



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRA-AD-101 OF 2022 (O&M)

RESERVED ON : JULY 31, 2024

DATE OF DECISION : AUGUST 29, 2024

Jasmit Kaur

...Appellant

Versus

State of Haryana and another

...Respondents

CORAM : HON'BLE MR. JUSTICE ANUPINDER SINGH GREWAL
HON'BLE MS. JUSTICE LAPITA BANERJI

Present : Mr. Ankit Joshi, Legal aid counsel,
For the appellant.

Mr. Rahul Dev Singh, Addl. AG, Haryana.

LAPITA BANERJI, J.

This is an appeal by the prosecutrix against the acquittal of the accused-Harjeet Singh vide judgment dated September 06, 2021 passed by learned Sessions Judge, Ambala. The accused-Harjeet Singh was named in FIR No.181 dated 30.07.2018 under Sections 366, 376, 506 of Indian Penal Code (for short "IPC") and Section 3 of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short "SC/ST Act") registered at Police Station Sadar Ambala.

BRIEF FACTS

2. The case of prosecution is that on July 30, 2018, the father of prosecutrix lodged a complaint under Section 366 of IPC and prayed for investigation to be conducted. The father of prosecutrix stated that he had one daughter and three sons. He got his daughter/prosecutrix married to one Balkar Singh in 2011 but she got divorced later. He again fixed the marriage of his daughter and her engagement took place but since the prosecutrix refused to marry on the day of the wedding, the Baraat went back. The



complainant again got his daughter married to one Parveen resident of Ismailabad in November, 2014 but again divorce with Parveen had taken place. Thereafter, he had fixed the marriage of his daughter again for July 08, 2018 but on July 06, 2018, his daughter had left the house without disclosing anything to anyone. On July 08, 2018 his daughter had made a phone call to him and informed that she was in Gurudwara Sahib, Amritsar and his son brought her back from there. His daughter's marriage was again re-fixed for July 25, 2018 but his daughter again left the house without disclosing anything to anyone on that very date at about 6:30 am. According to the complainant, the accused-Harjeet Singh enticed his daughter away and so a FIR under Section 366 IPC was filed for tracing his daughter.

3. On August 09, 2018, the prosecutrix/victim was recovered from Golden Temple, Amristar. In her statement recorded under Section 164 of Cr.P.C, the prosecutrix stated that she was in a relationship with the accused since 2006. He had established a physical relationship with her on the promise of marriage. On July 06, 2018, the accused had taken her to 'Beas' and left her. On July 08, 2018, her marriage was fixed but since the accused had enticed her away, her marriage had broken. On July 25, 2018, he again took her away and left her. He promised her marriage time and again but did not keep the same. She alleged that the accused has spoiled her life by making false promises of marriage and thereafter not complying with the same. After carrying out due investigation and medical examination, Sections 376, 506 IPC and Section 3 of SC/ST Act were added to FIR.

ANALYSIS OF EVIDENCE

4. The prosecutrix was examined as PW-1. She deposed that she was in a relationship with the accused since 2006 and he had established physical relationship with her on the pretext of marriage. In 2011, the



prosecutrix got married for the first time but due to problems at her matrimonial home she came back to her paternal home. The accused had requested her not to go back to her matrimonial home and promised that he would solemnize marriage with her. Since the accused emotionally blackmailed her, by threatening to commit suicide in the event she returned to her matrimonial home, the prosecutrix did not go back. She ultimately separated, by way of a Panchayati divorce, from her first husband. Thereafter, she stopped talking to the accused for about six months but the accused sought her forgiveness and assured her that he would marry her after divorcing his wife.

5. When her parents fixed her marriage again for July 08, 2018, the accused asked her not to marry as he would himself marry the prosecutrix. On July 06, 2018, the accused took her to 'Beas' and left her there after giving her money to purchase food from canteen of "Dera Beas". He had also assured her that he would return in 2-3 days but did not do so. On July 07, 2018, the prosecutrix took a free bus from "Dera Beas" and reached the railway station. When she called the accused, he asked her to go to Amritsar by train and wait for him there. The prosecutrix went to Amritsar but the accused did not come to fetch her. On July 09, 2018, she called her brother who went to Amritsar and brought her back home. On July 10, 2018, the prosecutrix along with her parents and brother visited the police station where the accused was also called. Even in the Police Station, the accused had promised to marry the prosecutrix.

6. On July 25, 2018, one day before the rescheduled date of marriage, the prosecutrix again left with the accused who took her to Amritsar and left her there. The prosecutrix waited for him for 15 days. Since the accused did not return she called the Women Police Station at Ambala from



someone else's phone. The police brought her back to Ambala on August 09, 2018. On August 10, 2018, she was medically examined at Civil Hospital, Ambala City and her custody was handed over to her parents.

