

2024:PHHC:077665 DB

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

CRA-AD-17-2024 (O&M)
Reserved on: 02.05.2024
Date of decision: 21.05.2024

Sxxx Bxxx

.....Appellant

Versus

State of Haryana and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE SUDHIR SINGH
HON'BLE MR. JUSTICE HARSH BUNGER

Present: Dr. R.N. Bharti, Advocate, for the appellant.

Mr. Manish Dadwal, AAG, Haryana.

SUDHIR SINGH, J.

The present appeal has been filed against the judgment dated 19.07.2023 passed by the learned Additional Sessions Judge, Gurugram, whereby accused-respondent No.2 (Aditya Sachdeva) has been acquitted of the charges under Section 376(2)(n) IPC.

2. Vide order dated 07.03.2024, the Lower Court record was called for. The same was received on 18.04.2024.

3. The prosecution case was that on 08.07.2021, complainant-prosecutrix (PW-7) made a complaint alleging therein that she had been residing in Sector-37, Gurugram since 10.09.2020. On 25.09.2020, at about 7.00/8.00 P.M., accused-respondent No.2, Aditya Sachdeva, came to meet her and that she offered him a glass of water and when she went into kitchen to put the glass, on finding her all alone, respondent No.2 after putting her on the bed, had forcibly committed a rape upon her.

She raised noise and tried to save herself, but all in vain. After the incident, when she started crying and said that she would report the matter to the police, then the accused assured her that he would marry her. The accused asked her not to weep and not to get registered a case against him. He promised to marry her once the Corona pandemic was over. However, after the incident, her mental condition got deteriorated and she fell ill. After a long time, she felt better and wanted to report the incident as she did not want to marry accused-respondent No.2.

4. Based on the aforesaid complaint, FIR No. 75 dated 09.07.2021, under Section 376(2)(n) IPC, was registered at Police Station, Women (West), Gurugram. After investigation, the charge-sheet was submitted, where-after cognizance was taken. Thereafter, charge was framed against respondent No.2, to which he pleaded not guilty and claimed to be tried.

5. During trial, the prosecution examined ten witnesses, namely, PW1 Dr. Manav Chauhan, PW2 Dr. Poonam Yadav, PW3 Constable Parveen, PW4 Constable Umesh, PW5 Girish Kumar, Draftsman, PW6 Rajiv Marothia, PW7 prosecutrix, PW8 Inspector Suman, PW9 L/ASI Anita, Investigating Officer and PW10 Deepak Kumar, Nodal Officer. On conclusion of the prosecution evidence, statement of the accused (respondent No.2) was recorded under Section 313 Cr.P.C., wherein the entire incriminating evidence was put to him. But, he denied the same and pleaded false implication in the case. In defence, the accused-respondent No.2 tendered the document Ex.D1.

After conclusion of the trial, the learned Trial Court acquitted the accused (respondent No.2), as noticed above.

6. The grounds considered by the learned Trial Court for acquitting respondent No.2 are as under:-

- i) There were contradictions in the complaint Ex.P15 and the statement made by the prosecutrix under Section 164 Cr.P.C. Ex.P17. In the statement Ex.P17, the prosecutrix had mentioned about having known the accused-respondent No.2 since February 2019 and the accused committing forcibly rape upon her on 25.09.2020 at her house. In that statement, she had further stated that the accused established physical relations with her on the pretext of false promise of marriage. But, he never executed his promise and threatened her with the dire consequences and further, committed unnatural intercourse with her. The facts pertaining to threats and unnatural intercourse, allegedly committed by the accused, were not mentioned by the prosecutrix in her complaint Ex.P15 and Ex.P16 and were also not mentioned in her testimony while appearing as PW-7.
- ii) No specific time or period has been mentioned by the prosecutrix, during which, accused-respondent No.2 established physical relations with her either in her complaints Ex.P15 & Ex.P16 or statement Ex.P17 or her testimony as PW-7. However, in the MLR Ex.P3, the prosecutrix stated that the accused established physical relations with her from 25.09.2020 till 01.02.2021.
- iii) There was delay of five months in lodging the FIR in this case. There was no explanation, as to why the prosecutrix waited for five months to approach the police. The only reason given by the prosecutrix was her mental instability or depression. But, no

medical evidence has been produced to prove the said fact.

iv) No medical evidence was produced to show any injury on the person of the prosecutrix or to show any forceful act of accused-respondent No.2.

v) The prosecutrix, while appearing as PW-7 admitted that she had already been married when she got registered the present FIR. So, there was no reason with the prosecutrix to give consent to establish physical relations on the basis of any alleged promise of marriage since she could not marry the accused till the conclusion of her divorce proceedings. Moreover, there was nothing on record to show that the prosecutrix had taken divorce from her husband.”

