

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CRA-AD-140-2022 (O&M)
Date of Decision: 25.01.2023



-Appellant

Versus

STATE OF HARYANA AND ANR.

-Respondent

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE KULDEEP TIWARI**

Argued by: Mr. A.K. Sharma, Advocate
for the appellant.

Mr. Anmol Malik, DAG, Haryana.

KULDEEP TIWARI, J.

1. The instant appeal is directed against the order of acquittal dated 22.12.2021 rendered by learned Additional Sessions Judge, Jind, whereby, the respondent No.2 has been acquitted qua the charges framed against him, under Sections 354 (D), 376(2)(N), and, 506 of Indian Penal Code (hereinafter referred to as "IPC"), in case FIR No. 178 dated 31.08.2018, registered at Police Station: Women, Jind, District Jind.

2. The appellant has challenged the order of acquittal, on the averments that the learned trial Court has not appreciated, in its right perspective, the credible evidence as led by the prosecution, whereas, the statement of the prosecutrix (identity of the prosecutrix is withheld in view of provision of Section 228(A) of IPC) (hereinafter referred to as the "prosecutrix"), alone was sufficient to bring home the guilt of the respondent No.2, as the defence has totally failed in its efforts to impeach

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the veracity of her statement. Reliance has mainly been placed upon the statement of the prosecutrix, on the ground that, in a case involving sexual offences, the statement of prosecutrix does not require any corroboration to prove the commission of such offences by the wrongdoer(s). It is further averred that the statement of a rape victim is to be considered, at par with the statement of an injured victim, and therefore, weighty credence ought to have been imparted to the statement of the prosecutrix by the learned trial Court, whereas, the learned trial Court erred by placing reliance to the minor contradictions to reach at a finding of acquittal, rather, has misdirected itself.

3. Before we deal with the legality of the impugned order of acquittal, it is apt to first deal with the factual aspects of the present case.

FACTUAL MATRIX

4. The prosecution agency was set into motion, upon a complaint (Ex. P5) being moved in Women Police Station, Jind, on 31.08.2018, by the prosecutrix, which reads as under:-

“I was taking tuition at [REDACTED] near Government College, Jind, in the year 2011, and, aforesaid [REDACTED] used to misbehave with me upon my visit there, to which I objected. He wanted to befriend me and used to follow me. He also used to tell me that he has fallen in love with me. He used to harass me every day and when I tried to move a complaint against him to police, he threatened to commit suicide and to put the blame on me, whereupon, I got frightened. He told me that he cannot live without me, but, I kept on evading him for some day. After a few days, I received a telephonic call, wherein, the caller

disclosed himself to be [REDACTED] and told me that [REDACTED] has consumed spray, and, is admitted in Rohtak Hospital. On the next day, I received telephonic call of [REDACTED] who threatened me that if I did not accept his love proposal, he will die. Because such a thing had happened for the first time in my life, therefore, I believed his words and got emotional and I accepted his proposal to save his life. However, his intentions were dishonest from the very beginning and he wanted to blackmail me by making me emotional. After some time, he told me that he wanted to marry me, and, on various occasions, he started putting pressure on me for developing physical relations with him, but, I was not ready for the same before marriage. [REDACTED] also told me that he cannot marry me before marriage of his elder brother [REDACTED]. [REDACTED] kept on asking me for physical relation, but, I every time I used to evade him. However, one day in July, 2012, at about 2:00 p.m., [REDACTED] forcibly took me to a room in his village Siwaha and under the pretext of marriage, he again tried to develop physical relations with me, and, exerted pressure upon me for the same, whereupon, I tried to leave the room but he asked me to leave after having some water. I took 3/4 sips of water, taste of which was somewhat strange, and I started feeling dizzy and thereafter, [REDACTED] performed sexual intercourse forcibly with me. I was aware to all that was happening with me but my body felt so weakened that I was feeling helpless. After this intercourse, I fell asleep and when I regained full consciousness, [REDACTED] was present there, who said that this had to happen one day and he asked me to become modern as we have to live as husband and wife. Thereafter, by making promise of

