

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRA-AD-83-2021

Date of reserve:23.01.2023

Date of Pronouncement: 01.02.2023

Mobina @ Shabnam @ Shalu

...Appellant.

Versus

1. Murslin

...Respondents.

2. State of Haryana

CORAM: HON'BLE MR. JUSTICE M.S. RAMACHANDRA RAO
HON'BLE MRS. JUSTICE SUKHVINDER KAUR

.....

Argued by: Mr. Abhinav Aggarwal, Advocate
for the appellant.

Sukhvinder Kaur, J.

1. The appellant-Mobina @ Shabnam @ Shalu has preferred the instant appeal against judgment dated 09.04.2021, passed by learned Additional Sessions Judge (Fast Track Court), Panipat, vide which respondent-accused Murslin has been acquitted.

2. The facts, as per record, are that on 04.01.2017, a complaint bearing No.1794-Peshi dated 27.12.2016 was received in the police station by post, for taking legal action against Murslin, son of Alisher, Alisher, son of Mukhiya, Afsar, son of Alisher, Aarju, wife of Afsar, Shabila, wife of Alisher and two-three other unknown persons, wherein complainant, Prosecutrix "A" (name withheld) alleged that she was a resident of Dhoop Singh Nagar, Panipat and was engaged in labour work. Earlier, she was

married to Vikas, who had expired four years ago. Complainant/ prosecutrix further alleged that she met the accused Murslin for the first time at a cloth shop in Kairana and thereafter, they started visiting each other. The accused extended a marriage proposal to her and on the assurance of marriage, he developed physical relations with her and thereafter, he committed wrong act upon her repeatedly and also took her gold ring, cash amount and jewellery on the pretext of keeping the same in the bank locker. Thereafter, when the complainant asked accused for marriage, accused solemnized '*Nikah*' in Ram Nagar and obtained her signatures on some blank papers in the Court. She was an illiterate lady and later on came to know through believable sources that accused had solemnized marriage with one Rubi resident of Village Chakwali. When she asked about this fact from the accused and his family members, they extended life threat to her. She prayed for taking legal action against the accused.

3. On this complaint, FIR was registered. Investigation of present case was conducted by P/SI Sunita. During investigation, on 05.01.2017, after visiting place of occurrence site plan was prepared. Statements of witnesses were recorded. CD containing recording of accused was obtained and the same was taken into police possession. Complainant/ prosecutrix was got medico-legally examined from General Hospital, Panipat and parcels regarding medical were taken into police possession. On 06.01.2017, statement of complainant/prosecutrix under Section 164 of Cr.P.C. was got recorded from learned Magistrate. On 30.01.2017, accused Murslin was arrested in the present case and on 31.01.2017, accused was medico-legally examined from General Hospital, Panipat. During investigation, '*nikhahnama*' was taken into police possession. On

15.05.2017, accused Alisher son of Mukhiya, Afsar son of Alisher, Aarju wife of Afsar and Shabila wife of Alisher were joined in the investigation of present case and during investigation by Inspector/ SHO and Deputy Superintendent of Police (Head Quarter), Panipat, they were found to be innocent and Section 120-B of IPC was deleted in this case. Sealed parcels were sent to FSL, Madhuban for examination. After the conclusion of investigation, challan against accused was presented in the Court.

4. Copy of challan was supplied to the accused as envisaged under Section 207 of Cr.P.C. and vide order dated 22.08.2017, the case was committed to the Court of Sessions for trial.

5. On finding prima facie case against accused Murslin, he was charge sheeted under Sections 376(2), 406 and 506 IPC read with Section 34 IPC to which he pleaded not guilty and claimed trial.

In order to prove its case the prosecution examined PW1-EHC Jagbir Singh, who prepared the scaled site plan Ex.P1 on the demarcation of prosecutrix.

