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

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Date of Decision: 26.09.2024

ANNU DEVI

... Appellant

Versus

STATE OF HARYANA & OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE SUDHIR SINGH

HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Gurfateh Singh Khosa, Amicus Curiae
for the appellant.

Mr. A.S. Chaudhary, Addl. A.G., Haryana.

Mr. Gaurav Vir Singh Behl, Advocate
for respondent Nos.2 to 4.

JASJIT SINGH BEDI, J.

The present appeal has been filed against the judgment of acquittal dated 21.02.2018 passed by the Additional Sessions Judge, (Exclusive Court for Heinous Crimes Against Women and Children), Yamuna at Jagadhri.

2. The FIR was registered on 28.08.2015, the judgment of acquittal passed by the Additional Sessions Judge, (Exclusive Court for Heinous Crimes Against Women and Children), Yamuna at Jagadhri is dated 21.02.2018, the appeal was filed on 26.04.2018 and the matter is being taken up for hearing now after 09 years of the registration of the FIR.



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3. The brief facts of the case are that the FIR Ex.PW2/A came to be registered at the instance of the prosecutrix and the same reads as under:-

“To, The Superintendent of Police, Yamuna Nagar. Subject: Application against (1) Chaman Lal son of Sh. Jai Ram, Mobile No.94674-10845 (2) Jai Ram son of Sh. Fakir Chand, (3) Smt. Darshani Devi wife of Sh. Jai Ram, (4) Roshni Devi daughter of Sh. Jai Ram, (5) Bittu son of Jai Ram, (6) Rajni Devi wife of Bittu, residents of village Yara, Distt. Kurukshetra (7) Jai Kumar son of Soran Chand. resident of village Badsalu, Distt. Karnal, Mobile No. 94663-66646, 94674-10845- Chaman Lal 94675-15340-Jai Ram. Sir, The applicant submits as under:- 1. That the marriage of applicant was solemnized with the above named accused No.1 on 23.03.2012 in village Nagla Saidan, Distt. Yamuna Nagar. From that marriage, one daughter namely Kamna was born on 26.02.2013 to the applicant and accused No.1 and she was born in Government hospital of village Deeg, Distt. Kurukshetra. 2. That the accused No.1 is applicant's husband, accused No.2 is father-in-law, accused No.3 mother-in-law, accused No.4 sister-in-law (Nanad), accused No.5 elder brother-in-law (Jeth), accused No.6 elder sister-in-law (Jethani) and accused No.7 is maternal-uncle of the husband of applicant. 3- That on dated 13.01.2014, in District Kurukshetra through the Court divorce has taken place between the applicant and accused No.1. On dated 26.01.2014, accused No.1 sent a message to the applicant that he has some urgent work with her. And I want to meet you. And as per his instructions, I in order to meet him, met at Babain Bus Stand. At Babain, District Kurukshetra, Stand, other accused were also present. And accused No.1 said to the applicant that you go to our house. I will make marry with you. Above named persons by playing fraud with me on account of marriage, took me with them. And I started with the accused No.1 on this believe that accused No.1 will perform marriage with me and will reside with me as husband. But, the accused without performing marriage with me



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keep continue to establish physical relations with me. And due to this, I became pregnant. But, the accused No.1, in the month of May took me in a town of District Saharanpur, Uttar Pradesh. By going there, accused got my pregnancy aborted without my consent and I keep continue to ask the accused for performing marriage, but the accused on one or the other excuse, keep continue to linger on the marriage and without marriage and without my wish keep continue to establish physical relationship with me and keep continue to perform sex with me. Number of times, I asked about this to the accused No. 2 to 7 that you may got performed my marriage with the accused No.1, but they all keep continue for make one or the other excuse with me and did not got performed my marriage with the accused No.1. In this last, on dated 05.11.2014, above named accused persons gave me beatings and ousted me from in-laws house. And accused No.1 said to me that if I had to get performed marry with you, then why I take divorce from you and why I got aborted your pregnancy. Remaining accused said that we had to take revenge from you; therefore we had brought you knowingly without marriage. Now, you cannot put us to any loss. In this way, accused keep continue to commit rape upon me and threatened me that if you after going from here about this talked with anyone or made any application then we will kill you. In this way, the applicant is apprehending danger to his life and liberty at the hands of the accused persons. Accused No.1 in collusion with assistance of other accused persons and by playing cheating upon me, keep continue to commit rape upon me. By playing fraud kept continue me with him. Therefore, it is requested to your goodself by registering case under Section 376/420/506/323/366/313/363/365/120-B IPC against the above accused persons, stern legal action may kindly be taken. I may be provided justice. You will be thankful. SD- Anu Devi applicant-Anu Devi daughter of Sh. Balbir Singh, resident of village Nagla Saidan, Tehsil Jagadhri, Distt. Yamuna Nagar.”