7. The learned counsel for the appellant, while assailing the judgment of acquittal passed by the trial Court, has argued that there is sufficient evidence on record corroborating the entire testimony of the prosecutrix that on 25.09.2020, at about 7.00/8.00 P.M., accused-respondent No.2 entered her house and forcibly committed rape upon her. It is, further argued that there was no material contradiction in the testimony of the victim and she had specifically named the accused not only in her statement under Section 164 Cr.P.C., but also while appearing in Court as PW7. It is, thus, argued that when the victim's version was duly corroborated by the testimony of the other witnesses, the very approach of the trial Court in acquitting the accused is not tenable in the eyes of law.

8. After hearing the submissions made by the learned counsel for the appellant, the following issues arise for consideration in the present appeal:-

“(i) Whether the contradictions in the testimony of the victim is fatal to the case of the prosecution?

(ii) Whether in the absence of any conclusive clinical evidence, can it be said that the victim was subjected to a forcible sexual assault by the accused-respondent No.2?

(iii) Whether the huge delay of five months in lodging the FIR has been satisfactorily explained by the prosecution?”

9. The trial Court while evaluating the evidence on record, has specifically found that though in complaint dated 07.07.2021 Ex.P15, the victim had mentioned the factum of accused establishing physical relations with her on the pretext of false promise of marriage, yet in the subsequent complaint Ex.P16, she had stated that the accused had started living with her and establishing physical relations on the pretext of false promise of marriage. It was found that there was no explanation on the part of the victim, as regards non mentioning of this fact in her previous complaint Ex.P15. It was further found that in her statement under Section 164 Cr.P.C. Ex.P17, the prosecutrix had mentioned about having known the accused since February, 2019 and him having committed rape upon her on 25.09.2020 at her house, but when she confronted the accused with his promise to marry her, he had threatened her with dire consequences and had also committed unnatural intercourse with her. It was found that these allegations were also not mentioned in the earlier complaints Ex.P15 and Ex.P16. The same were also not mentioned in her statement under Section

164 Cr.P.C. Even, in the MLR Ex.P3, the victim had denied unnatural intercourse by the accused. Thus, it was found that there were contradictions in the statements and the testimony of the victim, as regards forcible sexual assault under the false promise of marriage. It was, thus, concluded by the learned trial Court as under:-

“46. With regard to the allegations of establishing physical relations on the pretext of false promise of marriage, the prosecutrix has admitted in her testimony as PW7 that she was already married when she got registered the present FIR. As such, the accused could not have married the prosecutrix legally nor it was legally possible for him to do so at that time. There was no misconception or misrepresentation in the mind of the prosecutrix in this regard as inability of the accused to marry the prosecutrix was because of the marital status of the prosecutrix herself. There was no reason with the prosecutrix to give consent to establish physical relations on the basis of any alleged promise of marriage since she very well knew that she could not marry the accused till the conclusion of her divorce proceedings. Even otherwise, there is nothing on record apart from verbal averments of the prosecutrix that she had taken divorce from her husband and no documentary proof has been placed on record in this regard in the evidence by the prosecution.”

It was also found that as per version of the victim, she had been subjected to forcible sexual assault a number of times, but nothing came forward as to why she remained quiet for such a long time. It was, however, found that the victim had refused to give her voice sample when she was confronted with the obscene videos alleged to be of hers and that of the accused. Thus, it was found that from the stage of giving the complaint

Ex.P15 till the recording of her deposition in the Court, the testimony of the victim remained inconsistent and untrustworthy.

