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IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRA-S No.3369 of 2023
Date of decision: 16.07.2024
Reserved on: 30.04.2024

Krishan ... Appellant

Vs.

State of Haryana ... Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Ashit Malik, Advocate,
for the appellant.

Mr. Neeraj Poswal, AAG, Haryana.

Mr. Samay Sandhawalia, Advocate,
for the complainant.

MANISHA BATRA, J.

1. The present appeal has been preferred by the appellant-accused against the judgment of conviction and order on quantum of sentence both dated 17.10.2023 passed in Sessions case No.SC/155/2021 titled as **State of Haryana v. Krishan** arising out of FIR No.64 dated 07.07.2019 registered under Sections 376 and 506 of IPC and Section 67 of Information Technology Act, 2008 (For short “IT Act”) (later on Section 201 of IPC and Section 66-E of IT Act added) at Police Station Women,

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District Kaithal whereby, the appellant-accused had been held guilty and convicted in the manner as indicated below:-

Under Section 376 (2) (n) of the Indian Penal Code, 1860	To undergo rigorous imprisonment for a period of Ten (10) years and to pay a fine of rupees twenty thousand (Rs.20,000/-) . In default of payment of fine, he shall further undergo rigorous imprisonment for a period of four (4) months .
Under Section 506 of The Indian Penal Code, 1860	To undergo rigorous imprisonment for a period of Two (2) years and to pay a fine of rupees five thousand (Rs.5,000/-) . In default of payment of fine, he shall further undergo rigorous imprisonment for a period of One (1) month .
Under Section 201 of the Indian Penal Code, 1860	To undergo rigorous imprisonment for a period of One (1) year and to pay a fine of rupees five thousand (Rs.5000/-) . In default of payment of fine, he shall further undergo rigorous imprisonment for a period of One (1) month .

2. For the sake of continuity and coherence, the parties shall be nominated as per their original nomenclature as given during the course of trial.
3. Brief facts of the case relevant for the purpose of disposal of this appeal are that the FIR of this case was registered on the basis of a written complaint received at the police station on 06.07.2019 and as filed by the prosecutrix “K” (name withheld) alleging therein that she was married with one “S” (name withheld) on 19.02.2019. Prior to her marriage, she had friendship with the accused and even talks about their marriage had taken place but since her parents wanted to get her married at the earliest whereas the accused had told that he would get his marriage performed after getting some job, therefore, her parents got her

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married elsewhere. She alleged that one week after her marriage, she had come to visit her parental house when accused had insisted her to meet her once. She accepted his request and had gone to meet him. He took her to some hotel on the pretext of having conversation with her and told her that he used to miss her a lot and then he took their selfies through her phone and sent the same to his phone. Thereafter, he extended threat to have physical relations with her and otherwise to make those pictures viral and then committed rape upon her. He started blackmailing her and subsequently also, he took her objectionable photographs and prepared vidoes and by extending threat to make the same viral, he started insisting her to get her marriage revoked and otherwise to defame her in a manner that she would be compelled to commit suicide and also ravished her again. On these allegations, a case under Section 376 and 506 of IPC read with Section 67 of IT Act was registered. Investigation proceedings were initiated. The prosecutrix was medically examined. Her statement under Section 164 of Cr.P.C. was also recorded. The accused was arrested on 13.02.2021. After completion of necessary investigation and usual formalities, challan under Section 173 Cr.P.C. was presented in the Court.

4. On finding a prima facie case for commission of offences under Sections 376 (2) (n), 201 and 506 of IPC read with Sections 66-E and 67 of IT Act, the accused had been charge-sheeted accordingly. He

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pleaded not guilty to the charges and claimed trial.

5. To substantiate its case, the prosecution examined 24 witnesses in all besides placing reliance upon certain documents and thereafter learned Public Prosecutor closed the prosecution evidence.

6. The statement of the accused under Section 313 Cr.P.C. was recorded wherein he abjured his guilt and pleaded innocence. In defence evidence, he produced certain documents.

7. After hearing the contentions raised by both the sides and appraising the evidence produced on record, the learned trial Court acquitted the appellant-accused of charges under Section 66-E and 67-A of IT Act but held him guilty for the aforementioned offences and sentenced him as discussed in para No.1 and in the manner as indicated above.