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4. The matter was investigated by Inspector/SHO Virender Singh and PSI Sheelawanti. During investigation, statements of witnesses were recorded under section 161 of the Criminal Procedure Code 1973, the statement of the complainant-victim was recorded under Section 164 of Code of Criminal Procedure. She was got medico legally examined. The accused were arrested and after completion of the investigation, the accused were challaned under Section 173(2) Cr.P.C.

5. On finding a prima facie case, punishable under Sections 120-B, 365, 366-A, 420, 323 read with Section 120-B IPC, 1860 and under Section 506 IPC, accused Jai Ram and Darshani Devi were charge-sheeted thereunder; whereas accused Chaman Lal was charge-sheeted for the commission of offences punishable under Sections 120-B, 365, 366, 420, 376(2)(n), 313, 323 read with Section 120-B IPC, 1860 vide order dated 06.02.2016 passed by the Court of Additional Sessions Judge, Yamuna Nagar at Jagadhri to which the accused Jai Kumar, Darshani Devi and Chaman Lal pleaded not guilty and claimed trial.

6. To substantiate its case, the prosecution examined nine witnesses namely complainant 'A' as PW1; Inspector/SHO Virender Singh as PW2; PSI Sheelawanti as PW3; 'B' father of complainant as PW4; Head Constable Poonam as PW5; Ex.ASI Shamsher Singh as PW6; Ram Kumar, Draftsman as PW7; Dr. Kulpreet Kaur, Medical Officer PHC Gudha as PW8 and LASI Mukesh Kumari as PW9, on the case file. The witnesses namely Jaspal, Raj



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Dulari, Ms. Vinti, JMIC and Jaswinder Kaur were given up as unnecessary witnesses.

7. The prosecution relied upon the following documents:-

Ex.PW1/A	Application/complaint
Ex.PW1/B	Statement of complainant-prosecutrix dated 19.08.2015
Ex.PW1/C	Statement of prosecutrix under Section 164 of Cr.P.C.
Ex.PW2/A	FIR
Ex.PW2/B	Endorsement
Ex.PW2/C	Application for medical examination of complainant/prosecutrix 'A'.
Ex.PW3/A	Disclosure statement of accused Chaman Lal
Ex.PW3/B	Disclosure statement of accused Jai Ram
Ex.PW3/C	Disclosure statement of accused Darshani Devi
Ex.PW3/D	Application for medical examination of accused Chaman Lal
Ex.PW7/A	Scaled site plan
Ex.PW8/A	Affidavit of Dr. Kulpreet Kaur
Ex.PW8/B	MLR of complainant/prosecutrix 'A'
Ex.PW9/A	Application for recording the statement of victim under Section 164 of Cr.P.C.
Mark A	Copy of Affidavit of 'B' father of complainant-prosecutrix 'A'
Mark B	Copy of Panchayati Faisala

8. Accused Chaman Lal, Jai Ram and Darshani Devi were examined under Section 313 Cr.P.C. on 17.11.2017 and the entire incriminating evidence was put to them. They denied all the allegations and pleaded that they had been falsely implicated in this case and that they were innocent.

9. The accused did not lead oral evidence in defence. They, however, tendered application under RTI dated 22.09.2015 as Ex.D1 (Mark C); copy of Panchayati Compromise as Ex.D2 (Mark D), Affidavit of 'B'

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father of complainant as Ex.D4 and copy of judgment dated 13.01.2014 passed in petition titled as 'A Versus Chaman Lal' as Ex.D5.