marriage, he had sexual intercourse with me on many occasions against my will, and, every time he used to say that it will take some time in their marriage. In the year 2014-2015, when I again asked him to have a word with his family members regarding marriage, he told me that his family members are looking for a girl having govt. job because he is also having a govt. job, and, he asked me to try and get some govt. job. Accordingly, I prepared and qualified NET, and, in the year 2016, I joined as Assistant Professor (Contractual). Thereafter, [REDACTED] again tried to have physical relations with me, but, I asked him to talk with his family members regarding marriage. Before having physical relations with me, [REDACTED] always used to say that this time he will talk with his family members regarding their marriage, but, after intercourse, he used to ask me to wait for some more time. As a result of forcible physical relations made by [REDACTED] with me, I became pregnant in the year 2016 and when I gave the news of pregnancy to him, he forced me to get abortion, but, I denied for it, whereupon, he said that we will perform marriage immediately after the marriage of his elder brother, but, the pregnancy needs to be aborted. I am a sensitive girl and consider it a sin to abort child, however, [REDACTED] forcibly gave me medicine due to which my pregnancy was terminated. He also threatened to either commit suicide himself or to kill me, if I disclosed this fact to anyone. Thereafter, the elder brother of [REDACTED] got married and when I asked him to talk to his parents for marriage, he started evading me and said that his parents will not allow for inter-caste marriage. However, [REDACTED] continued to make physical relations with me during this period. [REDACTED] spoiled my

life by making physical relations with me against my will, under the pretext of marriage, and, under threat, and thereafter, he fraudulently performed marriage with some other girl on 02.07.2017, but, I was not aware of this fact. I gained knowledge about his marriage later on. Even thereafter, [REDACTED] kept me in dark and told me that he will perform marriage with me because he wants to give divorce to his wife [REDACTED], as their chemistry is not good. He asked me to give him some more time and he will settle everything and will keep me as his wife. However, he was lying and I did not want to spoil anyone's life. Thereafter, I started feeling depressed. On 31.10.2017, at about 5-40 p.m., I consumed poison in front of [REDACTED] had, under the pretext of marriage, made physical relations with me against my wishes, and, thereafter fraudulently married some other girl, which I could not tolerate. Thereupon, [REDACTED] firstly shifted me to Civil Hospital, Jind, and, thereafter I was admitted at Malik Hospital, Jind. In Ambulance, he requested me with folded hands to give him a last chance and not to disclose anything to anybody otherwise he will die. Thereafter, he fled from there. My health deteriorated severely and when I regained consciousness, I came to know that police has recorded a statement that I had consumed expired medicines because of which, I fell ill. Even thereafter, [REDACTED] made physical relations with me and every time he sexually exploited me, against my will, under the pretext of marriage. If I used to evade him, he extended threats to me. On 10.11.2017, [REDACTED] met me and told me that he does not have good relations with his wife and he wants to marry me and he asked me to give him time till July 2018. He asked me not to tell

anything to anyone and threatened that if I told anything to my parents or police, he will kill me and also his wife and will himself also commit suicide. I remained in dilemma for a long time, and, on 24.01.2018 I again talked to him but he evaded the matter on one pretext or the other and demanded time till July. Lastly, he threatened to kill me if I troubled him much and also threatened to kill my family if I even thought of approaching police. [REDACTED] has always sexually exploited me, against my will, under the pretext of marriage and thus, has committed fraud with me. Now, to prevent me from disclosing the above facts to my family, and/or, police, he either threatens to commit suicide by making me emotional or threatens to kill me.”

5. On the basis of the above statement, the present FIR was registered against the respondent No.2. Thereafter, the statement of the prosecutrix, under Section 164 Cr.P.C., was recorded before the learned Illaqa Magistrate, and, she was medico-legally examined by Dr. Jyoti, Medical Officer, Civil Hospital, Jind (PW10). Thereafter, the respondent No.2 was arrested on 02.09.2018, and, he was also medico-legally examined by Dr. Vishal Verma, Medical Officer, Civil Hospital, Jind (PW9). Statements of the witnesses were recorded by the Investigation Officer. After completion of investigation, the Final Report under Section 173 Cr.P.C. was presented before the concerned Illaqa Magistrate. Finding the case exclusively triable by the court of Sessions, the learned Illaqa Magistrate, committed the case to the court of Sessions vide committal order dated 12.10.2018.