The complainant/prosecutrix has been examined as PW2, She has deposed on oath, in detail regarding the allegations levelled by her against the accused. She has stated that her husband Vikas had expired five years ago and she was residing in Dhoop Singh Nagar, Panipat. About three years back, she went to Kairana (U.P) to purchase some clothes, where she met accused Murslin. Thereafter, accused started visiting her house and promised to marry her. On the pretext of marriage, he made physical relations with her on several occasions. Accused even borrowed money from her several times and at one time,

accused took Rs.50,000/- from her on the excuse that his mother was seriously ill. Five months prior to registration of FIR, accused took her gold jewellery and Rs.1,50,000/- with the assurance that he would keep them safe in the bank locker. But thereafter, he performed marriage with Rubi, resident of Village Chakwali, District Saharanpur (U.P) and stopped visiting the prosecutrix. Thereafter, on one day, accused again came to the house of the prosecutrix and stated that his parents had forcibly solemnized his marriage with Rubi and asked her to accompany him to Haridwar with an assurance that he would arrange a job for her. But the same night, she heard accused talking to his father Alisher and came to know that he was planning to kill her. When accused went to sleep she checked his mobile phone and heard the recording of that conversation, and accused was asking his father as to who would eliminate the prosecutrix, whereupon his father said that accused Kurban would do that job properly. After hearing the conversation, she removed the chip from mobile phone and left the home in the night itself to save herself. On the next day, Afsar, Aarju, Ali Sher and Sabila made phone call to her and threatened that they would eliminate her if she would initiate any action against them. She also proved the application given by her to S.P. Panipat as Ex.P2. She has admitted that she was medico-legally examined at General Hospital, Panipat and proved her MLR as Ex.P3. She admitted that her statement Ex.P4 under Section 164 of Cr.P.C. was recorded. She had handed over one CD containing the chip

of that conversation, which she had removed from the mobile phone of accused. She has stated that said CD Ex.MO.1 was taken into police possession vide recovery memo Ex.P5.

PW3-SI Suresh Kumar has stated that after receiving application Ex.P2 from the office of Superintendent of Police, Panipat, he had registered FIR Ex.P6 and made endorsement Ex.P7.

PW4-ASI Naresh Kumar has tendered into his evidence affidavit Ex.PW4/A deposing therein that on 05.01.2017 P/SI Sunita had deposited with him sealed parcel containing swabs and slides with one envelope alongwith sample seal. On 31.01.2017, SI Saroj had deposited with him sealed parcel containing underwear with one envelope alongwith sample seal. On 27.03.2017, he had handed over these parcels to EHC Bijender for depositing the same in FSL, Madhuban, who deposited the same in FSL, Madhuban on the same day and handed over the receipt to him. Till the samples remained in his possession, the same were not tampered with.

PW5-Constable Sushil has deposed in his affidavit Ex.PW5/A regarding delivery of the special reports to Illaqa Magistrate, Superintendent of Police and Deputy Superintendent of Police on the same day.

PW6- EHC Bijender is also a formal witness and in his affidavit Ex.PW6/A has stated that he had deposited the parcels in FSL, Madhuban on the same day, which were handed over to him by ASI Naresh on 27.03.2017, and till the sealed parcels remained

in his possession, the same were not tampered with.

PW7-Ajj son of Abdul Gafur has stated that about 2½-3 years back, he was residing in Dhoop Singh Nagar, Panipat, as tenant, in the house of Jagbir along with his wife. Prosecutrix was also residing in the same building and she was his cousin. Prosecutrix met the accused Murslin in Kairana (U.P.) at a cloth shop and thereafter, he started visiting her in her rental accommodation at Panipat and under the false promise of marriage, he abused her sexually on many occasions. Accused Murslin took away Rs.2,00,000/- and gold jewellery from the prosecutrix on the pretext that he would keep the same in bank locker but thereafter, accused solemnized marriage with Rubi resident of Chakwali and stopped visiting the house of the prosecutrix. Then one day, accused came to her at Panipat and told her that he would arrange a job for her in U.P. Accused also asked her to accompany him to Haridwar. On that day, he stayed in the room of the prosecutrix and during the night he heard accused talking to his father and planning to kill the prosecutrix. He informed the prosecutrix about the said conversation. Then she checked the mobile phone of accused when he went to sleep. In the morning both prosecutrix and accused had a fight and then accused left the house of the prosecutrix.