10. It is trite law that in a case of sexual intercourse, the testimony of the victim alone is sufficient to bring home the guilt on the part of the accused, provided such evidence is consistent, trustworthy and without any contradiction. Where, however, such testimony of the victim is inconsistent, untrustworthy and contradictory, the same cannot be a sufficient ground to hold that the prosecution has been able to prove its case beyond the reasonable doubt. In the instant case, the victim has alleged that she had been subjected to sexual assault by the accused under the false promise of marriage. Ironically, the victim was found to be already married and therefore, her version that the accused had committed rape upon her under the false promise of marriage is untenable. Still further, it has been proved on record that in one of her complaints (Ex.P16), the victim had stated that the accused had started living with her and establishing physical relations under the false promise of marriage, but this fact was neither mentioned in the earlier complaint Ex.P15 nor in her statement under Section 164 Cr.P.C. This clearly indicates that there is no substance in the allegations of the victim that she had been subjected to a forced sexual intercourse. Accordingly, issue no. (i) is answered in the affirmative.

11. Coming to issue No. (ii), from the evidence on record, it appears that the relationship between the victim and the

accused-respondent No.2 was consensual one. It was found by the trial Court that the prosecutrix had never disclosed to anyone about the wrongful acts committed by accused-respondent No.2 on 25.09.2020 and on the contrary, she had given her consent to the accused to maintain physical relations with her after the aforesaid act on 25.09.2020. In the instant case, the FIR was lodged on 09.07.2021. The occurrence is alleged to have taken place in a well guarded society, where if, the matter had been reported by the victim, she would have readily obtained the necessary help. Though, Dr. Poonam Yadav, while appearing as PW-2, had opined that possibility of sexual intercourse could not be ruled out, yet it was found by the trial Court that there was no clinical or scientific evidence to show any injury on the person of the prosecutrix, which could establish any forcible act by the accused-respondent No.2. The prosecutrix had given printouts of Instagram and WhatsApp chats (Ex.P18), wherein there was no reflection about the relationship between the victim and the accused on or before 25.09.2020. The said chats indicated that the same were between the accused-respondent No.2 and some other girl and in the WhatsApp chats, there was nothing to indicate that the accused had given any promise of marriage to the victim. It was found by the learned trial Court that while appearing as PW-7, the victim had admitted about doing a role-play in the sexual fantasies as mentioned in the chat Ex.P18. The victim did not submit her phone to the Investigating Officer for its forensic examination and therefore, it was difficult to decipher the

realities from the said fantasies and to confirm, as to whether those were actually chatting in their real self or as a part of some fantasies in the alleged role-play. The trial Court, after considering document Ex.D1, found that the allegations of threats leveled by the victim against the accused-respondent No.2 were found false and baseless.

12. It has come on record that the victim was already married. She alleged forceful sexual intercourse at the hands of the accused-respondent No.2. It is also proved on record that the accused-respondent No.2 and the victim had been in relationship since 2019. The FIR was lodged on 09.07.2021. The facts and the evidence on record indicate a consensual relationship between the two. The exchange of videos and WhatsApp chats further indicates that there was no circumstance created by the accused-respondent No.2 so as to compel the victim to place her person before him (accused). It was found by the learned trial Court that no scientific or clinical evidence was produced on record to show that the victim was subjected to a forceful sexual assault by the accused-respondent No.2. Thus, in the absence of any such evidence, coupled with the conduct of the victim in not submitting her phone to the Investigating Agency to send the same for forensic examination, would be a sufficient ground to hold that the victim was a consenting party to the alleged act and she was not subjected to the forcible sexual assault. Issue No. (ii) is also answered accordingly.

