

CRA-AD-348-2023 (O & M)

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2024:PHHC:125921-DB



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRA-AD-348-2023 (O & M)

Date of decision:23.09.2024

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..... Appellant(s)

V/s

State of Punjab and anr.

...Respondent(s)

**CORAM: HON'BLE MR. JUSTICE SUDHIR SINGH
HON'BLE MR. JUSTICE JASJIT SINGH BEDI**

Present: Mr. PKS Phoolka, Advocate, for the appellant.

Mr. Ek Lavya Darshi, DAG, Punjab.

JASJIT SINGH BEDI, J.

The present appeal has been filed against the judgment of acquittal dated 28.02.2023 passed by the Judge, Special Court/Additional Sessions Judge, Bathinda.

2. The FIR in the present case came to be registered on 11.09.2020. The judgment of acquittal was passed on 28.02.2023. This

appeal has come up for final hearing now i.e. after a period of 04 years having elapsed from the date of the registration of the FIR.

3. The case of the prosecution is that the FIR was registered on the basis of the statement of the prosecutrix alleging that she was a Post Graduate and was preparing for the ILETS examination at a Center in Bathinda. She met the accused at a marriage function in her maternal aunt's house, where they exchanged contact numbers. The accused wanted to marry her. On the pretext of performing marriage, the accused won her confidence and kept sexually assaulting her over a period of time. Later on he reneged on his promise, resulting into the registration of the FIR. She was produced before the Medical Officer for medical examination and got recorded her Statement under Section 164 Cr.P.C. before the Judicial Magistrate on 24.09.2020. The investigating officer conducted the investigation. The accused was arrested and statements of witnesses were recorded. On completion of the investigation, the police report under Section 173(2) Cr.P.C was submitted before the Court.

4. On commitment, finding a prima facie case, charge under Section 376 of IPC was framed against the accused on 04.02.2021, to which he pleaded not guilty and claimed trial.

5. In order to prove its case, the prosecution examined the following witnesses:-

i. The prosecutrix was examined as PW-1. She stated that she had met the accused in a marriage function at the house of her aunt. They developed friendship, Accused proposed to her for marriage. Initially, she refused, but on 19.8.2019, he visited

Bathinda and met her. On his insistence, she accompanied him and he took her to Star hotel situated at Malout bypass, where he forcibly committed sexual intercourse with her. Thereafter, he left her at her P.G, accommodation. Thereafter, also on numerous occasions, he established physical relations with her at different places on the pretext of marriage. She trusted him. However, later on, he refused to marry her. She alongwith her mother approached the accused through his relative but he refused to solemnize marriage with her. She was admitted at Civil Hospital, Bathinda for medico legal examination, where police recorded her statement Ex.PA in the presence of her mother Paramjit Kaur. She also got recorded her statement under Section 164 Cr.P.C.

ii. PW-2 Paramjit Kaur deposed on similar lines as the prosecutrix. She stated that at the time of occurrence, the prosecutrix was about 23 years of age. There was marriage of her nephew at a village in the District of Shri Ganganagar. The prosecutrix also accompanied her to attend the marriage. Gursewak Singh met her in the above marriage. Thereafter, they developed physical relations. Thereafter, the accused took the phone number of her daughter from Randhip Singh and he started conversing with her. He proposed to her daughter for marriage. On 19.8.2019, he took her daughter in a car on the pretext of performing marriage and instead took her to Star hotel, where he sexually assaulted her. On 18.8.2019, he alongwith Randhip Singh took her daughter with him on the pretext of marriage from her house and this fact was disclosed to her by her daughter on the next day on 19.8.2019. Thereafter, she approached Gursewak Singh and requested him to solemnize marriage with her daughter, but he refused. Thereafter, she got admitted her daughter at Civil Hospital, Bathinda for medical examination. SI Karamjit Kaur recorded

statement of the prosecutrix Ex.PA and she also endorsed the same.

iii. PW-3 SLCT Harmeet Kaur tendered into evidence her duly sworn affidavit Ex.PW3/A. She was examined to prove the link evidence.

iv. PW-4 Vijay Kumar, Computer Operator, Municipal Council, Gidderbaha proved the date of birth of the prosecutrix. He brought the record pertaining to the birth of the prosecutrix and proved the relevant extract of the same as Ex.PW4/A. As per the record her date of birth was 6.7.1996. He also proved letter bearing No. 830/3.11.2020 attached in the judicial file as Ex.PW4/B, vide which the local registrar certified the correctness of the birth certificate of the prosecutrix.

v. PW-5 C. Tarandeep Singh tendered into evidence his duly sworn affidavit Ex.PW5/A. He was examined to prove the link evidence.

vi. PW-6 SI Karamjit Kaur deposed that on 11.9.2020 she visited Civil Hospital, Bathinda on receiving information, where she moved application Ex.PW6/A to the Medical Officer, Civil Hospital, Bathinda to inquire about the fitness of the prosecutrix to suffer a statement. She recorded the statement of the prosecutrix Ex.PA in the presence of her mother Paramjit Kaur who also endorsed the same. She, thereafter, effected her endorsement Ex.PW6/B and dispatched the ruqa through PHG Mahinder Partap on the basis of which formal FIR Ex.PW6/C was registered by SI Rajwinder Singh. On the same day, she made a request to Medical Officer, Civil Hospital, Bathinda Ex.PW6/D regarding providing the MLR of the prosecutrix as well as the body sample of the prosecutrix. On 5.10.2020, Gursewak Singh was arrested vide memo Ex.PC. On 6.10.2020, she moved an application Ex.PW6/F1 to Medical Officer, Civil Hospital, Bathinda to conduct his potency test and also drew

out his blood sample for DNA estimation. On 4.11.2020 she moved an application Ex.PW6/G to Municipal Corporation, Bathinda to confirm the validity of the license of Star hotel. The prosecutrix was produced before the learned Illaqa Magistrate to record her statement under Section 164 Cr.P.C. She also proved copy of DDR No.55 dated 1.10.2020, which is Ex.PW6/H vide which the prosecutrix disclosed the correct name of the hotel.

