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**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH.**

CRA-AD-275-2022

Date of Decision : 02.08.2023

GULISTA

.....Appellant

Versus

STATE OF HARYANA AND ANOTHER

....Respondents

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

Present : Mr. A.P.S.Nain, Advocate
for Mr. Ajay Ghangas, Advocate
for the applicant.

Mr. P.P.Chahar, DAG, Haryana.

SURESHWAR THAKUR, J. (Oral)

1. The instant appeal is directed against the verdict of acquittal, as became recorded on 24.01.2022, by the learned Additional Sessions Judge, (Fast Track Court) Panipat upon Sessions Case No. 43 of 2021. The said verdict of acquittal was made in respect of the charges drawn against the accused under Sections 342 and 376 of the IPC.

2. The stark fact which emerges from a reading of the impugned verdict and also from the reading of the records of the learned trial Court becomes comprised in the factum that the testification of prosecutrix, does not inspire, the confidence of this Court nor thereby she can be construed to be rendering a truthful and un-tainted version in respect of the genesis

of the prosecution case.

3. The principal reason for this Court forming the above opinion arises from the factum that though this Court, would be led to assign credence to her testification but only when there were no rife or improvement(s) or embellishment(s) in her testification, as, made before the learned trial Judge, over her previously made statement in writing besides also only when she during the various stages of the investigation thus had made statements which were completely consistent with each other.

4. However, for the reasons to be assigned hereinafter, it appears that the prosecutrix has at various stages of the investigation being made into the crime event, rather had made statements which but contradict each other. The said contradiction(s) are apparent on a reading of application Exhibit P-7, and of her statement recorded under Section 164 Cr.P.C., to which Exhibit P-2 became assigned, besides on a reading of the statement recorded as PW-2, before the learned trial Judge concerned.

5. The said inter-se contradiction(s) inter-se the above made statements are that, in her statement made before the learned trial Judge concerned, before whom she appeared as PW-2, as well as in her statement Ex.P2, she has echoed therein, that Dilbag met her on the way and told that that his wife was calling. Nonetheless, in her application (Exhibit P-7), she claimed that Mashroofa had called her and also had stated in the said application, that Mashroofa had asked to bring something lying inside her house, whereas, in contradiction thereto, when she stepped into the witness box as PW-2, she stated that Dilbagh had asked her to bring scissors lying inside the room. Moreover, in her statement before the

learned Magistrate concerned, in proceedings drawn under Section 164

Cr.P.C., to which Exhibit P-2 is assigned, she had stated that the accused had administered her some drug and had also clicked some video. However, the above recital is completely amiss in her application Exhibit P-7 as well as in her statement recorded as PW-2. Therefore, the above inter-se contradiction(s) inter-se application (Exhibit P-7) and her statement recorded under Section 164 Cr.P.C. (Exhibit P-2) before the Magistrate concerned, besides with her deposition as made before the learned trial Judge concerned (Exhibit PW-2), thus are not minimal inter-se contradiction(s), but are gross and stark inter-se contradiction(s). Consequently, thereby the prosecutrix cannot be concluded to be rendering a truthful or inspiring version in respect of the genesis of the prosecution case.

6. Significantly, also there is an unexplained delay of about 18 days in the registration of the FIR, at the instance of the concerned. The effect of the above unexplained delay, thus occurring at the instance of the concerned, does beget the ill consequence of thereby, the story as propounded by the prosecution, being both tainted as well as concocted and thereto no credence being assignable.

7. Moreover, it is apparent on a reading of the records that the prosecutrix had refused to undergo medical examination. The above reluctance of the prosecutrix to face medical examination, which would have, irrespective of the above gross inter-se contradiction(s) rather would had assured the judicial conscience of this Court, but only upon the doctor concerned, who had put her to medical examination, hence in his report, speaking that the prosecutrix has been subjected to forcible sexual intercourse, qua the verdict of acquittal, as made by the learned trial Judge

concerned, thus warranting interference. Moreover, also when after

collection of the apposite vaginal swabs, besides of the semen of the accused, thus best forensic evidence may have emerged revealing therein on comparative examination(s) thereof, thus semen of the accused being found thereins. However, in the wake of the prosecutrix relenting from undergoing medical examination, thereby she has precluded the emergence of best forensic evidence (supra) which otherwise may have irrespective of the above inter-se contradiction(s), rather led this Court to reverse the verdict of acquittal.

8. In consequence, there is no merit in the appeal, and, it is dismissed. The impugned verdict of acquittal, as made by the learned trial Judge concerned, is affirmed and maintained.

9. Records be sent down forthwith.

(SURESHWAR THAKUR)
JUDGE

02.08.2023

kavneet singh

(KULDEEP TIWARI)
JUDGE

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