7. In her cross-examination, the prosecutrix admitted that before her marriage in 2011, she used to repeatedly meet the accused at Anand Sukh Hotel, Ambala City and Mehak Hotel, Ambala City. On May 08, 2018, they met at Royal Palace near Shambu. She admitted that her divorce with Balkar Singh took place on July 08, 2012 through the Panchayat and a decree of divorce was not granted by any Civil Court of law. She was again engaged in July, 2014 with Amarjit but her baraat returned from Gurudwara Sahib situated near Ashok Vihar Colony, Ambala City, as she refused to get married. She again got married to Parveen on November 06, 2014. After her marriage, she voluntarily accompanied Parveen's family and resided there only for a month and returned to her parental place in January, 2015. The accused was not aware of her marriage and did not visit her matrimonial home. Even though there was no dispute between her and Parveen on any account, still she did not go back to her matrimonial home after January, 2015 as the accused asked her not to go back. She got divorced from Parveen in September 2015 through the Panchayat.

8. The prosecutrix stated that initially she was not aware of the date or year of accused's marriage but the accused had told her in December, 2012 that he was a married person. However, even after December, 2012, the accused established continuous physical relationship with her. She also volunteered to state that accused promised to marry her after divorcing his wife.

9. PW-9 Dr. Neelam, Medical Officer, Civil Hospital, Ambala in her cross-examination admitted that there was no injury on the body or any



private part of the prosecutrix. There was no sign to show that any force was used upon her. In the opinion of the Doctor, since the prosecutrix was a married lady, she was habitual to intercourse.

10. PW-7 Manager of Mehak Hotel, Ambala City deposed that on August 11, 2018, he had handed over the photocopy of the visitor's register of March 19, 2018 and June 02, 2018 to the Investigating Officer. As per record, the accused stayed in his hotel with the prosecutrix. During cross-examination, he admitted that the prosecutrix visited his hotel on her own and he did not notice any pressure or force of any kind upon her. She had signed the register on both the occasions out of her own free will, without any pressure.

FINDINGS OF THE TRIAL COURT

11. Learned Special Court-cum-Additional Sessions Judge, Ambala recorded that the prosecutrix was admittedly a major, aged 33 years and the age of prosecutrix was not in dispute. She had specifically stated that she was in a relationship with the accused since 2006 and the accused had established physical relations with her on a false promise of marriage. The trial Court came to the finding that there was no merit in such allegations since there was no explanation as to why she had performed marriage in 2011 despite the fact that she was in a relationship with the accused since 2006 and the accused had established a physical relationship with her. It observed that as per her own statement, she had come back to her parental home due to some trouble in her matrimonial home but there was no allegation that it was due to any action/conduct of the accused, she was forced to come back. As per the prosecutrix's own version, she continued to maintain her relationship with the accused even after knowing that he was a married man and had children, though a case had been sought to be made out by alleging that the accused promised to marry her after getting divorce from his wife. There was nothing on record to show that



divorce proceedings were even filed by the accused. When the accused failed to marry her after 2012, there was no reason for the prosecutrix to continue her relationship with him.

12. The prosecutrix had continued her relationship with a married man knowing fully well that he could not perform a second marriage during the subsistence of the first one. In cross-examination, prosecutrix admitted that she used to meet the accused repeatedly at Anand Sukh Hotel, Mehak Hotel and also Royal Palace. The prosecutrix herself had married one Balkar Singh in 2011 and had also performed a second marriage with Parveen in 2014 but could not produce any decree of divorce in respect of either of her marriages. Since the prosecutrix herself had gotten married twice and could not produce any decree of divorce with either of her husbands, her allegations that the accused had established a physical relationship with her on a false promise of marriage was not accepted by the Trial Court.

13. The Trial Court held that the conduct of the prosecutrix showed that the relationship between them was consensual and the bald allegations against the accused did not inspire any confidence as the prosecutrix knew very well that the accused was a married man and could not perform a second marriage during the subsistence of the first one. Furthermore, when the prosecutrix herself had performed two marriages, she could not allege that the accused continued the physical relationship with her on the false pretext of marriage. After careful scrutiny of the oral evidence and the Medico-legal report the trial court opined that the theory of absence of consent on the part of the prosecutrix was negated. The prosecutrix herself admitted that she used to meet the accused in hotels but despite having ample opportunities to raise an alarm, she did not do the same. Moreover, the manager of Mehak Hotel,

Ambala City, stated in his cross-examination that he did not notice any



pressure or force on the prosecutrix and she signed the register out of her free will.

14. Taking the detailed evidence into consideration, the learned trial Court held that the allegation of the prosecutrix regarding sexual intercourse by the accused with her, on the false pretext of marriage was a concocted one as she was a major person and the act seemed to be consensual. Hence, the accused was acquitted of the charges under Section 376 IPC. He was also acquitted of the charges under Section 506 IPC as no evidence was led that the accused had threatened the prosecutrix with dire consequences of life.

15. Furthermore, the trial Court held that even though the prosecutrix belonged to the Schedule Caste community but since offences under Sections 376 and 506 IPC were not proved, therefore, the allegations under Section 3 of the SC/ST Act, also remained unproved. Therefore, as the prosecution failed to prove the case beyond a shadow of reasonable doubt, the accused was acquitted of the charges framed against him.