PW8-Ms. Payal Bansal, Additional District and Sessions Judge, Yamuna Nagar, has stated that she had recorded the statement of the prosecutrix under Section 164 Cr.P.C. On 06.01.2017,

prosecutrix voluntarily made her statement Ex.P4 and signed the same. She also proved the certificate Ex.P9 and stated that the said statement was recorded by her in her own hand writing and it bears her signatures at point B. She also proved the zimini orders as Ex.P10, Ex.P11 and Ex.P12, bearing her signatures.

PW9-Iliyas son of Rashid Ahmad has stated that he had never worked as a Maulvi. On 19.03.2016, neither prosecutrix nor the accused had come to his shop. He had no information about the nikah of prosecutrix with Murslin. The accused was not known to him. As he was not supporting the case of prosecution, so he was declared hostile on the request of learned Assistant Public Prosecutor. During his cross-examination, he was confronted with his statement Ex.P8 recorded under Section 161 of Cr.P.C. but he denied to have made any such statement.

PW10-Inspector/SHO Sunita is the Investigating Officer, (who partly conducted the investigation) and she has deposed in detail regarding the investigation conducted by her in this case. On 05.01.2017, after visiting the place of occurrence along with the prosecutrix, on her demarcation, prepared the rough site plan Ex.P13 of the place of occurrence. She also took the prosecutrix for medical examination at Government Hospital, Panipat and proved her MLR Ex.P3. She also stated that doctor had handed over to her one sealed parcel containing slides and swabs of prosecutrix, sealed envelope, sample seal and copy of MLR, which were taken into police possession vide recovery

memo Ex.P14, on the same day i.e. 05.01.2017. Prosecutrix produced one CD Ex.MO.1 regarding conversation of accused Murslin, which was taken into police possession vide recovery memo Ex.P5. On 06.01.2017, she produced prosecutrix before learned ACJM, Panipat and got recorded her statement Ex.P4 under Section 164 of Cr.P.C. On 30.01.2017, she arrested accused Murslin. On 31.01.2017, accused was produced before Medical Officer, General Hospital, Panipat. After medical examination, doctor handed over to her sealed parcel containing underwear of accused, sample seal, sealed envelope and copy of MLR and the same were taken into police possession vide memo Ex.P17. She has also recorded the statements under Section 161 of Cr.P.C. and then handed over to SI Saroj for further investigation.

PW11-Sub Inspector Saroj Bala, prepared the scaled site plan Ex.P1 on demarcation of the prosecutrix, after visiting the spot. After completion of investigation, she produced the case file before Inspector/SHO Sandeep Kumar, Police Station Chandni Bagh, Panipat, who prepared and forwarded the final report under Section 173 Cr.P.C. against the accused Murslin.

PW12-DSP Sandeep Singh Ist IRB Bhondsi, District Gurugram, has stated that after completion of investigation, he prepared the report under Section 173 Cr.P.C. and forwarded the same to learned Area Magistrate, which bears his signature.

PW13-Dr. Shivanjali, Medical Officer, General Hospital, Panipat, has stated that on 05.01.2017, she had medico legally

examined the prosecutrix vide MLR Ex.P3, which bears her signatures. She has further deposed that she had seen report of FSL Ex.P18 and DNA report Ex.P19 and possibility of sexual assault upon prosecutrix could not be ruled out.

PW14-Dr. Pawan, Medical Officer, General Hospital, Panipat, has stated that on 31.01.2017, he had medico-legally examined the accused and has proved carbon copy of his MLR as Ex.P20, which bears his signatures. He has stated that there was nothing to suggest that abovesaid accused was not capable to perform sexual intercourse.