PROCEEDINGS OF TRIAL COURT

6. Finding a prima facie case, the respondent No.2 was charge-sheeted for commission of offences punishable under Sections 354(D), 376(2)(N), and, 506 of IPC, to which he pleaded not guilty and claimed trial. The prosecution, in order to substantiate the charges framed against the respondent No.2, examined as many as 11 witnesses. The respondent No.2, in his statement recorded under Section 313 Cr.P.C., pleaded innocence and false implication in the present case. He took a specific stand therein, that he never extended any promise to marry the prosecutrix, rather, the prosecutrix entered into a relationship with him out of her own volition and their relationship was consensual.

7. The trial Court did not find the statement made by the prosecutrix credible and consequently, recorded the impugned order of acquittal. Moreover, while recording the impugned order of acquittal, it has been observed that, in fact, the prosecutrix was having a love affair with the respondent No.2, and, she freely exercised her choice between resistance and consent. There is no evidence available on record to conclusively prove, that the respondent No.2 had no intention from the beginning to marry the prosecutrix, and, had extended such promise only to establish sexual relationship with her. Accordingly, the learned trial Court ordered the acquittal of the respondent No.2.

REASONS

8. With the able assistance of learned counsel for the appellant, we have examined the entire record of the learned trial Court and also

perused the order of acquittal.

9. There is no dispute that this Court can re-appreciate the entire evidence while dealing with a order of acquittal. The High Court has full power to appreciate the entire evidence to reach its own conclusions and it is also open for the High Court, to re-determine the question of facts and law. For this, we place reliance upon the judgment passed by Hon'ble Supreme Court in ***State of Maharashtra vs. Sujay Mangesh Poyarekar, 2008 (9) SCC 475.***

Also, Hon'ble Supreme Court in ***Chandrappa vs. State of Karnataka, 2007(2) RCR (CrL) 92*** laid down broad principles to be followed while dealing with an appeal against an order of acquittal, which are as under:

“(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, based 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 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.”

Ordinarily, the order of acquittal will not be interfered with, lightly, merely because other view is possible. Upon passing of an order of acquittal, presumption of innocence in favour of the accused gets reinforced and strengthened, as laid down by Hon'ble Supreme Court in ***Harijana Thirupala vs. Public Prosecutor, High Court of A.P., (2002) 6 SCC 470.***

10. On the touchstone of the aforesaid legal proposition, as laid down by the Hon'ble Supreme Court, we do not find any solid ground to interfere with the impugned order of acquittal, as recorded by the learned trial Court.

11. Indubitably, in a case involving sexual offences as of rape, the statement of prosecutrix is of utmost importance, and, is a vital piece of evidence, which, if in the opinion of the Court carries credence, does not warrant any corroboration from any corner, for basing the conviction

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of the wrongdoer. However, in the present case, we are not able to place reliance on the statement of prosecutrix, for one amongst various reasons. The prosecutrix, in her statement (Ex.P5), has narrated the sequence of events from 2012 upto 2018. The first allegation, as carried therein against the respondent No.2, is that in July, 2012, at about 02:00 p.m., the respondent No.2 forcibly took her to a room in Village Siwaha, under the pretext of marriage, where he tried to develop physical relations with her, to which she denied, and, when she was leaving from there, the respondent No.2 offered her water, and, upon consuming such water which allegedly contained an intoxicant, the respondent No.2 committed rape upon her, without her consent, by taking advantage of the situation. After regaining consciousness, the respondent No.2 pacified her on the pretext that this had to happen and assured her that he will perform marriage with her. Thereafter, on the strength of such promise to marry her, the respondent No.2 had sexual intercourse with her on many subsequent occasions, against her will. Now, while dealing with this allegation, it is apt to note here that, the prosecutrix, in her statement recorded under Section 164 Cr.P.C., did not narrate the aforesaid incident, rather, she only stated therein that she was having love affair with the respondent No.2, who had promised to marry her and that is why she developed physical relations with him. She did not allege any incident of commission of rape, by the respondent No.2, under deceitful intoxication. Not only this, there is no other medical or forensic evidence brought on record qua administering of any intoxicant to her, to

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substantiate the allegation (supra), which even otherwise, does not become alleged in her statement recorded under Section 164 Cr.P.C. For ready reference, the statement of the prosecutrix, under Section 164 Cr.P.C., is reproduced as under:-

“I had love affair with [REDACTED]. He had told me that he will perform marriage with me, that's why, we developed relations. We were together for 7 years. I got pregnant in 2016, however, at that time also, he refused to perform marriage with me. He had brought me medicine for abortion, which I had consumed. Thereafter, our relationship continued because I was in love with him. In 2017, his brother got married. At that time, I asked him to talk with his family members. On 02.07.2017, he performed marriage with someone else. I came to know about his being married after a month of his marriage. Even thereafter, our relationship continued. I got depressed. On 31.10.2017, I consumed poison. I went to Coaching Centre. I teach in Housing Board. I called him there for meeting and then I consumed poison. I did not tell anything to police at that time because he had asked me not to tell and he had asked for 2-3 months' time. In the beginning of this year, he asked me not to file any case.”