10. The evidence of the prosecution in brief is as under:-

PW-1 'A': She was the complainant-cum-prosecutrix on whose complaint Ex.PW1/A, the present case FIR was lodged against the accused at Radaur Police Station, District Yamuna Nagar. She disclosed about the incident in question.

PW-2 Inspector/SHO Virender Singh stated about receiving of application Ex.PW1/A, registration of FIR Ex.PW2/A, making endorsement Ex.PW2/B, recording of statements of witnesses under Sections 161 of Cr.P.C., moving of application Ex.PW2/C for medical examination of the victim, and preparation of the final report under Section 173 of Cr.P.C.

In cross-examination, he stated that he had seen the case file and Section 313 Indian Penal Code was deleted. He did not know as to on what basis Section 313 Indian Penal Code had been deleted.

PW-3 PSI Sheelawanti stated about the arrest of the accused; suffering of disclosure statement Ex.PW3/A, Ex.PW3/B and Ex.PW3/C respectively of the accused and moving of application Ex.PW3/D for medical examination of accused Chaman Lal.

In cross-examination, she stated that it had come in her investigation that the complainant was earlier married to accused Chaman Lal. Both of them got dissolved their marriage under Section 13-B of Hindu Marriage Act, 1955. The Complainant stayed with the accused for about 8-9



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months after her dissolution of the marriage. During investigation, the statement of the complainant was found partly false qua sister, brother-in-law, sister-in-law and maternal uncle of accused Chaman Lal.

PW-4 'B' father of the complainant supported the case of the complainant

PW-8 Dr. Kulpreet Kaur, Medical Officer, PHC Gudha, Kurukshetra tendered her affidavit Ex. PW8/A to the effect that on 29.08.2015, she medico legally examined 'A' and prepared MLR Ex.PW8/B, which bore her signature.

PW5- Head Constable Poonam, PW6-Ex.ASI Shamsher Singh and PW7-Ram Kumar, Draftsman testified as to the different aspects of the investigation.

11. Based on the evidence led, the accused/respondents No.2 to 4 were acquitted by the Court of Additional Sessions Judge, (Exclusive Court for Heinous Crimes Against Women and Children), Yamuna at Jagadhri vide judgment dated 21.02.2018.

12. It is the aforementioned judgment of acquittal which is under challenge in the present appeal.

13. The learned Amicus Curiae for the appellant/complainant and the counsel for the State contend that the impugned judgment has been passed on the basis of conjectures and surmises. The prosecutrix PW1 and her father PW-4 were consistent in material particulars as to how and in what manner the offences were committed. The said witnesses had been

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disbelieved without any cogent reason whatsoever. The medical evidence was totally in consonance with the ocular account. They, therefore pray that the impugned judgment was liable to be set aside and the accused be convicted for having committed the offences in question.

14. The learned counsel for the respondent Nos.2 to 4/acquitted accused, on the other hand, contends that the impugned judgment was based on proper appreciation of the evidence on record and, therefore, no fault could be found with the same. Thus, the appeal was liable to be dismissed.

15. We have heard the learned counsel for the parties and gone through the record.

16. In the application/complaint Ex.PW1/A which lead to the registration of the FIR Ex.PW2/A, it is clearly mentioned that on 13.01.2014, a mutual divorce was taken by the complainant from the District Courts, Kurukshetra. On receipt of a message, on 26.01.2014, after thirteen days of the divorce from Chaman Lal, she visited Bus Stand, Babain, in order to meet him, where he alongwith other accused was present and under the assurance that he would remarry her, he took her with them and she started the residing with him. She maintained physical relation with him and in the month of May, Chaman Lal got her pregnancy terminated but he and the other accused did not arrange her remarriage with him and on 05.11.2014, she was beaten by them and turned out from their home. Thus Chaman Lal in connivance with his family members had cheated her and raped her.