PW-15-Dr. Rajeev Kawatra, S.S.Officer, FSL, Madhuban, has proved the DNA report Ex.P19.

Pw16-HC Rajbir has stated that he joined the investigation of present case with P/SI Sunita. Investigating Officer had recorded his statement under Section 161 of Cr.P.C.

Besides that, learned Assistant Public Prosecutor also tendered into evidence FSL report Ex.P18 and DNA report as Ex.P19 and then closed the prosecution evidence.

Thereafter, the statement of accused under Section 313 Cr.P.C. was recorded, in which incriminating evidence against him was put to him, who denied the same and pleaded false implication.

In the defence, the accused has relied upon the documents

1. Ex.DA Application for medical examination of prosecutrix;
2. Ex.DB Application moved by Shabnam to SHO, Kotwali, Kairana, District Shamli;
3. Ex.DC Complaint moved by Shalu

against Vipin etc.; 4. Ex.DE Recovery memo of photo copy of Nikah; 5. Mark-DA Copy of marriage certificate and 6. Mark-DB Agreement for Nikah and close the defence evidence.

6. After concluding the trial, the trial Court acquitted accused Murslin.

7. Aggrieved by the said decision, Mobina @ Shabnam @ Shalu has preferred the present appeal against acquittal of accused Murslin.

8. We have heard Mr. Abhinav Aggarwal, Advocate for the appellant and have also perused the record.

9. Learned counsel for the appellant has vehemently contended that the trial Court has failed to appreciate that the appellant is an illiterate lady, and accused by taking the benefit of her innocence and by misleading her, under the pretext of marriage raped her. He has contended that the marriage certificate/Nikahnama dated 19.03.2016 (Mark DA) produced by the local police in connivance with the accused is completely a fake document. PW9 Hafij Illiyas has specifically stated that he had never worked as a Maulvi and he had no information about the *nikah* of prosecutrix with Murslin. He has argued that the trial Court has not considered the fact that in all her complaints Ex.P-2 before the police and in her statement under Section 164 Cr.P.C. (Ex.P4) she has specifically stated that appellant was in relationship with accused for three years and when the appellant asked the accused for marriage then he took her to some Ram Mandir and then he had taken her signatures on blank papers. He has contended that it does not prove the marriage between appellant and the accused. The trial Court has not considered that accused has performed marriage with another lady, namely, Ruby resident of Chakwali. He even

hatched a criminal conspiracy alongwith his family members to kill the appellant. However, the appellant came to know about it and saved herself by fleeing from the house. He has contended that the trial Court has failed to appreciate the conversation dated 25.11.2016 at 8.57 A.M., between accused Murslin and his father Alisher (CD Ex.MO.1), which clearly shows that accused had committed criminal breach of trust regarding the gold jewellery and cash of the appellant and also made a plan to eliminate the appellant at Shamli or some other place and further hired some person, namely Kurban for the same. He has contended that the view taken by learned Lower Court is unsustainable in the eyes of law and trial Court has ignored the true facts and laws and has wrongly acquitted the accused and prayed that appellant may be granted leave to appeal against the judgment of acquittal qua the respondent.

10. It is well settled law that while hearing appeals against acquittal, the judgments of acquittal should not be interfered with lightly and Courts have to be extremely careful while hearing such appeals. In the case of **Sadhu Saran Singh Vs. State of U.P. and others, 2016 (2) RCR (Criminal) 319**, the Hon'ble Apex Court reiterated that generally an appeal against acquittal has always been altogether on a different pedestal from that of an appeal against the conviction. It was held that in an appeal against acquittal, where the presumption of innocence in favour of the accused is re-enforced, the Appellate Court would interfere with the order of acquittal only when there was perversity of fact and law. A word of "caution" was also added by the Hon'ble Apex Court that the paramount consideration of the Court was to do substantial justice and avoid miscarriage of justice, which could arise by acquitting the accused, who is guilty of an offence.

