

In the High Court of Punjab and Haryana at Chandigarh

**CRA-AD No. 293 of 2022
Reserved on : 20.11.2023
Date of Decision: 04.12.2023**

Pinki

.....Petitioner

Versus

State of Haryana and others

.....Respondents

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA**

Argued by: Mr. Raman Chawla, Advocate
for the appellant.

Mr. Pardeep Prakash Chahar, Sr. DAG, Haryana.

SUDEEPTI SHARMA, J.

1. The instant appeal is directed by the aggrieved complainant, against the impugned verdict, as made on 20.5.2022, upon Sessions Case No. 135/2020, by the learned Additional District and Sessions Judge-cum-Special Judge, Fast Track Court, Fatehabad. Through the above said verdict, the learned trial Judge concerned, acquitted accused-respondents No. 2 and 3, in respect of charges drawn against them for the offences punishable under Sections 376(2)(n), 506 of the IPC, besides under Section 3 of The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short 'the Act of 1989').

Factual Background

2. The genesis of the prosecution case becomes embodied in the appeal FIR, to which Ex. P-31 is assigned. The narrations carried in

Ex. P-31 are that the present case was registered by the prosecutrix/victim

"P" (real name withheld) by moving written complaint to the Police Station Sadar, Fatehabad on 11.10.2018, alleging therein that accused Harshwardhan and his mother Balwinder Kaur brought her to their house in village Salam Khera, with her children on 31.12.2017. Accused Harshwardhan and his mother Balwinder Kaur kept her as wife of accused Harshwardhan. At the instance of mother of accused Harshwardhan that she (complainant) developed physical relations with her son (Harshwardhan) under a promise of marriage. She was kept in that house for six months and accused Harshwardhan kept on developing illicit relations with her. His mother Balwinder Kaur used to say that the complainant 'P' was given the rights of a daughter-in-law in that house. Moreover, she was made to work as a maid and was exploited. She further stated that when accused Harshwardhan and his mother came to know that she was pregnant then she was given beatings and ousted from the matrimonial house saying that they had kept her as a maid only. She was having pregnancy of 6-7 months from the lions of accused Harshwardhan. Accused Harshwardhan and his mother Balwinder Kaur refused to accept the child and they had tried to abort the child after giving her beating and attempted to eliminate her by throwing her in a canal. On the basis of complainant, the FIR was registered.

Investigation proceedings

3. During investigations, the case was sent to Police Station Women Fatehabad. Special report was sent to Learned Illaqa Magistrate and superior police officers. During investigation, section 406 of IPC was deleted. Accused Harshwardhan was arrested on 11.10.2018. His disclosure statement was recorded. Place of occurrence was inspected and site map of the same was prepared. Balwinder Kaur mother of accused Harshwardhan

was found innocent. Statement of complainant under Section 164 Cr.P.C. was got recorded by the learned Magistrate. After conclusion of investigations, the investigating officer concerned, proceeded to institute a report under Section 173 of the Cr.P.C., against accused Harshwardhan before the learned Court concerned.

Trial Proceedings

4. The learned trial Judge concerned, after receiving the case for trial, made an objective analysis of the incriminatory material, adduced before her. Resultantly, initially, the learned Judge, Special Court-cum-ASJ, Fatehabad, vide order dated 11.12.2018, proceeded to draw charges against accused Harshwardhan for the commission of offences punishable under Sections 376(2)(n) and 506 of the IPC, and, under Section 3 of the Act of 1989. However, on an application being moved by the prosecution under Section 319 Cr.P.C., accused Balwinder Kaur was summoned as additional accused to face trial along with accused Harshwardhan. Thereafter vide order dated 29.8.2019, charge sheet was served, upon both the accused, for the commission of offences punishable under Sections 376(2)(n) and 506 of the IPC, and, under Section 3 of the Act of 1989. The afore drawn charges were put to the accused, to which they pleaded not guilty, and, claimed trial.

5. In proof of its case, the prosecution examined 19 witnesses, and, thereafter the learned Public Prosecutor concerned, closed the prosecution evidence. After the closure of prosecution evidence, the learned trial Judge concerned, drew proceedings, under Section 313 of the Cr.P.C., but therein, the accused pleaded innocence, and, claimed false implication. They also chose to adduce defence evidence, but did not lead any defence witness into the witness box.

6. The learned trial Judge concerned, acquitted the accused of the charges by extending benefit of doubt.

Submissions of the learned counsel for the appellant

7. The learned counsel for the aggrieved complainant has argued before this Court, that the impugned verdict of acquittal, as made by the learned trial Judge concerned, requires an interference. He supports the above submission on the ground, that it is based on a gross misappreciation, and, non-appreciation of evidence germane to the charge.

Reasons for the dismissal of the instant appeal

8. Having culled out the above facts, as emerge from the evidence existing before this Court, it has to be adjudicated, whether the allegation, as, made by the prosecutrix against the accused, that on the promise of his marrying her, he had subjected her to forcible sexual intercourse, rather is a true or a validly made accusation against the accused.

9. The uncontroverted facts, as emerge from the records, as produced before this Court, are:-

- (i) that there is an unexplained delay of 7-8 months in lodging the present FIR.
- (ii) that the prosecutrix is a 28 years old married lady, having children from the legally wedded husband.
- (iii) The prosecutrix is having no decree of divorce from her legally wedded husband.
- (iv) The prosecutrix on her sweet will along with her children (from the legal wedlock) and her sister used to reside in the house of the accused and the marriage of the sister of the prosecutrix was also got performed by the accused.

- (v) Cruelty and beatings by the accused to the prosecutrix without any complaint against the accused.
- (vi) Giving birth to the female child of the accused and visiting of the accused to the rented premises of the prosecutrix to see the female child born out of their relationship.

10. The prosecutrix was major, married and was having consensual physical relationship with the accused as is depicted from the record of this case, therefore there can be no possibility of any promise by the accused of marriage since without the dissolution of her previous marriage, the prosecutrix could not re-marry.

11. The reason for making the above inference ensues from the factum, that in case the prosecutrix wanted to resist the physical relationship with the accused, she would have lodged the FIR at the earliest, which she did not, from which an inference can be drawn that the prosecutrix was a consensual party to the sexual intercourse.

12. The prosecutrix had also alleged against the accused, that the latter subjected her to cruelty. However, the best evidence in proof of the above allegation, becomes comprised in her MLR. But the same was never produced as evidence.

Final order

13. In view of the above, this Court does not find any merit in the appeal, and, is constrained to dismiss it. Consequently, the impugned verdict of acquittal, as made by the learned trial Court, is maintained, and, affirmed. The case property, if any, be dealt with, in accordance with law,

but after the expiry of the period of limitation for the filing of an appeal.

14. Records be sent down forthwith.

(SURESHWAR THAKUR)
JUDGE

(SUDEEPTI SHARMA)
JUDGE

December 04, 2023
Gurpreet

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