In Naim Ahamed Vs. State (NCT of Delhi), (2023)15

SCC 385, the Hon'ble Apex Court, while considering somewhat similar issue has held that the prosecutrix who herself was a married woman having three children, could not be said to have acted under the alleged false promise given by the appellant or under the misconception of fact while giving the consent to have sexual relationship with the appellant. It was held as under:-

“19. After duly examining the record in the light of the submissions made by the learned counsels for the parties, following facts have emerged:—

- (i) Prosecutrix was a married woman having three children.
- (ii) Accused was staying in a tenanted premises situated in front of the house of the prosecutrix.
- (iii) Though initially hesitant, the prosecutrix developed liking for the accused, and both started having sexual relationship with each other.
- (iv) The prosecutrix delivered a male child on 28/10/2011 from the loin of the accused.
- (v) The prosecutrix went to the native place of the accused in 2012 and came to know that he was a married man having children.
- (vi) The prosecutrix still continued to live with the accused in separate premises.
- (vii) The prosecutrix and her husband took divorce by mutual consent in 2014 and thereafter prosecutrix permanently left her three children with her husband.
- (viii) The prosecutrix lodged the complaint on 21st March, 2015 alleging that she had consented for sexual relationship with the accused as the accused had promised her to marry and subsequently did not marry.

20. The bone of contention raised on behalf of the respondents is that the prosecutrix had given her consent for sexual relationship under the misconception of fact, as the accused had given a false promise to marry her and subsequently he did not marry, and therefore such consent was no consent in the eye of law and the case fell under the Clause - Secondly of Section 375 IPC. In this regard, it is pertinent to note that there is a difference between giving a false promise and committing breach of promise by the accused. In case of false promise, the accused right from the beginning would not have any intention to marry the prosecutrix and would have cheated or deceived the prosecutrix by giving a false promise to marry her only with a view to satisfy his lust, whereas in case of

breach of promise, one cannot deny a possibility that the accused might have given a promise with all seriousness to marry her, and subsequently might have encountered certain circumstances unforeseen by him or the circumstances beyond his control, which prevented him to fulfill his promise. So, it would be a folly to treat each breach of promise to marry as a false promise and to prosecute a person for the offence under Section 376. As stated earlier, each case would depend upon its proved facts before the court.

21. In the instant case, the prosecutrix who herself was a married woman having three children, could not be said to have acted under the alleged false promise given by the appellant or under the misconception of fact while giving the consent to have sexual relationship with the appellant. Undisputedly, she continued to have such relationship with him at least for about five years till she gave complaint in the year 2015. Even if the allegations made by her in her deposition before the court, are taken on their face value, then also to construe such allegations as 'rape' by the appellant, would be stretching the case too far. The prosecutrix being a married woman and the mother of three children was matured and intelligent enough to understand the significance and the consequences of the moral or immoral quality of act she was consenting to. Even otherwise, if her entire conduct during the course of such relationship with the accused, is closely seen, it appears that she had betrayed her husband and three children by having relationship with the accused, for whom she had developed liking for him. She had gone to stay with him during the subsistence of her marriage with her husband, to live a better life with the accused. Till the time she was impregnated by the accused in the year 2011, and she gave birth to a male child through the loin of the accused, she did not have any complaint against the accused of he having given false promise to marry her or having cheated her. She also visited the native place of the accused in the year 2012 and came to know that he was a married man having children also, still she continued to live with the accused at another premises without any grievance. She even obtained divorce from her husband by mutual consent in 2014, leaving her three children with her husband. It was only in the year 2015 when some disputes must have taken place between them, that she filed the present complaint. The accused in his further statement recorded under Section 313 of Cr. P.C. had stated that she had filed the

complaint as he refused to fulfill her demand to pay her huge amount. Thus, having regard to the facts and circumstances of the case, it could not be said by any stretch of imagination that the prosecutrix had given her consent for the sexual relationship with the appellant under the misconception of fact, so as to hold the appellant guilty of having committed rape within the meaning of Section 375 of IPC.”

Recently, in somewhat similar circumstances, Hon'ble Supreme Court in case of Vinod Gupta v. State of Madhya Pradesh, 2024(2) RCR (Criminal) 175; held as under:-

“8. From the contents of the complaint, on the basis of which FIR was got registered and the statement got recorded by the complainant, it is evident that there was no promise to marry initially when the relations between the parties started in the year 2017. In any case, even on the dates when the complainant alleges that the parties had physical relations, she was already married. She falsely claimed that divorce from her earlier marriage took place on 10.12.2018. However, the fact remains that decree of divorce was passed only on 13.01.2021. It is not a case where the complainant was of an immature age who could not foresee her welfare and take right decision. She was a grown up lady about ten years elder to the appellant. She was matured and intelligent enough to understand the consequences of the moral and immoral acts for which she consented during subsistence of her earlier marriage. In fact, it was a case of betraying her husband. It is the admitted case of the prosecutrix that even after the appellant shifted to Maharashtra for his job, he used to come and stay with the family and they were living as husband and wife. It was also the stand taken by the appellant that he had advanced loan of Rs. 1,00,000/- to the prosecutrix through banking channel which was not returned back.

