



CRA-AD-105-2023 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Decided on:- 14.05.2024
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BXXXX

....Appellant

Versus

State of Haryana and another

...Respondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL
HON'BLE MRS. JUSTICE AMARJOT BHATTI

Present:- Mr. Shailender Singh, Advocate
for the appellant.

Mr. Sukhdeep Parmar, Senior DAG, Haryana.

AMARJOT BHATTI, J.

1. Appellant/Victim (name withheld and to be referred as 'Victim B' hereinafter) has filed present appeal against judgment of acquittal in favour of Deepak respondent No. 2, dated 03.01.2023 passed by learned Additional Sessions Judge (Fast Track Court), Panipat in Sessions Case bearing No. 75 of 22.12.2021, titled as "State Vs. Deepak". The appellant/victim 'B' has also challenged directions of learned Additional Sessions Judge (Fast Track Court), Panipat for filing complaint against Victim 'B' in the Court of learned Chief Judicial Magistrate, Panipat to initiate action under Section 193 of IPC along with other relevant provisions of law.

2. Brief facts of the case are that present FIR was lodged on 26.04.2019, on the written complaint of N (name withheld) mother of victim



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'B' addressed to Police Post Model Town, Panipat. Complainant stated that she was resident of Friends Colony, Panipat having two daughters and one son. Her second daughter/victim 'B' used to work in a saloon at Sonapat. The owner of said saloon namely Deepak used to pick and drop her daughter at home. In the first week of April, victim 'B' left the house with Deepak. For about 2-3 days, victim 'B' was in touch with her on phone, thereafter her mobile phone was switched off. She tried to inquire the matter at her own level and found that Deepak had enticed her daughter with intention to marry her forcibly. Accordingly, she prayed for taking legal action against Deepak.

3. On this complaint, formal FIR No. 307 dated 26.04.2019 was registered at Police Station Old Industrial, Panipat under Sections 363 and 366 of Indian Penal Code, 1860 (for short 'IPC') and later on offence under Sections 328, 376(2)(n) and 506 of IPC were added. Investigation was commenced. Statements of witnesses were recorded. On 11.06.2019, victim 'B' returned home and she was produced before the police by her mother. After conducting her medical examination, she was taken to Judicial Complex, Panipat where her counseling was done by Ms. Monika Kakkar, Legal Aid Counsel. Thereafter, victim 'B' was produced before Ld. Illaqua Magistrate and her statement was recorded under Section 164 Cr.P.C. Despite best efforts made by Investigating Officer, accused Deepak could not be apprehended, as a result proceedings under Section 82 Cr.P.C. were initiated against accused. He was declared as Proclaimed Person vide order dated 25.01.2021. On 11.07.2021, accused Deepak was arrested by SI Sat Narain and joined in the investigation of this case. After completion of



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investigation, challan was presented in the Court of Illaqa Magistrate at Panipat against Deepak.

4. Accused was supplied complete set of copy of challan report as provided under Section 207 of Cr.P.C. Since the offence under Sections 328, 366 and 376(2)(n) of IPC are exclusively triable by the Court of Sessions, therefore, the learned Additional Chief Judicial Magistrate, Panipat committed the case to the Court of learned Sessions Judge, Panipat for trial vide commitment order dated 13.12.2021.

5. The learned Additional Sessions Judge, Panipat, after hearing the arguments, framed charge-sheet against accused Deepak under Sections 366, 328, 376(2)(n), 313, 406 and 506 of IPC, which was read over and explained to him in simple language to which he pleaded not guilty and claimed trial.

6. In order to prove the facts of the case, prosecution examined Nikhil Kumar, Copyist, Sessions Copying Agency, Panipat as PW1, Karambir, Ahlmad as PW2, Monika Kakkar, Legal Aid Counsel, District Court, Panipat as PW3, HC Devender as PW4, EASI Jagbir Singh as PW5, ASI Mahabir as PW6, EHC Sitender as PW7, Inspector Saroj as PW8, Retired SI Dilbag Singh as PW9, Dr. Shashi Lata as PW10, Dr. Pawan as PW11, ASI Kaptan Singh as PW12, HC Devender as PW13, HC Sunil Kumar as PW14, complainant 'N' as PW15, Victim 'B' as PW16, DSP Kamaljeet as PW17, EASI Mukesh Kumar as PW18, Retired Inspector Sat Narayan as PW19 and Inspector Subhash Chand as PW20. Thereafter, learned Public Prosecutor for the State closed prosecution evidence.



