

CRA-AD-184-2024 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRA-AD-184-2024 (O&M)
Date of decision: 12.09.2024.

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...Appellant.

Versus

State of Haryana and another

...Respondents.

CORAM: HON'BLE MRS. JUSTICE LISA GILL
HON'BLE MRS. JUSTICE SUKHVINDER KAUR

.....

Present: Ms. Mehak Ghangas, Advocate for
Mr. Ajay Ghangas, Advocate
for the appellant.

Mr. Sukhdeep Parmar, Sr. DAG, Haryana.

Sukhvinder Kaur, J.

1. Appellant/ prosecutrix has preferred the instant appeal against judgment dated 16.11.2022, passed by learned Additional District and Sessions Judge, (Fast Track Special Court to try the Offences of Rape and under POCSO Act), Kurukshetra, vide which respondent No.2-accused Harpreet Chopra has been acquitted.
2. Factual scenario, as per prosecution version is that complaint No.2959-MISC dated 29.07.2019 was received through post in the Police Station from the office of Superintendent of Police, Kurukshetra, which had been filed by complainant/ victim alleging that she belongs to 'Chamar' community and is working at Kurukshetra University, Kurukshetra. For the first time, she met accused Harpreet Chopra at Employment Department,

Kurukshetra University, Kurukshetra. Thereafter he started coming there and meeting her every day. He enticed her on false promise of marriage and started physically abusing her. He kept saying that he would talk with his family members regarding their marriage. He continued bluffing her for three years on the pretext of solemnizing marriage with her. Then Simran, who is sister-in-law of accused came to know about their relationship and instead of talking about their marriage, she asked the accused to prepare for IELTS, so that he could go abroad. She also got the accused engaged with some other girl from her relations, who had cleared IELTS because accused could not clear the IELTS. The accused did not disclose the aforesaid facts to her. When she came to know about the aforesaid facts she told him that she would inform his parents about their relationship. Upon which accused started threatening her that he would commit suicide. She disclosed the entire facts to her father, who called Satpal Chopra, father of accused and Ranpat at Ravidas Mandir and apprised them about these facts. Ranpat told them that they would talk with accused regarding the matter and father of accused also assured that he would talk to accused in front of the entire family. Then she met Ranpat and told him about her relationship with the accused, who suggested that she should compromise the matter after taking something as she was belonging to a poor family. On 16.07.2019, Ranpat called her and her family members at Ravidas Mandir, but father of accused came alone. Ranpat and father of accused were having family relations and they are members of the same committee. When her family members inquired from them about accused, then they said that they were apprehending danger to his life, so they did not bring him along with them.

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Father of accused also told them that he had not disclosed this fact to anybody in his family. Then, on the asking of her family members, accused was called who admitted all the facts in front of his father and Ranpat. Ranpat asked her what she wanted and she replied that she want to solemnize marriage with the accused, but accused under pressure of his family members and sister-in-law refused the same and also told that he was going abroad after 15 days. On the basis of aforesaid complaint submitted by complainant, FIR No.73 dated 29.07.2019, under Sections 366 and 376 IPC at Police Station Women, Kurukshetra, was registered.

3. During investigation, record of Hotel Kathi King from year 2017 to 2019 qua visits of accused was taken in police possession. Rough site plan of place of occurrence was prepared. Statements of the witnesses were recorded. Complainant/ victim was got medico legal examined. Her statement under Section 164 Cr.P.C. was recorded before learned Magistrate. On 08.08.2019 accused was arrested. He demarcated the place of occurrence, as per his disclosure statement. His medical examination was conducted. During investigation Satpal Chopra, Simran and Ranpat Singh were found innocent and offences under Section 120-B and 34 IPC were deleted. After completion of investigation challan under Section 173 Cr.P.C. was presented in Court for trial of accused Harpreet Chopra.

4. Offence under Section 376 being exclusively triable by the Court of Sessions, this case was committed to the Court of Sessions by learned Judicial Magistrate First Class, Kurukshetra.

5. Finding a prima facie case, charge for offences punishable under Sections 366 and 376 506 IPC was framed against the accused, to

which he pleaded not guilty and claimed trial.