From the above, it emerges that there is not one, but, various material contradictions in the statement of prosecutrix, recorded under Section 164 Cr.P.C., with the statement recorded before Court, during the course of trial, which tantamounts to material improvements and as a consequence, the same are unworthy of any credence being assigned thereto. Besides the above discussed anomalies, to elaborate further, when the prosecutrix stepped in the witness box, she narrated a couple of

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incidents regarding her being threatened to be killed by the respondent No.2, whereas, any such threats, ever being extended to her, do not become narrated, even briefly, in her statement recorded under Section 164 Cr.P.C. Moreover, the allegations qua prosecutrix being blackmailed by the respondent No.2, as carried in her deposition before Court, and, which she stated to be one of the reasons for her continuing her relationship with appellant/accused, also do not find any place in her statement recorded under Section 164 Cr.P.C. Evidently, the prosecutrix has herself admitted to be continuing her relationship with the respondent No.2, despite gaining knowledge about his marriage with some other woman.

12. Another important aspect, inasmuch as pertaining to the allegations of forcible abortion is concerned, no such evidence placed on record to substantiate either the story of abortion, or, the story of consumption of poison by the prosecutrix, which becomes discussed hereafter. The prosecutrix, in her statement recorded before the Court, stated qua hers getting pregnant in December, 2016, whereupon, the respondent No.2 forcibly gave her medicine, which resulted in termination of her pregnancy. However, in her statement under Section 164 Cr.P.C., the prosecutrix made a version that respondent No.2 brought her medicine for abortion, which she herself consumed, and, the allegation of any forceful administration thereof was not made therein.

Now, coming to the allegations of consumption of poison by prosecutrix, as per her version before the Court, on 31.10.2017, at about

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05:30 p.m., she consumed poison in front of respondent No.2, whereupon, he took her to Civil Hospital, Jind, from where, she was shifted to Malik Hospital, Jind, and she got discharged after about 4 days, however, such details are missing in her statement recorded before Magistrate. Even if we make up a mind to consider the story, as projected by the prosecutrix of her consuming poison and getting admitted in hospital, the same is bereft of any force in the absence of any cogent evidence to substantiate the same. It is not a case where the prosecution agency did not try to collect evidence. Rather, it is a case wherein the prosecutrix is unable to produce any document and herself giving in writing that she does not have any evidence to substantiate both the aforesaid allegations. The above writing is proved on record as Ex.P7.

13. What further constrains this Court to draw an adverse inference against the version projected by the prosecutrix is the lack of evidence, either documentary or oral, to substantiate the story, as became authored by her, during the course of her medico-legal examination by Dr. Jyoti (PW10). While giving history of sexual assault to the doctor (supra), the prosecutrix disclosed about her abortion in December, 2016, but, she did not provide any supporting record to establish the genuineness of such claim. The relevant extract of MLR of prosecutrix, Ex.P21, containing sexual assault history as well as physical examination of prosecutrix, becomes extracted hereinafter:-

“As per history given by her, she was with living relationship with

He promised her for marriage but he got married

to some other person 2 July 2017. But he was still in relationship with her promising to divorce his wife and will marry [REDACTED]. They were sexually related to each other till end of Jan. 2018. She gave history of abortion on Dec. 2016 but no records available.

Physical examination:- No any new/old mark of injury seen externally over face, limbs, abdomen.

Sexually secondary character well developed.

Local examination:- Hymen rupture at 3',6',9'o clock with old healed tear. No any mark of injury seen on labio minora major. No redness/congestion seen. Pubic hair well developed.”