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17. From the averments contained in the application-complaint Ex.PW1/A, it is evident that she was aware of her divorce and despite that fact she accompanied Chaman Lal. Apparently, she was a mature woman with a child. Though she alleged that there was a conspiracy on the part of her Nanad Roshni Devi, Jeth Bittu, Jethani Rajni Devi W/o Bittu and Jai Kumar son of Soran Chand, Mama of Chaman Lal, for taking her again to their house after divorce under the pretext of remarriage, but during investigation, the above persons namely Roshni Devi, Bittu, Rajni Devi and Jai Kumar son of Soran Chand, were found to be innocent by the investigating agency. Therefore, a part of the prosecution version was disbelieved by the Investigating Agency itself.

18. In her statement dated 19.08.2015 Ex.PW1/B, recorded by the police, she added that her husband Chaman Lal procured her signature on blank papers by taking her to Court, in July, 2013 and she could not go through the same being illiterate. This version is inconsistent with the contents of her complaint Ex.PW1/A, on the on the basis of which, the present FIR was lodged. From the perusal of the contents of the complaint Ex.PW1/A, it is clear that she was aware that their marriage was dissolved vide judgment dated 13.01.2014 Ex.D5 from the Court of the District Judge, Kurukshetra. Even otherwise the prosecutrix admitted in her cross-examination that she had passed the class 10th examination which clearly shows that she is lettered. The judgment and decree of divorce dated 13.01.2014 Ex.D5 remains unchallenged by the complainant till date.

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19. As per her deposition, on receipt of a telephonic message of her husband, she herself went to meet him at Bus Stand, Babain and accompanied him to his house. Merely stating that her mother-in-law, father-in-law, Jeth, Jethani and Nanad were also present there at that time does not prove that they induced her to go with them or cheated her under any pretext knowing that a divorce had been taken place or that they still wanted to exploit her in any manner. As per her own statement, she was taken by her husband Chaman Lal, who developed physical relation with her during her stay with him. She has not explained as to why she continued to live there and did not resist the acts of the accused.

20. Further, it is not mentioned in the complaint Ex.PW1/A that during her stay at her matrimonial home after the divorce, her father-in-law Jai Kumar and Jeth Bittu (not challaned) committed rape upon her. This version is a significant improvement from her initial case.

21. There is inconsistency, regarding details of termination of her pregnancy by the accused No. 1 only or all the accused persons. She was confronted with the complaint and her previous statements, wherein she had given an entirely different story. As per the contents of complaint Ex.PW1/A, Chaman Lal, in the month of May, took her to one town of District Saharanpur and got her pregnancy terminated against her wishes. However, in her statement Ex.PW1/C, she stated that her in-laws took her to Saharanpur and in a shop gave her tea and after consuming the same, she



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became unconscious and she did not know what happened and found that her pregnancy had been aborted.

22. There is no evidence that on which date, she became pregnant while staying with accused in his house. There is no document on the file to show and prove that her pregnancy was ever detected by any doctor/laboratory. There is no name of any Doctor of Saharanpur mentioned in her statement, who allegedly terminated her pregnancy, at the asking of her parents-in-law-accused. In the statement of PW-8 Dr.Kulpreet Kaur, it has come on record that on 29.08.2015, she medico legally examined 'A' vide MLR NO.KK/273/2015/Rdr dated 29.08.2015 Ex.PW8/B, who gave the history of abortion forcefully in the month of May, 2013 and history of anal sex by her husband after 26.01.2014 for approximate eight months. She noticed the following injuries on the person:-

On P/v no external mark was present.

Hymen was not intact.

For abortion, gynaecologist opinion MLGH, Yamuna Nagar.

No external mark was present at anal region advise surgeon opinion.

There is no report of any gynecologist on the file. No injury marks were noticed on the person of the complainant. There is no corroborative evidence on record to strengthen the case of the prosecution qua this allegation.

23. The statement of the father of the prosecutrix, who appeared as PW-4 on various aspects of the case is also full of infirmities. The complainant had accepted her signatures as well as signatures of her family

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members over Ex.D4 i.e. affidavit. It is apparent that the explanation of PW-4 'B' over Ex.D4 at point 'A' regarding obtaining of signatures by his son-in-law from his residence, on the pretext of going abroad is nothing but an unsubstantiated allegation, as its contents are sufficient to reveal the circumstances, in which the complainant and her husband got the marriage dissolved by mutual consent. It is conceded by PW-4 that two panchayats were convened and that his signatures and that of his brothers were present on Ex.D2 and other documents.