6. As many as 11 witnesses were examined by the prosecution to prove its case. Statement of accused under Section 313 Cr.P.C. was recorded while putting all incriminating evidence to him. He claimed innocence and false implication. However, no defence evidence was led by the accused.

7. After considering the evidence on record, learned trial Court found the same to be woefully insufficient to convict the accused who was accordingly acquitted of the offences for which he had been charge-sheeted, vide impugned judgment dated 16.11.2022.

8. Aggrieved of the said decision, present appeal has been filed by the appellant/ complainant challenging acquittal of the accused/ respondent No.2.

9. Learned counsel for the appellant vehemently contended that prosecutrix in her testimony has deposed in detail in respect to commission of the offence as alleged and her version is duly corroborated by testimony of her father, which is further supported by medical evidence to prove that she was raped by the accused for three years on false pretext of marriage. He further contended that learned trial Court has wrongly held that there is delay of three years in registration of the present FIR. In view of the facts and circumstances it cannot be said that there was delay and even if it is so presumed, same is duly explained, in as much the accused kept misleading the complaint on the basis of false assurances of marriage. He urged that learned trial Court has wrongly acquitted the accused on the premise that victim was having consensual relationship with the accused and no offence

of rape was made out. Rather from testimony of PW8 victim, PW-11 father of the victim and PW-4 Dr. Surbhi Tiwari and other material prosecution witnesses, it is duly proved that accused committed rape upon the prosecutrix on the false promise of marrying with her and later on refused to marry her and started threatening her. Such conduct is no consent in the eyes of law. He submitted that impugned judgment of acquittal is not only prima facie perverse but is also against the well settled propositions of law. Sole testimony of prosecutrix by itself is sufficient to convict the accused. He thus prayed that this appeal be accepted, judgment dated 16.11.2022 be set aside and accused be convicted for the offences as charged and be punished accordingly.

10. Firstly, it is appropriate to have a look at the evidence adduced by the prosecution in the present case.

11. In order to prove its case, prosecution has examined PW1-Ct. Jai Bhagwan, who is a formal witness, who was associated with ASI Saroj, Investigating Officer, during investigation and has proved recovery memo of blood samples and identification form of accused Ex.P1.

PW2-Dheeraj Sharma, Hotel Manager brought summoned record of Hotel Kathi King for last about four years and proved entries of various registers Ex.P2 to Ex.P6. He deposed that as per record, the accused had booked the room in the Hotel on 01.02.2018, 19.05.2018, 13.08.2018, 06.12.2018 and 24.04.2019.

PW3-Dr. Bahadur, Medical Officer, deposed that he conducted medico legal examination of accused and proved MLR of accused Ex.P9 and opined that there was nothing to suggest that the person could not

perform the act of sexual intercourse.

PW4-Dr. Surbhi Tiwari, Medical Officer, who medico legally examined the complainant/ victim, proved her MLR Ex.P10 and opined that possibility of sexual assault cannot be ruled out.

PW5-SI Mukesh Kumar, Draftsman prepared the scaled site plan Ex.P11 of the place of occurrence, at Hotel Kathi King.

PW6-HC Sunita tendered in evidence her affidavit Ex.P12, stating therein regarding deposit of case property with her on 30.07.2019 and 09.08.2019 by ASI Saroj and handing over the said parcels to EHC Vijay Kumar for depositing the same with FSL, Madhuban in an intact condition, who deposited the same accordingly and handed over a receipt to her.

PW7-EHC Vijay tendered in evidence his affidavit Ex.P13 stating therein that on 22.08.2019, case property was handed over to him by HC Sunita for depositing the same with FSL, Madhuban in an intact condition. He deposited the same and handed over the receipt to her in this regard.