8. Feeling aggrieved, the instant appeal had been filed by the appellant-accused.

9. It was argued by learned counsel for the appellant-accused that the impugned judgment of conviction and order on quantum of sentence were liable to be set aside as the findings as given by learned trial Court were not sustainable in the eyes of law the same being perverse. The learned trial Court did not apply its judicious mind and committed a grave error in holding him guilty for commission of offences punishable under Sections 376 (2) (n), 506 and 201 of IPC. The prosecutrix was an

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adult married female. She admitted having friendship with the appellant-accused even two years prior to her marriage. The testimony of PW-6 proved that she along with the accused had visited London Dream Guest House and Restaurant, Dhand not even once but thrice. Entries regarding her visit to the abovesaid hotel with the petitioner duly proved that the accused and the prosecutrix were in constant touch with each other and were having a consensual relationship. They were also proved to be in constant touch with each other through mobile phones and, therefore, there was no question of accused having committed rape upon her.

10. It was further argued that the learned trial Court also ignored the fact that there was no medical evidence to prove that the accused had committed rape upon her. There was unexplained and inordinate delay in lodging of the FIR which too had not been taken into consideration. The prosecution failed to produce any material on record to prove that the accused had ever blackmailed the prosecutrix. The pictures which were found on the social media were not sexually explicit and that is why the accused had been acquitted of the charges under Section 66-E and 67-A of IT Act. The testimony of the prosecutrix proved that the relationship between them was consensual one. With these broad arguments, it was submitted that the impugned judgment was liable to be set aside, the appeal deserved to be accepted and further that the appellant-accused deserved to be acquitted of the charges for which he had been held guilty

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and convicted.

11. Per contra, learned State counsel assisted by learned counsel for the complainant argued that there was sufficient, cogent, convincing and reliable evidence on record to prove that the accused had called the prosecutrix for meeting her after her marriage had been performed elsewhere and had forcibly committed rape upon her, had captured her objectionable photographs and on the basis of the same, he had started blackmailing her and repeatedly ravished her. He further argued that the testimony of the prosecutrix had remained unshattered and proved the guilt of the accused to the hilt. Therefore, it was argued that the appeal was devoid of any merits and it was urged that the same was liable to be dismissed.

12. Both the sides had been heard at length and the material placed on record has been carefully appraised.

13. As per the case of the prosecution, the prosecutrix and the appellant-accused were in relationship since two years prior to the marriage of the prosecutrix with one "S" and even there were conversations about their marriage with each other. However, since the appellant-accused had refused to perform marriage with the prosecutrix till he got a suitable job, therefore, her parents got her married with the abovementioned "S" on 19.02.2019. As per the further allegations, after her marriage when the prosecutrix visited her parental house, the

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appellant-accused had called her to meet with him once and after taking their joint pictures/selfies on her phone, he had transferred those pictures in his phone and then threatened to make those pictures viral and on that pretext had forced her to have physical relations with her and subjected her to rape. The further allegations are that thereafter he had taken her objectionable photographs and videos and started blackmailing her and committed rape upon her twice after calling her into a hotel. The prosecutrix reported the matter to the police when her objectionable pictures and videos were uploaded by the appellant on different social media platforms like Facebook and Instagram etc.

14. On the other hand, the plea as taken by the appellant-accused in his defence is that he had never committed rape upon the prosecutrix and the relationship between them was consensual and even after her marriage, the prosecutrix had willingly gone with him at three different occasions at London Dream Guest House and Restaurant, Dhand and had stayed with her wherein they had consensual physical relationship. Since the fact that the act of sexual intercourse was committed by the appellant upon the prosecutrix thrice after her marriage itself is not denied by the appellant-accused at any point of time, therefore, irrespective of the fact that the medical evidence produced on record did not help the prosecution in proving that the appellant-accused had committed rape upon the prosecutrix, the fact that he had committed acts of sexual

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intercourse with the prosecutrix stands proved.

15. Now the question that arises for consideration is as to whether the act of the accused of subjecting the prosecutrix to sexual intercourse on three different occasions admittedly on 27.02.2019, 22.03.2019 and 28.03.2019 had been a consensual act on the part of the prosecutrix or she was forced to the same? In this regard, the testimony of the prosecutrix who was the star witness of the case is important. In her sworn deposition, she categorically deposed in support of the allegations as levelled in the complaint filed by her and stated that when she had met the appellant-accused after her marriage, then he had clicked selfies of both of them by using her mobile phone and then after transferring the same on his phone, he threatened her to have physical relations with him and otherwise to make her videos viral and on that pretext, he had committed rape upon her. She also deposed that he had blackmailed her subsequently also and asked her to disrobe herself and click her photographs and thereby blackmailed her. She admitted that she had gone in a hotel with the appellant-accused three times on being called by him as he was having her photographs and videos. She admitted that she had been calling the appellant-accused on his mobile phone from her own mobile phone. However, it was denied by her that she had voluntarily gone with the appellant-accused in the hotel and there was no threat on his part. She was subjected to pertinent questions of cross-examination in