FINDINGS OF THE COURT

16. This Court has heard the parties and carefully perused the materials on record.

17. Admittedly, the prosecutrix was a mature lady of 32 years when the FIR was lodged. Even though it could have been assumed that in 2006, at the inception of her relationship she was unaware of the marital status of the accused, but admittedly since 2012 she was aware of the same. Despite being aware of the accused's marital status, she admittedly continued her physical relationship with him till 2018 when the FIR was lodged. The prosecutrix being a married lady herself since 2011 continued the said physical relationship without obtaining a proper decree of divorce from the competent

Civil Court. The prosecutrix had on several occasions run away from her own



house to be with the accused. She went to several hotels to be with the accused out of her own free will.

18. Though, the case of the defence is of denial, the accused had admitted that he was in a relationship with her since 2006 and the prosecutrix voluntarily accompanied him. It was contended that after the alleged rape, no alarm was ever raised by the prosecutrix or no complaint was made by her to even her near and dear ones. There were no injury marks or evidence of forcible sexual intercourse and therefore, the consent of the prosecutrix to the relationship was evident.

19. The main issue which fell for determination by the trial Court and falls before this Court also is whether the version of prosecutrix inspired confidence to warrant conviction of the accused for an offence of rape and whether the consent of the prosecutrix was obtained under misconception or false promise of marriage as alleged by her or was the same given by her own free will.

20. To answer the abovesaid issue, a beneficial reference may be made to the Apex Court's judgment in "*Naim Ahamed v. State (NCT of Delhi)*" in SLP (Crl.) No.8586 of 2017, wherein it was held that it would be a folly to hold each *breach of promise* to marry as a *false* promise and to prosecute a person for an offence under Section 376 IPC. In that case it was held that the prosecutrix herself being a married woman having three children could not be said to have acted under the alleged false promise given by the accused or under the misconception of the fact while giving consent to sexual relationship with the accused. The prosecutrix therein had continued to have relationship with the accused for about five years till she filed a complaint in the year 2015.



21. Furthermore, it was held that the prosecutrix being a matured married lady had enough intelligence to understand the consequences of moral and immoral quality of act she was consenting to. The prosecutrix had betrayed her husband by having a relationship with the accused and staying with him during subsistence of her marriage. In 2012, she had come to know that the accused was a married man having children but still she continued to have a live-in relationship with him. She obtained a decree of divorce by mutual consent in 2014 and it was only in 2015, when certain disputes arose between the prosecutrix and the accused that she had lodged the complaint against him. Therefore, the Apex Court held that 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 to the sexual relationship with the accused under any misconception of fact so as to hold the appellant guilty of having committed rape within the meaning of Section 375 of IPC.

22. In the present case also by no stretch of imagination can it be held that the prosecutrix being twice married herself, choosing to continue a sexual relationship with the accused during the subsistence of her marriages and being aware of the accused's marriage since 2012, had given her consent to sexual relationship with the accused under misconception of false promise of marriage so as to hold the appellant guilty of having committed rape under Section 375 IPC.

23. On the given facts and circumstances, the trial Court was justified in acquitting the accused. The judgment of trial Court is based on valid reasons. The prayer of appellant for conviction of accused is liable to be declined keeping in view the principles laid down by Hon'ble Apex Court.



CASE LAWS

24. Moreover, the scope of interference by the Appeal Court in cases of acquittal is very limited. A beneficial reference may be made to the case of “*State of Karnataka v. K. Gopalakrishna*” (2005) 9 SCC 291, wherein it has been held that where the findings of the Court below are fully unreasonable or perverse and not based on evidence on record or suffer from serious illegality and includes ignorance and misreading of record, the appellate Court will be justified in setting aside such order of acquittal but not otherwise.

25. In “*Chandrappa v. State of Karnataka*” (2007) 4 SCC 415, the Apex Court culled out general principles regarding powers of the appellate Court while dealing with an appeal against an order of acquittal. The principles are enumerated herein below :

“(1) An appellate court has full power to review, re-appreciate and reconsider the evidence upon which the order of acquittal is founded.

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

(3) Various expressions, such as, “substantial and compelling reasons”, “good and sufficient grounds”, “very strong circumstances”, “distorted conclusions”, “glaring mistakes” etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of “flourishes of language” to emphasize the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

*(4) An appellate court, however, must bear in mind that in case of acquittal, there is **double presumption in favour of the accused**. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.*



(5) *If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.”*

CONCLUSION

26. Keeping in view the aforesaid discussion and the principles laid down by the Apex Court, this Court finds no infirmity or perversity in the decision of learned trial Court acquitting the accused of all the charges. Accordingly, the appeal against acquittal is dismissed. Pending criminal miscellaneous application(s), if any, also stand disposed of.

(ANUPINDER SINGH GREWAL)
JUDGE

(LAPITA BANERJI)
JUDGE

AUGUST 29, 2024
Shalini

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