PW8-Complainant/ victim is the most material witness of prosecution and has stated that she met the accused for the first time in the year 2017 at Employment Department situated at Kurukshetra University, Kurukshetra. They started talking with each other and also exchanged their phone numbers. Accused told her that they belong to the same caste. They started meeting each other at University. Accused used to take her to Hotel Kathi King, situated at Salarpur Road for having meals. She further stated that he used to force her to go in the hotel room but she used to deny every

time. After putting her in fear, he used to take her in the hotel room No.108 and committed rape with her forcibly there, without her consent. He used to sign the visitor register of said hotel at his own and sometimes put her signatures in the register. Her family members were looking for a match for her, when she informed about the same to the accused, he threatened to commit suicide. At that time, he was pursuing IELTS as he wanted to go abroad. Accused told her that his sister-in-law was having knowledge about their affair and he would talk to her about their relationship. He could not clear IELTS exam and his sister-in-law got his marriage fixed in her relations, with a girl who had cleared IELTS. Accused did not inform her about this fact and she came to know about it from some other source. When she asked the accused about the same he threatened to commit suicide if the matter would be disclosed to his parents. He also said to her that she belonged to a poor family and was in the habit of trapping the rich boys.

She further deposed that father of accused is the member of Ravidas Dharamshala. She called him telephonically and requested him to meet her there. She apprised her parents regarding the entire facts. Next day, she alongwith her parents, maternal aunt (Mausi) and maternal uncle (Mama) went to Ravidas Mandir and called father of accused. Father of accused was oblivious to the entire facts and when her parents disclosed to him regarding the entire matter he assured that he would talk to his son. This meeting took place on a Friday, the date and year of which is not mentioned in the testimony. She stated that on the Tuesday, thereafter, her parents and father of accused met at Ravidas Mandir, it is to be noted that no date or year again mentioned. When her father asked father of accused

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that why he had come alone, father of accused insulted her parents. After that she and accused were called there and Ranpat, President of Ravidas Mandir talked with them. Accused confessed about their relationship before Ranpat and said that if he would perform marriage with her then his family members would kill both of them. She and her father requested father of accused to intervene in the matter. Accused and his father went away from there and thereafter, they started defaming them amongst their relatives. Ranpat also threatened her after coming to her house and said that she was running after money and she should stay away from the accused. She started receiving threats from Ranpat and others. She was called at Ravidas Mandir by Ranpat, who arranged her meeting with accused after registration of FIR. During their relationship, she became pregnant and there was altercation between them on this score and she pressurized him to marry her. Then she moved complaint before the police and in the Police Station accused refused to recognize her. She proved her complaint Ex.P14, medico legal examination report Ex.P10 and statement recorded under Section 164 Cr.P.C. Ex.P15.

PW9-Ct. Reenu proved recovery memo of samples of complainant/ victim Ex.P16 and recovery memo of record of Hotel Kathi King Ex.P17.

PW10-ASI Saroj, partly investigated the present case and deposed about investigation proceedings conducted by her during the course of investigation.

PW11-father of complainant/ victim stated that complainant/ victim is his daughter who was having love affair with accused. Both of

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them were working in Kurukshetra University, Kurukshetra. Their affair continued for three years. Accused was also having affair with another girl, so he refused to marry his daughter/ victim. Accused wanted to go to abroad. There was a dhaba situated on Salarpur Road, accused enticed the complainant/ victim and committed wrong acts with her there. Then he refused to marry her and proclaimed that she could do whatever she wanted. Father and sister-in-law of accused knew about their relationship. He requested Ranpat and father of accused to solemnize the marriage of victim with the accused but they did not pay any heed. Panchayat was convened at Ravidas Mandir, but accused party refused to solemnize marriage with the complainant/ victim, as accused party was rich and they were poor persons. Thereafter, Panchayat was convened at Dronacharya Stadium but again accused did not agree to solemnize marriage with the complainant/ victim.

12. After having heard learned counsel for the appellant at length and having perused the impugned judgment as well as other relevant record, we are of the considered opinion that prosecution in the instant matter was unable to prove its case against the accused beyond reasonable doubt.

13. As per the allegations, accused had physical relations with the prosecutrix on the basis of false promise of marriage but thereafter, he got engaged with some other girl. He kept sexually abusing her for three years and ultimately refused to marry her. Arguments raised is that consent if any cannot be construed as such because if it all, it was obtained on false assurance of marriage.

14. Hon'ble the Supreme Court in *Pramod Suryabhan Pawar Vs. State of Maharashtra and another, (2019) SCC online SC 1073*, has

discussed “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.”