vii. PW-7 Dr. Amit Kamboj, Medical Officer, Civil Hospital, Bathinda deposed that on 6.10.2020 on police request Ex.PW6/F1, he medico legally examined the accused and also drew out blood sample for DNA examination. He proved his endorsement on police request Ex.PW7/A. He also proved the computerized copy of MLR Ex.PW7/B.

viii PW.8 Hardeep Singh, the owner of the Star hotel, stated that he was not in possession of record between 2015 and 2021 as the same was destroyed due to fire in the building. He did not identify accused Gursewak Singh. He stated that he did not know if the accused alongwith prosecutrix ever visited his hotel in August 2018. He was declared hostile and allowed to be cross-examined by the Addl. PP.

ix. PW-9 Dr. Renuka Goyal, Medical Officer, Civil Hospital, Bathinda deposed that on 11.9.2020, on police request Ex.PW6/D she declared the prosecutrix fit to make a statement vide endorsement Ex.PW9/A. She also proved the computerized copy of the MLR of the prosecutrix as Ex.PW9/BN. She also obtained body sample of the prosecutrix and handed over the same to police official on police request Ex.PW6/D, vide endorsement Ex.PW9/C. She examined the DNA report, which was negative and as per her opinion possibility of sexual intercourse with the prosecutrix could not be ruled out.

x. PW-10 Sunil Gulati, Inspector Licence, Municipal Corporation, Bathinda brought the record pertaining to the license issued to Star hotel. He proved the copies of Trade License Certificate as Ex.PW10/D to Ex.PW10/F for the year 2018 to 2021 respectively.

6. After the closure of prosecution evidence, the statement of the accused was recorded under Section 313 Cr.P.C. on 02.04.2022 in which the incriminating evidence was put to him. He denied the same and pleaded false implication.

7. Based on the evidence led, the accused-respondent No.2 came to be acquitted vide judgment dated 28.02.2023 passed by the Judge Special Court/Additional Sessions Judge, Bathinda.

8. It is the aforesaid judgment which is under challenge before this Court.

9. The learned counsel for the appellant contends that the impugned judgment has been passed on conjectures and surmises. The prosecutrix examined as PW-1 and her mother/Paramjit Kaur examined as PW-2 have duly supported the prosecution version. The medical evidence was totally in consonance with the ocular account. It was apparent that the occurrence had taken place on account of the duress exerted by the accused on the pretext of wanting to marry the prosecutrix. The prosecutrix who belonged to a simple family had trusted the accused. Thus, the impugned judgment dated 28.02.2023 was liable to be set aside and the accused ought to be convicted for having committed the offence in question.

10. The learned counsel for the State-respondent No.1 while supporting the case of the appellant/complainant contends that the impugned judgment was not based on proper appreciation of the evidence on record and, therefore, the judgment of acquittal was liable to be set aside.

11. We have heard the learned counsel for the parties and examined the record.

12. The case of the prosecution rests on the testimony of the prosecutrix. She has explained as to how she came in contact with Gursewak Singh. They became friends. Friendship transformed into an intimate relationship resulting into sexual intimacy. It is her case that the sexual intercourse was the direct result of the promise of marriage handed out by the accused. However, on an appreciation of the evidence on record, it does not seem probable that the consent given by the prosecutrix was only on account of the promise to marry, if any, made by the accused. Admittedly, the prosecutrix was aged about 23 years at the time of occurrence, well educated, having completed her Master Degree in Hindi Language and was preparing for her IELTS Exam at a coaching center situated at Ajit Road, Bathinda. The accused met her at a marriage at the house of her aunt. They remained in a relationship for a long time. The prosecutrix was mature enough to take her decision. In her cross-examination she has admitted that she never objected or raised an alarm when ever the accused used to take her along. She accompanied Gursewak Singh to Shri Ganganagar. There is no evidence on record to draw an inference that the consensual relationship between the parties was the result of a false promise to marry. It is quite

possible that the relationship between the two became estranged over a period of time. In fact, the prosecutrix stated in her cross-examination that neither she met the family of the accused nor the accused met her family. Quite to the contrary, the mother of the prosecutrix PW-2/Paramjit Kaur stated that she had approached the accused for the marriage of the prosecutrix which he refused. PW-6/SI Karamjit Kaur, the investigating officer of the case also stated that the prosecutrix had never told her that the parties had met each other in the context of the marriage of the prosecutrix and the accused.

Further, the corroborative evidence regarding the visit to the Star hotel or any other hotel by the prosecutrix alongwith the accused is missing. PW-8 Hardeep Singh, the owner of the Star hotel, deposed in the court that the record of the visitor book from the year 2015 to 2021 was destroyed and he could not recall from his memory, if Gursewak Singh alongwith prosecutrix ever visited the hotel.

The medical evidence and DNA report also do not support the allegations of the prosecutrix regarding the commission of sexual intercourse.

The testimony of PW-2 Paramjit Kaur is based on *hear say* evidence as she herself was not a witness to any occurrence and only deposed on the basis of the information supplied by her daughter.

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

14. 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 dated 28.02.2023 passed by the Judge, Special Court/Additional Sessions Judge, Bathinda. Therefore, the present appeal stands dismissed.

(JASJIT SINGH BEDI)
JUDGE

(SUDHIR SINGH)
JUDGE

September 23, 2024
sukhpreet

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No