking: Yes/No

Whether reportable: Yes/No