14. On a conjoint reading of the statement of prosecutrix, recorded under Section 164 Cr.P.C., and, the MLR, containing assault history, we can safely conclude that it is a case where sexual relationship continued for a long period, i.e. more than 6 years, and it continued even after the marriage of respondent No.2. Insofar as the reasoning given by the prosecutrix, as stated in history of sexual assault in the MLR, for continuing her physical relationship with respondent No.2 even after his marriage is concerned, it lacks corroboration, as the prosecutrix was completely mute in this regard in her both subsequent statements recorded before Magistrate, under Section 164 Cr.P.C., and, before the learned trial Court. Therefore, it is a clear cut case of consensual sexual relationship. Even the allegation, as recorded in her sexual assault history in MLR, that she was in relationship with the respondent No.2 even after his marriage upon assurance given by the respondent No.2 to take divorce from his wife, remains unsubstantiated, in the absence of it being

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corroborated by her statements recorded before Court, and, before Magistrate, except it being carried in her complaint (Ex. P5). Moreover, the allegation that consent was obtained under the pretext of marriage, loses its significance and becomes shattered, simply in light of the fact that the sexual relationship continued even after the marriage of respondent No.2. It has come on record that the prosecutrix is an educated girl, who worked as Assistant Professor in [REDACTED] Jind, and, also used to teach in a coaching centre. Therefore, she was well aware of the fact that once the respondent No.2 had married another woman, her marriage with respondent No.2 was not possible. However, despite hers being aware of all the consequences, the prosecutrix chose to continue her relationship with a married man. In such circumstances, the consent of the prosecutrix was voluntary, and, not under any misconception of fact.

15. Furthermore, there is not even a single piece of evidence available on record, except the bald statement of prosecutrix, that the respondent No.2 did not have any intentions to marry her since the very inception of their relationship. Furthermore, when the prosecutrix was confronted with her statement, under Section 164 Cr.P.C., she smartly tried to cover up all the aforesaid lacunae by levelling allegations against the Magistrate, that it was the Magistrate, who advised her to narrate her story in brief. However, such allegation of the prosecutrix becomes belied from the testimony of Ms. Shivani Rani, the then JMIC, Jind, who was examined as PW11, by the prosecution. She has categorically stated that

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she had recorded the statement of prosecutrix, under Section 164 Cr.P.C., only after ascertaining, and, being satisfied, that she is giving her statement voluntarily, and, without any duress. Even the statement, so recorded, was read over to prosecutrix, whereupon, she appended her signatures thereon, as a mark of its correctness.

16. Besides the above discussed material contradictions, there is also a huge delay of nearly 7 years in lodging the present FIR, which also goes on to cast a serious doubt on the case set up by the prosecutrix. Though, delay in such cases is not fatal per se, but considering the broad probabilities of the case, the delay in reporting the matter to police in the instant case, is of importance. Nonetheless, the delay does not find explained, even remotely, by the prosecution and therefore, it affects the probative value of prosecutrix's evidence.

17. Upon examining the testimony of [REDACTED] (PW5), brother of the prosecutrix, it is revealed that his deposition falls within the category of "hearsay". He had acquired knowledge about the events, as alleged, from the prosecutrix only a few days prior to registration of FIR. Therefore, his testimony is not material, being hearsay, in the present case and has rightly been discarded by the trial Court.

18. Therefore, in our opinion, the ultimate gist of the present case, as culled out from the afore-discussed facts and circumstances, is that the prosecutrix and the respondent No.2 were having love affair for around 6-7 years and they had a consensual sexual relationship, which continued even after the marriage of the respondent No.2. However,

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consequent to the marriage of respondent No.2, the prosecutrix felt neglected and their relationship also turned sour, which led to registration of the present FIR against the respondent No.2.

CONCLUSION

19. Upon a cumulative reading and appreciation of the evidence on record, this Court comes to a conclusion that the statement of prosecutrix is unworthy of acceptance because the same is found to be replete with infirmities. Moreover, the reasoning given in the learned trial Court's judgment does not suffer from any gross perversity or absurdity of mis-appreciation and non-appreciation of evidence on record. It is trite law that order of acquittal should not be disturbed unless there are substantial or compelling circumstances.

20. Therefore, this Court does not find any ground to interfere with the impugned order of acquittal. In sequel, the **appeal** is hereby **dismissed**, being bereft of merits, and, the impugned **order of acquittal** rendered by the learned Additional Sessions Judge, Jind, is hereby **upheld**.

21. The case property, if any, be dealt with in accordance with law. The record be forthwith sent down.

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

25.01.2023
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Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No