7. Statement of accused was recorded under Section 313 Cr.P.C. While denying all incriminating evidence put to him, he pleaded innocence and false implication.

8. Accused closed his defence evidence without examining any witness.

9. After hearing arguments advanced by learned Public Prosecutor for the State and learned counsel representing the accused besides considering evidence on record, accused Deepak was acquitted of the charge framed against him vide judgment of acquittal dated 03.01.2023. Learned trial Court took note of the fact that victim 'B' at the stage of cross-examination stated that she was never subjected to rape by accused and that statement before police and legal aid counsel had been recorded to pressurize accused to marry her. Victim 'B' categorically stated that she had no grievance against accused. Similarly, victim's mother PW15 also stated in the cross-examination that she had no grievance against the accused. Further, learned trial Court on the application moved by prosecution under Section 340 Cr.P.C. for initiating inquiry against PW16 victim 'B', had directed learned Chief Judicial Magistrate, Panipat to initiate action against victim 'B' under Section 193 IPC and other relevant provisions of IPC, as detailed therein.

10. Feeling aggrieved of this judgment of acquittal and aforesaid observation, present appeal has been filed by victim 'B'.

11. Learned counsel for appellant argued that findings given by learned Additional Sessions Judge, Panipat in judgment dated 03.01.2023 are



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without any justification. Learned trial Court wrongly directed the Reader to draft a complaint to be filed in the Court of learned Chief Judicial Magistrate, Panipat to initiate proceedings under Section 193 of IPC and other relevant provisions of IPC. On the other hand, respondent No. 2/accused Deepak was acquitted of the charge framed against him without proper appreciation of evidence on record. Learned trial Court wrongly observed that there was a possibility that complainant examined as PW15 and victim 'B' examined as PW16 entered into a compromise with accused outside the Court. The prosecution moved application dated 03.12.2022 under Section 340 Cr.P.C. for initiating inquiry against the appellant. On that application, no notice was served upon the appellant. Without holding any inquiry or giving any opportunity of hearing to appellant, directed to proceed against her under Section 193 IPC. In-fact, appellant was never declared hostile by prosecution. Learned trial Court on the basis of statement of victim examined in chief as PW16 could have taken another view and convicted the respondent No. 2/accused. The allegations levelled against respondent No.2/accused were proved on file by examining other witnesses. Learned trial Court has erred while acquitting respondent No. 2/accused by passing impugned judgment dated 03.01.2023. Therefore, findings given by learned trial Court may be reversed and respondent No. 2/accused be convicted and sentenced in accordance with law and observation given by learned trial Court for initiating proceedings under Section 193 of IPC against appellant may be set aside, by accepting the present appeal.



12. On the other hand, learned counsel for State argued that facts of case and evidence led by prosecution were rightly appreciated by learned trial Court. The case of prosecution was based on statement of alleged victim examined as PW16. In her examination-in-chief, she fully supported prosecution case. However, during cross-examination, she changed her version altogether by alleging that accused never committed rape upon her nor he gave beating resulting into her miscarriage. She claimed that she had levelled allegations against respondent No. 2/accused in order to pressurize him to solemnize marriage with her. Therefore, by appreciating statement of victim as PW16 as well as her mother examined as PW15, learned trial Court came to conclusion that prosecution had failed to prove the guilt of accused under Section 366, 328, 376(2)(n), 313, 406 and 506 of IPC and was rightly acquitted of the charge framed against him. On account of statement of victim 'B' recorded as PW16, prosecution filed application under Section 340 Cr.P.C. for initiating inquiry against her. By appreciating the facts and statement of prosecutrix/victim 'B' as PW16, learned trial Court rightly ordered initiation of proceedings against appellant under Section 193 of IPC and other relevant provisions of IPC by filing complaint before learned Chief Judicial Magistrate, Panipat. Thus, the judgment of acquittal and aforesaid findings given by learned Additional Sessions Judge (Fast Track Court), Panipat in judgment dated 03.01.2023 do not require any interference and appeal preferred by appellant/victim deserves dismissal.