15. So from the ratio of law laid down in the aforesaid 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 extended a false promise of marriage knowingly without having any intention to keep his promise since the inception of relationship. In the instant case evidence on record does not indicate that there was at the first instance a promise to marry extended by the accused to the prosecutrix. It is to be noticed, at this stage that prosecutrix in her complaint Ex.P14 and statement recorded under Section 164 Cr.P.C. Ex.P15 stated that she was in a relationship with the accused for last three years and he maintained physical relations with her on the pretext of marrying her but ultimately refused to marry.

16. When the prosecutrix stepped into the witness box as PW8 she stated that she was forced by the accused to establish relations against her wishes and there is not even a whisper that he promised to marry her at any point of time. Thus, she has taken a totally contradictory stand from her

earlier version. She categorically stated in her examination-in-chief that accused used to take her to Hotel Kathi King at Salarpur Road for having meal. He used to force her to go to hotel rooms, but she used to deny for the same every time. After putting her in fear, he used to take her in the hotel rooms and used to commit rape with her forcibly and without her consent. He used to take her in room No.108 in Hotel Kathi King. From her cross-examination it is revealed that she was having physical relations with the accused for the last three years. They used to go to different places with each other and whenever they used to go to Hotel Kathi King, they used to have physical relations with each other. It emerges from the evidence on record that she never objected at that time and did not inform even her family members about the same. During this entire long span of three years she never made any complaint against the acts of the accused. Even her father while appearing as PW11 clearly stated that he came to know about relationship of complainant/ victim with the accused in the year 2019 and previously they had no knowledge of the same. So this conduct reveals that she was in relationship with the accused and was never raped by him. Rather she maintained physical relations with the accused out of her own accord and was never enticed by the accused to develop physical relations under the pretext of marriage as alleged. It appears that she was in consensual relationship with the accused. While deposing as PW8 she tried to project it as a case of forcible sexual relations. While appearing as PW8 she clearly stated that she pressurized the accused to marry her, but when he did not agree, then she filed an application against him after consulting her family members. Therefore, it is not established that the accused had

extended a promise to marry the prosecutrix knowing it to be false and incorrect and established relationship with her while obtaining her consent on that basis.

17. Undoubtedly prosecutrix was over 25 years old when she came in contact with the accused. The complainant/ victim in her deposition before the Court on 26.08.2021 disclosed her age to be 30 years. In her medico legal examination report Ex.P10, her age has been mentioned as 29 years and in her statement recorded under Section 164 Cr.P.C., she disclosed her age as 27 years. In her cross-examination she has stated that she is M.A, B.Ed. and joined temporary service in Kurukshertra University, Kurukshetra in the year 2016 in Result Branch. She also applied in Rojgar Vibhag, situated in Kurukshertra University, Kurukshetra for obtaining a job under Saksham Scheme.

18. It is thus established on record that the prosecutrix was mature educated lady duly engaged in gainful work and she maintained physical relations with the accused for a good period of three years out of her own free will and volition which cannot be said to have been obtained on account of a false promise or misconception or misrepresentation on the part of the accused. It is opposed to all probabilities and reasonableness that a mature educated lady as the prosecutrix would have continued in a physical relationship with the accused for three long years on the false pretext as alleged.

19. Under the given circumstances, it can be fairly inferred that the complainant/ victim was not under any misconception of facts and was in a consensual relationship with the accused. Learned trial Court has rightly

observed that such like consensual sexual relationship between accused and complainant/ victim cannot be termed as a rape and it appears that subsequently differences arose between the two and when accused and his family members refused to solemnize marriage, she opted to implicate the accused on allegations of rape which are not proved by the evidence on record.

20. It is thus not the case where she was duped or allured under the pretext of marriage, but is a case of consensual sex between two major persons.