11. Now adverting to the present case, it is to be seen that whether there is any perversity on facts or laws. After having heard learned counsel for the appellant at length and having perused the judgment as well as the other relevant record, we are of the considered opinion that the prosecution was unable to prove its case against the accused beyond the reasonable doubt.

12. As per the allegations, the accused had made physical relations with the prosecutrix in the wake of promise of marriage. The accused had promised to marry the prosecutrix but thereafter, he did not marry her rather married another lady, namely, Rubi resident of Village Chakwali. But these allegations, are belied even by the evidence led by the prosecution. In Ex.P2, the application moved by the prosecutrix she herself has admitted that accused had performed marriage with her at Ram Nagar and he had also obtained her signatures on certain papers. The application Ex.DB is also duly admitted by the prosecutrix and therein also, she had submitted that accused had performed marriage with her in the month of April in Panipat Court. In her medical history, she herself had dictated to the doctor “alleged history of sexual assault from past one to three years, repeated acts by some known friend and married to him for the last nine months”. PW-13 Dr. Shivanjali, had stated that prosecutrix had given the *ibid* history stating that she was married for the last nine months but she did not disclose the name. PW-16 HC Rajbir, has also stated during his cross-examination that Investigating Officer had verified about *nikah* in his presence and *nikah* between accused and the prosecutrix was confirmed in her investigation. PW-10 Inspector Sunita had also stated that the statement Ex.P8 was made by Hafij Illiyas voluntarily and she had not committed any omission or

addition while recording his statement. The perusal of statement Ex.P8 shows that Hafij Illiyas stated therein that on 19.03.2016, he had performed *Nikah* of both of them according to Muslim rites. Trial Court has rightly observed that even though Hafij Illiyas has turned hostile while appearing as PW-7, his testimony won't efface the testimony of other witnesses, who have spoken about *nikah* of accused with prosecutrix.

13. Trial Court has rightly held that after examining the instances explained above, it is easily fathomable that prosecutrix has claimed herself to be married to accused not once but umpteen times. Once she herself claims to be married to accused, then no breach of promise of marriage can be attributed to accused. Thus by claiming the status of being married to accused she herself has belied the allegations levelled in the complaint Ex.P2, which is fatal for the prosecution case.

14. Trial Court has also rightly held that even if for the sake of arguments it is believed that accused had promised to marry the prosecutrix but did not honour the same, still it cannot be believed that prosecutrix entered into physical relations with accused under any misconception or misrepresentation, allegedly wrapped in the promise of marriage.

15. The Hon'ble Apex Court in case **Pramod Suryabhan Pawar Vs. State of Maharashtra and another, (2019) SCC online SC 1073**, has discussed the "consent" in rape cases, especially with regard to promise of marriage, which is reproduced as under:-

"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 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.”

16. So from the ratio of law laid down in the case (supra) it is easily evincible that consent of prosecutrix to physical intercourse would be said to have been fraudulently obtained, if it is established, that accused had no intention to keep his promise since the inception of relationship. But in the instant case, there is no such evidence on record to prove that accused had no interest to marry the prosecutrix, when he extended the alleged promise of marriage. So it cannot be said that accused had obtained her consent under some misconception or under some misrepresentation.

17. Trial Court has further rightly observed that misconception or misrepresentation is not believable for an another reason also, as admittedly prosecutrix has already got married twice, before coming into contact with the accused and therefore, she cannot be treated like a girl of tender age, who had not faced the realities of life and was living in the fairy world. Undoubtedly, when she was more than 20 years of age when she encountered accused, then she was supposed to know her good and bad and capable of taking a rational decision.

18. It is also pertinent to note that promise of marriage cannot be held out as an inducement, for engaging in sex over a protracted and indefinite period of time, so the continuity of physical relations for three years is again not believable. When it is proved that prosecutrix had not entered into physical relationship with accused under some misconception or misrepresentation in the form of promise to marry, then what remains is consensual relationship, which cannot be termed as rape.