13. We heard arguments advanced by learned counsel for appellant/victim 'B' and learned counsel representing the State and have gone



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through the record carefully with their able assistance. In the case in hand, appellant has challenged the judgment of acquittal in favour of respondent No. 2/accused Deepak and further challenged the directions by learned Additional Sessions Judge (Fast Track Court), Panipat to file complaint against victim under Section 193 of IPC along with other relevant provisions of law.

The facts of case indicate that complainant who is mother of alleged victim 'B' filed written complaint on 26.04.2019 before *Chowki* Incharge Model Town, Panipat Ex.P11, alleging that victim 'B', aged about 22 years was matriculate and she was working in a saloon at Sonapat. The owner of said saloon Deepak used to visit her house and several times he would to pick the victim 'B' from her house. In the first week of April, victim 'B' left the house with Deepak. For about 2-3 days, victim was in touch with her on phone and thereafter, her mobile phone was switched off. She inquired the matter at her own level and came to know that Deepak had enticed away her daughter 'victim 'B'' by giving her allurements of marriage. With these allegations, FIR was registered under Section 363 and 366 of IPC. Later on, the alleged victim 'B' returned home and she was produced before police by her mother on 11.06.2019. Memo in this regard is Ex.P15. Statement of victim was recorded by learned Judicial Magistrate Ist Class, Panipat on 11.06.2019 under Section 164 Cr.P.C. Ex.P1, where she levelled allegations against Deepak that she accompanied him under pressure. She further levelled allegation that on 23.04.2018, she was given some intoxicant in a cold drink and he committed rape upon her and also prepared an



objectionable video. Thereafter, she was threatened by accused that said video would be made viral on social network. She further alleged that accused took her to Delhi in September 2018 with the assurance that he would perform marriage with her. She stayed with him for 3 months but he did not perform marriage. She further claimed that during this period, she got pregnant but on account of beating given to her, she suffered miscarriage. She was not provided any medical treatment. After 5-7 days, accused left her alone. Thereafter, he again called her and assured to marry her. He again took her to Ludhiana on 31st January but did not perform marriage with her. She was told to bring money along with her. She could not bring money and for this she was threatened and even beaten up. He sold her gold jewellery. She claimed that he used to take her earnings and maintained forcible physical relations. Later on, she came to know that accused was a married man and father of a daughter. Her statement was also recorded by legal aid counsel on the same day, which is Ex.P7. With these allegations, challan was presented and accused was charge-sheeted under Sections 366, 328, 376(2)(n), 313, 406 and 506 of IPC.

14. The testimony of victim 'B' was material piece of evidence to prove the charge-sheet along with testimony of her mother who was complainant in this case. The prosecution examined mother of victim 'B' as PW15. Her examination-in-chief was recorded on 25.05.2022 where she confirmed the application filed before Police Post Model Town, Panipat, which is Ex.P11. She confirmed that she had produced her daughter before the police and identified her signatures on memo Ex.P15. She also confirmed



that her daughter was medically examined and identified her signatures on MLR Ex.P21. She also confirmed that her daughter was produced before the Magistrate where her statement was recorded under Section 164 Cr.P.C. She identified accused facing trial in this case. Her cross-examination was conducted on 19.11.2022 where she changed her version altogether by alleging that application was not written by her. She claimed to be an illiterate lady having no knowledge about the contents of said application. PW15 claimed that she had gone to police station to lodge missing report regarding her daughter. She admitted that her daughter had narrated facts to doctor at the time of her medical examination. PW15 categorically stated that she did not have any grievance against accused nor is she aware of the content of statements given by her daughter on 25.05.2022 and 29.10.2022.

