

CRA-AD-296-2022

2023:PHHC:105775-DB

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

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CRA-AD-296-2022

Date of Decision : August 16, 2023

BHAN MATI

.....Appellant

VERSUS

STATE OF HARYANA AND OTHERS

.....Respondents

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

Present : Ms. Archana Chauhan, Advocate for
Mr. Sumit Jain, Advocate for the appellant.

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

SURESHWAR THAKUR. J.(Oral)

1. The instant appeal is directed against the verdict as became rendered on 3.8.2022, upon Session Case No. 153/2017 by the learned Additional Sessions Judge, Sonipat whereby, in respect of charges drawn against the accused for offences punishable under Sections 365, 376 and 506 IPC read with Section 34 of the IPC, he made a verdict of acquittal upon the accused.

2. There is no contest amongst the counsel appearing for the litigants before this Court about the prosecutrix at the relevant stage, thus being a major, and, thereby hers being capacitated to, thus voluntarily join the company of the principal accused, who is one Deepak. Therefore, it has to be discerned from the evidence on the record whether as alleged by the prosecutrix, qua the prosecutrix on some allurements, thus had taken to join the company of principal accused, who is one Deepak.

3. Initially in the above regard, there is a belated and inordinate delay of three months in the reporting of the matter to the police. The said period of delay is immense, and unless became well explained, by tangible evidence, thus becoming adduced, thereupon the said delay, would beget the ill consequence of the prosecution version, as contained in the FIR becoming stained with vices of afterthought, concoction and pre-meditation. In the event of the said stains manifesting in the FIR, thereupon this Court would decline to make any interference with the impugned verdict (Supra), as became rendered by the learned trial Judge concerned.

4. In the above regard, there is no evidence adduced on record by the prosecution, thus well explicating the said gross delay. Consequently, the effect, of the above gross period of unexplained delay taking place, since the crime incident taking place, and, its reporting being made to the police agency concerned, is that, thereby the prosecution version, as encapsulated in the apposite FIR, rather becoming stained with pervasive blemishes of concoctions and pre-meditations. Resultantly a concocted version qua the crime event, as encapsulated in the apposite FIR, thus requires that no credence be assigned thereto.

5. Be that as it may, even a reading of the deposition of the prosecution witnesses, as became recorded before the learned trial Judge concerned, thus also suggests that thereby inconsistent testimonies, have been made hence in respect of the crime event(s). The said inconsistencies are unfolded, on a reading of the deposition of the

prosecutrix, who stepped into the witness box as PW1. In her examination-in-chief she spoke, that the accused persons had abducted her by alluring her, she also deposed that the principal accused Deepak, had repeatedly subjected her to sexual assault. Further-more, she stated that the said sexual assault made upon her person by the principal accused Deepak, was, against her will and without her consent.

6. Apparently, the age of the prosecutrix at the time of happening of the crime event was more than 18 years, and, thereby she was a major at the relevant stage, as such, she became capacitated to without the consent of her parents, thus join the company of the accused. However, the prosecutrix has not been able to speak in her deposition, that as a matter of fact she joined the company of the principal accused Deepak, and, of the other co-accused, rather on the pretext of any allurements, thus as becoming meted to her by the accused. Therefore, in the prosecutrix joining the company of the accused, it has to be concluded that she did so, thus voluntarily, and, with her free consent.

7. In addition, when the above made statement of the prosecutrix as became rendered before the learned trial Judge, is juxtaposed, with her previously made statements, to which Ex.PW6/A and Ex.DW1/A, become assigned, thereupon, a reading of the said statements, divulges that there was no attribution therein, rather to the principal accused Deepak, that he had subjected her to repeated sexual assaults, and, that too without her consent. The non mentioning of the above fact, in the previously made statement by the prosecutrix, and, yet

hers making, the above deposition before the learned trial Judge concerned, are but to be concluded, to be gross, rife improvements from her previously made statements. In consequence, no credence has to be assigned to her testification, as, made before the learned trial Judge concerned. Further-more, the prosecutrix has even spoken in her cross-examination, that she alongwith the principal accused Deepak, had proceeded to Delhi from Sonipat in a bus. Since the bus stand at Sonipat is a crowded place, and, yet hers failing to, on hers taking to join the company of the accused, thus raise any outcry, for thereby hers inviting the attention of the persons available at the bus stand, thus inches to a conclusion, that she had voluntarily taken to join the company of the principal accused Deepak.

8. Be that as it may, in Ex.DW1/A, which is the previous statement made by the prosecutrix before the police, she has not disclosed therein that co-accused Kanta before 3 years, had called her on the roof of her house, and asked her to elope with the accused but had yet also spoken about the said fact in her deposition, as, made before the learned trial Judge concerned. Resultantly, if the prosecutrix upon hers appearing before the learned trial Judge concerned, had digressed from Ex.DW1/A, which is her previously made statement before the police Officer concerned, thereby no credence is to be assigned to the said testification made by her before the learned trial Judge concerned.

9. The nutshell of the above discussion, is that, as aptly concluded by the learned trial Judge that the prosecutrix has voluntarily

joined the company of the principal accused Deepak, and, thereby, she was neither allured nor was enticed by the principal accused Deepak to join his company. In consequence, this Court finds no merit in the present appeal.

10. Consequently, for the reasons assigned hereinabove, this Court finds no reason to interfere with the impugned verdict of acquittal, as made by the learned trial Court concerned. Consequently, the instant appeal is dismissed. 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. Personal, and, surety bonds, if any, furnished by the accused concerned, are ordered to be forthwith cancelled, and, discharged.

11. Records be sent down forthwith.

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

August 16, 2023
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Whether speaking/reasoned.	:	Yes/No
Whether Reportable.	:	Yes/No