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detail but credit of her testimony remained unshattered. No doubt, the prosecutrix was an adult female and it has also come on record that she had not raised any hue and cry when she was taken to hotel by the appellant-accused on three different occasions and was subjected to act of sexual intercourse but the reason that was given in this regard by the prosecutrix was that the appellant-accused had been blackmailing her on the basis of the photographs which he had taken. She placed on record Mark P-1 to Mark P-24 screenshots of the photographs taken by her from the Facebook account of the appellant and handed over to the police. Some of these photographs show the prosecutrix and the appellant to be in intimate postures. Undoubtedly, if these photographs would reach her matrimonial home, the same would have created havoc and that was a valid reason for the prosecutrix to remain quiet and be exploited/blackmailed by the appellant-accused.

16. Further, it has also come on record that the appellant-accused had made certain obscene photographs and videos of the prosecutrix and himself viral on Facebook and Youtube etc. This fact stands proved from the testimony of PW-7 Nitesh, friend of husband of the prosecutrix who deposed that he had seen the video clips and obscene photographs of the prosecutrix on his Facebook account and informed her husband about this fact. He even deposed that he still having those videoclips and obscene photographs in the memory of his phone and was ready to show them

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though learned counsel for the appellant did not choose to see the same. However, his statement goes a long way to show that infact some obscene photographs and videos of the prosecutrix were made viral and the same had been seen by PW-7. Even PW-3 “S” (name withheld) deposed about seeing obscene pictures and videos of the prosecutrix and giving information to the family of the prosecutrix and his statement also remained unrebutted and unchallenged.

17. Then, from the testimony of PW-15 Sub-Inspector Satyawar, Incharge, Cyber Cell, S.P. Office, Kaithal, it stands proved that obscene video of the prosecutrix made viral on different platforms of social media, from the IP account which was in the name of the appellant-accused thereby confirming the fact that the appellant-accused had made such photographs viral. In such circumstances, the testimony of the prosecutrix that she was pressurized to have physical relations with the appellant-accused on three different occasions on being threatened and blackmailed on the basis of the photographs so taken by him cannot be disbelieved especially in the circumstance when it is not the case of the appellant-accused that he did not commit act of sexual intercourse upon the prosecutrix on three different occasions after her marriage. Though he took the plea of their relationship being consensual, however, the testimony of the prosecutrix alone is sufficient, cogent and convincing enough to prove that she was being blackmailed and forced under the

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pretext of making her pictures viral on the internet to have sexual relations with the appellant-accused. The prosecutrix might be having relationship with the appellant-accused before her marriage but, that did not mean that she had given consent to have physical relationship with the appellant-accused after her marriage especially when it stands proved that the appellant-accused had taken her objectionable pictures along with him and had threatened to make the same viral and even made those viral subsequently. The learned trial Court had rightly observed that there was a presumption under Section 114-A of Indian Evidence Act as to absence of consent of the prosecutrix and the same did not stand rebutted in the present case. Apart from taking a plea that the prosecutrix had involved in act of sexual intercourse with him by giving her free consent, the appellant-accused failed to give any satisfactory explanation in this regard either at the time of recording his statement under Section 313 of Cr.P.C. or at the time of producing evidence in his defence. The evidence produced on record also proves that he had fled to Malaysia after registration of FIR and caused disappearance of his mobile phone which was evidence qua commission of offence of making the objectionable photographs of the prosecutrix viral on social media platform. As such, the testimony of the prosecutrix that the appellant-accused by extending threats to her and by blackmailing her had ravished her on three different occasions inspired full confidence to prove the case of the prosecution.

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The learned trial Court after making detailed discussion had rightly held the appellant-accused guilty for commission of offences punishable under Sections 376 (2) (n), 506 and 201 of IPC and and there is no perversity in the order as passed by learned trial Court. On the other other hand, the findings given by learned trial Court are well reasoned and warrant no interference.

18. In view of the discussion as made above, I see no reason to come to any different conclusion. Accordingly, finding no reason to allow the present appeal, the same is dismissed.

19. Copy be sent to trial Court and jail authorities.

16.07.2024
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(MANISHA BATRA)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No