19. Undoubtedly, statement of victim carries immense significance and accused can be convicted solely on her statement, if her statement is unblemished, consistent and dehors concoction. But in the instant case, it seems that the prosecutrix has tried to improve her version at every stage. In her application Ex.P2, she has alleged that she met the accused at a cloth shop, thereafter, he started visiting her and in the wake of promise of marriage, he made physical relations with her. Then he grabbed her cash and gold jewellery with the assurance that he would deposit the same in the bank locker. Thereafter, he solemnized marriage with her in Ram Nagar and even obtained her signatures on certain blank papers in the Panipat Court. Then she came to know from some acquaintance that accused had solemnized marriage with one Rubi resident of Chakwali. Thereafter, accused and his family members intimidated her and they even planned to kill her. But in her statement recorded under Section 164 Cr.P.C., she has narrated a different story by stating therein that accused Murslin was residing with her for the last three years and he promised her that he would not solemnize marriage with anybody else except her. Accused had obtained her signatures nine months ago and assured her that they had already got married. But after nine days, he performed another marriage with Rubi resident of Village Chakwali. One day, accused came to her saying that he had already left Rubi and stayed with her for ten days. Thereafter, accused administered some poisonous drug to her after mixing the same in tea. She vomited out as the drug was left at the bottom. Thereafter, accused along with his family members hatched a conspiracy to kill her after taking her to some place. She removed the chip from the mobile phone of accused after he went to sleep and heard the conversation. From the conversation, she

came to know that accused had given contract (supari) to kill her to one Kurban. She had specifically stated that Afsar, Alisher, Aarju wife of Afsar and Sabila, mother of accused were hands in one glove with each other in that conspiracy.

20. While appearing in the Court as PW-2, apart from her main allegations she further added that accused took Rs.50,000/- from her on the excuse of his mother's illness. He also took her gold jewellery and Rs.1,50,000/- on the excuse of keeping them safe in bank locker. Thereafter, accused performed marriage with Rubi at village Chakwali and stopped visiting her. After 2-3 days, accused again came to her house and told her that his parents had solemnized his marriage with Rubi forcibly and asked her to accompany him to Haridwar where he would arrange a job for her. On the same night, when accused visited her house in Panipat, she heard accused talking to his father and planning to kill her. When accused went to sleep, she checked the mobile phone and heard the recording wherein accused was saying that he would take her to some other place to kill her. He even inquired from his father that who would eliminate her and further told that Kurban would eliminate her and Mehtab would not be able to do the work properly. Accused's father Alisher asked accused to bring the prosecutrix to Haridwar so they could kill her there. Alisher even asked the accused to take the money from her bank account whereupon the accused replied that he could copy the signatures of prosecutrix. After hearing the recording, she removed the chip from the mobile phone and left her house in the night, to save herself.

21. From the perusal of all the three abovesaid statements, it can be easily gathered that all the three versions are not only different, but, also

have been tried to be improved upon. The trial Court rightly held that the contents which were not there in her complaint were introduced by her in her statement recorded under Section 164 Cr.P.C. and the contents which were not there in her statement recorded under Section 164 Cr.P.C., she added while appearing as a witness in the Court. Thus the prosecutrix did not remain consistent and firm qua her accusations at every stage i.e. during investigation; during trial and even at the time of facing the cross-examination. She did not stick to one version and rather she ventured to improve the same as and when she got a chance. So owing to these improvements, she cannot be said to be a 'reliable witness' for convicting the accused when her statement is not corroborated from any independent source.