21. 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 instant case, the complainant/ victim has taken a contradictory stand while appearing in the witness box as PW-8. Therefore, we do not find any merit in the arguments raised on behalf of the appellant that conviction of the accused should be based on the sole testimony of the prosecutrix as discussed in the foregoing paras, it cannot be said that testimony of the prosecutrix is of sterling quality on the basis of which conviction can be based upon. It has been held by Hon'ble the Supreme Court in **Rai Sandeep alias Deepu Vs. State of NCT of Delhi (2012) 8 SCC 21** as under:

“15. In our considered opinion, the ‘sterling witness’ should be of a very high quality and caliber whose version should, therefore, be unassailable. The Court considering the version of such witness should be in a position to accept it for its face value without any hesitation. To test the quality of such a witness, the status of the witness would be immaterial and what would be relevant is the truthfulness of the statement made by

such a witness. What would be more relevant would be the consistency of the statement right from the starting point till the end, namely, at the time when the witness makes the initial statement and ultimately before the Court. It should be natural and consistent with the case of the prosecution qua the accused. There should not be any prevarication in the version of such a witness. The witness should be in a position to withstand the cross-examination of any length and howsoever strenuous it may be and under no circumstance should give room for any doubt as to the factum of the occurrence, the persons involved, as well as, the sequence of it. Such a version should have co-relation with each and everyone of other supporting material such as the recoveries made, the weapons used, the manner of offence committed, the scientific evidence and the expert opinion. The said version should consistently match with the version of every other witness. It can even be stated that it should be akin to the test applied in the case of circumstantial evidence where there should not be any missing link in the chain of circumstances to hold the accused guilty of the offence alleged against him. Only if the version of such a witness qualifies the above test as well as all other similar such tests to be applied, it can be held that such a witness can be called as a 'sterling witness' whose version can be accepted by the Court without any corroboration and based on which the guilty can be punished. To be more precise, the version of the said witness on the core spectrum of the crime should remain intact while all other attendant materials, namely, oral, documentary and material objects should match the said version in material particulars in order to enable the Court trying the offence to rely on the core version to sieve the other supporting materials for holding the offender guilty of the charge alleged."

22. Gainful reference can be made to **Kaini Rajan Vs. State of**

Kerala 2013(4) R.C.R (Criminal) 365, wherein Hon'ble Supreme Court acquitted the accused in a rape case when prosecutrix had come up with version that she had acquaintance with the accused for the last two years. Accused promised to marry her and committed rape upon her and she became pregnant and gave birth to a child and FIR was lodged after ten months of the alleged incident. It was observed by Hon'ble Apex Court that all these factors cast a doubt about version that she was raped and it was held to be a consensual act.

23. Reference can further be made to *K.P. Thimmappa Gowda vs. State of Karnatka, 2011(4) SCALE 224*, wherein the case of the prosecution was that appellant had raped the prosecutrix, aged eighteen years on an assurance that he would marry her. There were allegations that appellant had sex with her several times on assurance to marry her. Prosecutrix became pregnant but appellant refused to marry her. He subsequently married another woman. It was held by Hon'ble Apex Court that from the facts, it came out that prosecutrix had sex with the appellant on several occasions. There was delay of about eight months in lodging the FIR and from the facts, it was held that prosecutrix had sex with appellant with her consent and no offence under Section 376 of IPC was made out.

24. In the instant case also the complainant/ victim a major, educated woman was maintaining physical relations with the accused out of her own free will for the last three years. The present complaint was filed against the accused after a long gap of three years and her long silence proved that she was a consenting party.

25. After analyzing the evidence on record it can safely be

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concluded that prosecution has failed to prove its case against the accused beyond reasonable doubt. Evidence on record is indeed not sufficient to convict the accused of the offence as charged and he has been rightly acquitted by learned trial Court.

26. It is a settled position that an order of acquittal is not to be interfered with lightly because presumption of innocence of the accused is further strengthened by acquittal. Interference is called for only under compelling circumstances, where impugned findings are perverse, unreasonable and convincing material on record is ignored unjustifiably by the trial Court. Reference in this regard can be made to judgment of Hon'ble the Supreme Court in 'Mahamadkhan Nathekhan vs. State of Gujarat' 2014 (14) SCC 589. Learned counsel for the appellant was unable to point out any illegality, infirmity or perversity in the impugned decision dated 19.12.2019 which calls for interference.

27. No other argument was raised.

28. In view of the above, the appeal being bereft of any merit is dismissed with impugned judgment dated 16.11.2022 passed by learned trial Court being upheld.

29. Pending applications, if any, stand disposed of accordingly.

(SUKHVINDER KAUR)
JUDGE

(LISA GILL)
JUDGE

12.09.2024.

Komal

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