9. Similar issue was considered by this Court in Naim Ahamed's case (supra) on almost identical facts where the prosecutrix herself was already a married woman having three children. The complaint of alleged rape on false promise of marriage was made five years after they had started having relations. She even got pregnant from the loins of the accused. Therein she got divorce from her existing marriage much after the relations between the parties started. This Court found that there cannot be any stretch of imagination that the

prosecutrix had given her consent for sexual relationship under misconception. The accused was not held to be guilty.”

13. There is a huge delay in registration of the FIR. As per the victim, she had been subjected to forcible sexual assault by the accused on 25.09.2020 for the first time. Thereafter, the accused-respondent No.2 continued to maintain physical relations with her on number of occasions. It has also come on record that the victim had submitted complaints Ex.P15 and Ex.P16 with regard to the alleged act, but the FIR was got lodged only on 09.07.2021. In para 41 of its judgment, the trial Court has found that according to the allegations of the victim, she had been subjected to forcible sexual intercourse by the accused from 25.09.2020 till 01.02.2021. Thus, taking into account that the last alleged act of sexual assault took place on 01.02.2021, there was a delay of five months in lodging the FIR (which was registered on 09.07.2021). It was further found that the only reason given by the victim for such delay was her mental instability and depression. However, the same was only verbal in nature and no medical record to prove the same was produced by the victim/prosecution. The non explanation of the delay, coupled with the contradictory stands taken by the victim in her complaints and statement under Section 164 Cr.P.C., would make it clear that the huge delay in lodging the FIR, is fatal to the prosecution case.

In Rohtas v. State of Haryana, (2019) 10 SCC 554, while considering the issue of delay in registration of the FIR, it was held by the Hon’ble Apex Court, as under:-

“27. As regards the delay in registration of FIR, that aspect has also been considered by the trial court and the finding recorded by the trial court rejecting that defence plea found favour with the High Court. We see no reason to deviate from the conclusion so recorded that there was no delay in registration of FIR in the facts of the present case. The significance of registration of FIR without loss of time need not be underscored. This Court in *State of A.P. v. M. Madhusudhan Rao*, (2008) 15 SCC 582, while dealing with similar arguments, observed in para 30 as follows:-

“30. Time and again, the object and importance of prompt lodging of the first information report has been highlighted. Delay in lodging the first information report, more often than not, results in embellishment and exaggeration, which is a creature of an afterthought. A delayed report not only gets bereft of the advantage of spontaneity, the danger of the introduction of a coloured version, an exaggerated account of the incident or a concocted story as a result of deliberations and consultations, also creeps in, casting a serious doubt on its veracity. Therefore, it is essential that the delay in lodging the report should be satisfactorily explained.”

It is, thus, settled law that the delay in lodging the FIR has to be satisfactorily explained by the person, who lodges the FIR. However, the only test is that such explanation must be reasonable and must stand to the logic and must also corroborate the attending circumstances. In the instant case, the said factual aspects are totally lacking and therefore, we do not find any illegality in the finding recorded by the trial Court that the delay of five months in lodging the FIR has not been explained by the victim. Accordingly, issue no. (iii) is decided in

negative.

14. It could not be pointed out that while passing the impugned judgment, any material evidence has been misread or not taken into consideration. Rather, we find that the findings given by the learned trial Court do not suffer from any illegality or perversity.

15. Accordingly, finding no merits in the appeal, the same is hereby dismissed.

Pending application(s), if any, shall also stand disposed of.

(Sudhir Singh)
Judge

(Harsh Bunger)
Judge

21.05.2024
Ajay Prasher

- Whether speaking/reasoned:

Yes/No
- Whether reportable:

Yes/No