24. The father PW-4 said that the accused got divorced from his daughter on 13.01.2014, though allegedly by fraudulent means and his family members took her again to their village, where accused Chaman Lal remarried his daughter. Again, there is inconsistency in between the statements of complainant PW-1 and her father PW-4, made during trial. As per her father, Chaman Lal remarried her and they stayed as husband and wife and as per complainant, Chaman Lal did not remarry her. He alleged that all accused took her to Haridwar under the pretext of taking a Holy-bath and got her pregnancy terminated, but he could not tell the date of pregnancy of his daughter or the date of its termination. In a state of intoxication how and in what manner, she was taken to the Doctor, the name of whom is not available on record and how he managed to terminate the alleged pregnancy in her unconscious state and when she regained consciousness is not recorded on the file. His statement is also not supported with any documentary evidence on record.

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25. Further, there is no medical evidence to prove that on 05.11.2014, the accused caused simple injuries to the complainant or that she was extended threats by the accused on the said date. There is no evidence of any criminal conspiracy i.e. prior meeting of minds of the accused persons for taking away the complainant with an intention to commit the alleged offences.

26. The prosecutrix-complainant admitted the execution of a compromise Ex.D2 after moving of her application Mark C and further accepted her signatures and that of her husband and other relatives, in the Police Station Shahabad on the said document at the time of her evidence, which were executed between the parties, about ten months prior to the registration of the case. In these circumstances, there cannot be a question of any threat/misrepresentation/ allurement, upon her as the document Ex.D2 clearly refers to a divorce between the parties and various other facets of the relationship.

27. From the statement of the prosecutrix, it becomes crystal clear that she had made substantial improvements in her deposition and the same were got duly confronted during her cross-examination by the defence counsel. She even tried to implead the relatives of the accused who were not been challaned by the police in this case.

28. It is a case where the alleged sexual intercourse with accused Chaman Lal appears to be consensual. It is not a case of minor discrepancies. In fact, the statements of the complainant are full of variations and



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exaggerations which have not been validly explained. It is not a case where any deceit was practiced upon the complainant by the accused. It is not a case, where the complainant was taken away from the custody of her lawful guardians against their consent. Rather, her father PW-4 stated that his son 'S' had left his daughter at Babain Bus Stand, where the accused were present and they took her to the village and accused Chaman Lal remarried his daughter.

29. As a sequel to the above discussion, apparently there is no cogent evidence against the accused for holding them guilty under Sections 363, 366, 376, 365, 323, 506, 420 and 120-B IPC

30. As to how an appeal against a judgment of acquittal is to be dealt with, the Hon'ble Supreme Court in **Kallu @ Masih & Ors. Vs. State of Madhya Pradesh 2006(1) RCR (Criminal) 427** has held as under:-

“ 8. While deciding an appeal against acquittal, the power of the Appellate Court is no less than the power exercised while hearing appeals against conviction. In both types of appeals, the power exists to review the entire evidence. However, one significant difference is that an order of acquittal will not be interfered with, by an appellate court, where the judgment of the trial court is based on evidence and the view taken is reasonable and plausible. It will not reverse the decision of the trial court merely because a different view is possible. The appellate court will also bear in mind that there is a presumption of innocence in favour of the accused and the accused is entitled to get the benefit of any doubt. Further if it



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decides to interfere, it should assign reasons for differing with the decision of the trial court.”

31. In view of the aforementioned discussion and keeping in view the law laid down in **Kallu @ Masih & Ors.** Case (supra), we find no reason to interfere with the well reasoned judgment of acquittal passed by the Court of Additional Sessions Judge, (Exclusive Court for Heinous Crimes Against Women and Children), Yamuna at Jagadhri. Therefore, the appeal stands dismissed.

(SUDHIR SINGH)
JUDGE

(JASJIT SINGH BEDI)
JUDGE

26.09.2024

JITESH

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