Thereafter, there is a testimony of victim 'B' recorded as PW16 where she has narrated all the facts as mentioned in her statement recorded under Section 164 Cr.P.C. Ex.P1. She identified her signatures on MLR Ex.P21 and other documents prepared by police during investigation. She also levelled allegations of rape against Naveen brother of accused by putting her under fear. The record shows that prosecution sought adjournment to file application under Section 319 Cr.P.C. which was filed as per *zimni* order dated 02.07.2022 and ultimately it was declined vide order dated 02.08.2022.

15. The victim 'B' as PW16 appeared for her cross-examination on 19.11.2022 where she changed her stand altogether by stating that FIR was lodged against accused to pressurize him to marry her. She categorically



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stated that accused never committed rape upon her. She recorded her statement before the police to force accused Deepak to solemnize marriage with her, whereas, she gave her statement under Section 164 Cr.P.C. before the Court as advised by police. She claimed that she did not have any grievance against accused Deepak. He never maintained physical relations with her against her consent. She further stated that he never seduced or compelled her to maintain physical relations with him nor he administered her any intoxicating substance. She further stated that accused was not responsible for her miscarriage. At this stage, on the request of Assistant Public Prosecutor, victim was subjected to cross-examination. She admitted her statement given before the Magistrate Ex.P1 but she explained that said statement was given as she was annoyed with accused.

16. MLR of victim is proved by Dr. Shashi Lata examined as PW10 which is Ex.P21. There is report of Forensic Science Laboratory (FSL) Ex.PX, according to which semen could not detected on slides and vaginal swabs tested in laboratory. However, Dr. Shashi Lata, M.O. Government Hospital Panipat as PW10 gave her opinion that possibility of sexual intercourse cannot be ruled out. The medical examination of accused Deepak is proved on record by examining Dr. Pawan, M.O. Government Hospital Panipat PW11. MLR of accused Deepak is Ex.P22. The investigation carried out by the Investigating Officer is proved by examining all relevant witnesses.

17. It is a settled position that conviction can be based on the sole testimony of witness provided it is absolutely trustworthy, unblemished and



of sterling quality. In the case in hand, cross-examination of victim recorded as PW16 is sufficient to demolish her own case. Entire statement given by victim 'B' as PW16 indicates that she cannot be accepted as a trustworthy/credible witness. Even the complainant examined as PW15 changed her version from time to time. Report of FSL Ex.PX does not help the case of prosecution in the given factual matrix. The vacillating stands taken by the victim 'B' and complainant (mother of victim 'B') are indeed sufficient to demolish the prosecution stand. Therefore, by appreciating the facts and evidence on record, judgment of acquittal passed in favour of respondent No. 2/accused Deepak is fully justified and it does not require any interference.

18. Another grievance raised is qua the direction given by learned trial Court to file a complaint against the alleged victim 'B' under Section 193 of IPC and other relevant provisions of IPC in the Court of learned Chief Judicial Magistrate, Panipat. Victim 'B' examined as PW16 during her cross-examination herself conceded that she gave false statement from time to time in order to put pressure on accused to marry her. During cross-examination, she denied all allegations which she had levelled when her statement was recorded in-chief as PW16 and further denied the allegations detailed in her statement recorded by the Judicial Magistrate under Section 164 Cr.P.C., which is Ex.P1. Prosecution filed application under Section 340 Cr.P.C. for initiating inquiry against alleged victim 'B' PW16. Proceedings have thus rightly been directed to be initiated under Section 193 IPC. Therefore, aforesaid direction given by learned Additional Sessions Judge



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(Fast Track Court), Panipat in the impugned judgment does not require any interference. Needless to say, appellant is at liberty to take up all available pleas in the abovesaid proceedings in her defence in accordance with law.

19. Considering the aforesaid facts and circumstances of the case, we do not find any reason to interfere in the judgment dated 03.01.2023 passed by learned Additional Sessions Judge (Fast Track Court), Panipat and same is accordingly, upheld.

20. Appeal preferred by appellant/victim 'B' is accordingly, dismissed.

21. Pending application(s) if any, also stands disposed of accordingly.

(AMARJOT BHATTI)
JUDGE

(LISA GILL)
JUDGE

14.05.2024
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Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No