22. PW7-Ajij alleged to be next door neighbour of the prosecutrix, has tried to corroborate the version of the prosecutrix, during his deposition, but it has been rightly observed by the trial Court that surprisingly his presence or knowledge has nowhere been admitted by the prosecutrix. Prosecutrix has nowhere stated that PW7-Ajij was also accompanying her when she encountered accused for the first time. She has nowhere stated either in her application Ex.P2 or in her statement recorded under Section 164 Cr.P.C. Ex.P4 or in her statement recorded in the Court as PW2 that it was Ajij, who had informed her about the conspiracy being hatched by the accused alongwith his father. So when the prosecutrix has not named this witness at any stage of the case, then the possibility of Ajij being a planted witness cannot be ruled out. This witness is contradictory to the prosecutrix on material aspects. As per this witness he apprised the prosecutrix regarding the conversation between accused and his father while planning to

kill her, whereas as per the prosecutrix she herself had heard this conversation and then checked the mobile phone of the accused. Again this witness has stated that after the prosecutrix came to know about the said conversation, then in the morning the prosecutrix and the accused had a fight and then accused left her house. But on the other hand, the prosecutrix has stated that she fled away from the house on the same night to save herself. As such statement of PW7-Ajij cannot be said to be corroborative piece of evidence for the prosecution.

23. During her cross-examination she has admitted that she had moved another application Ex.DB before SHO Kotwali Kairana, District Shamli on 05.12.2016 as she had a dispute with Murslin and his family members. But in Ex.DB, there is no allegation of making physical relations on the pretext of marriage rather she had claimed therein that accused had solemnized marriage with her and after nine days of this marriage, accused solemnized second marriage with Ruby. But, thereafter, application Ex.P2 was moved by the prosecutrix on 27.12.2016, incorporating the allegations of rape on the promise of marriage, which raises a doubt regarding the veracity of these accusations.

24. So far as, the allegations regarding criminal breach of trust regarding gold jewellery and cash of the prosecutrix are concerned, the prosecution version is inconsistent with her statement recorded under Section 164 Cr.P.C. as nothing of that sort was mentioned therein. Though in her complaint she had levelled the allegations of criminal breach of trust regarding the gold jewellery and cash yet in her complaint, she had not disclosed the exact amount of cash. But while appearing in the witness box as PW2, she has stated regarding the cash of Rs.1,50,000/- whereas PW7-

Ajij has stated that the cash amount was Rs.2,00,000/-. Moreover, the other material fact is that nothing was recovered from the possession of the accused as stated by PW16-HC Rajbir. Nothing is on record that what was the source of Rs.1,50,000/- of cash lying with the prosecutrix. There is no evidence regarding entrustment also.

25. The allegations regarding intimidation are that, in her complaint she had stated that she heard the recording from the mobile phone of accused when she came to know from some acquaintance that accused was planning to murder her. But while appearing as PW2, she has stated in her examination-in-chief that she herself had heard accused talking to his father, namely, Alisher on mobile phone. In her statement recorded under Section 164 Cr.P.C. Ex.P4, she has stated that she came to know from recording that accused had given her murder contract to Kurban, but name of Kurban has nowhere been mentioned in the application Ex.P2. In her statement under Section 164 Cr.P.C. Ex.P4, she has stated that Afsar, Alisher, Aarju, wife of Afsar and Sabila all had conspired against her. But while appearing in the witness box as PW2, she has stated that all of them called her on the next day and threatened her on the phone but both these versions are missing in her application Ex.P2.

26. The trial Court has rightly not relied upon the CD also, which allegedly contained the conversation of accused with his father while planning to murder the prosecutrix, as the source of the CD had never been taken into police possession and there was no certificate under Section 65-B of Indian Evidence Act by the person who had converted the contents from the mobile phone chip to CD nor any FSL report was placed on record to prove that the same was containing the voice of accused and his father.

27. Thus the trial Court has rightly reached at the conclusion that the prosecution could not prove its case beyond shadow of reasonable doubt against the accused and the accused has been rightly acquitted by the trial Court.

28. In view of the above, the appeal being bereft of any merits stands dismissed.

(M.S. RAMACHANDRA RAO)
JUDGE

(SUKHVINDER KAUR)
JUDGE

01.02.2023

Komal

Whether speaking/reasoned? : Yes/ No

Whether reportable? : Yes/ No