

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRA-AD-114-2024 (O&M)

Date of Reserved: 02.12.2025

Date of Pronouncement: 11.12.2025.

HXXXX BXXXXX

...Appellant.

Versus

State of Haryana and another

...Respondents.

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA
HON'BLE MRS. JUSTICE SUKHVINDER KAUR

.....

Argued by: Mr. Aman Bansal, Advocate and
Mr. Lakshay Jindal, Advocate
for the appellant.

Mr. Yuvraj Shandilya, AAG, Haryana.

Sukhvinder Kaur, J.

1. Appellant/ prosecutrix has preferred the instant appeal against judgment dated 02.03.2024, passed by learned Additional Sessions Judge, Gurugram, vide which respondent No.2-accused Satish Bisht has been acquitted.

2. Factual scenario, as per prosecution version is that on 28.09.2020, a complaint was moved by the prosecutrix with the allegations that she was married lady and residing in Gurugram along with her family and was working as Area Manager in M/s Navitas Eduservices Pvt. Lt. Connaught Place, New Delhi. Accused/ respondent No.2 hailed from Uttarakhand, was working as Regional Director South Asia in Adventus, IO, Connaught Place, New Delhi and presently residing in Dwarka. In the year 2016, she applied for a job at Flinders University, Australia for the post of a Country representative in India and accused was one of the panelists. Though she did not get a job but accused contacted her for a job in M/s

Study Group, Connaught Place, New Delhi, where he was Regional Director and she got a job. With the passage of time, he started discussing his family life with her and impressed upon her that he did not have any relation with his wife since last 10-12 years and was going to take divorce from his wife as he had developed an interest in her and wanted to marry her. She believed him and they got into a serious relationship with each other. In June 2016, they had physical relations in a guest house. Later on, when she came to know about his involvement with other woman, she tried to break her relationship with him, but he convinced her about his intention to marry her after giving divorce to his wife and continued to have sexual relationship with her. She believed on his false promises and consented for sexual intercourse under fond hope and belief that he would marry her positively after his divorce. Her husband came to know about the relationship and her family life was destroyed and her relationship with her husband was broken. When she told the accused about this, he again made her to believe in his promise of marriage and continued to exploit her sexually, physically, monetarily and emotionally. She spent Rs.12,00,000/- during this relationship, which included payment of educational fees and expenses of his children. He also made her to invest in his business, which he opened in the name of his sister and her mother. Earlier, she had given complaint against him in Police Station Sector-53, Wazirabad, Gurugram, in which the compromise was effected after accused gave undertaking not to repeat his illegal acts and deeds in future towards her. However, accused continued to sexually exploit her and refused to return her photos and videos. He was threatening her with dire consequences and also threatening to tarnish her image in the society.

3. On the basis of the above mentioned complaint Ex.P17, the Investigating Officer registered a formal FIR Ex.P21 and she also sent special report to the learned Illaqua Magistrate and higher police officials through email. On 30.09.2020, the prosecutrix was produced before learned Magistrate and got recorded her statement under Section 164, Cr.P.C. Then, the prosecutrix was taken to General Hospital, Gurugram and was got medico-legally examined. On 01.10.2020, the Investigating Officer along with the prosecutrix visited the place of occurrence and prepared rough site plan Ex.P23/A on demarcation of the prosecutrix. On the same day, L/SI Mukesh Kumari gave a notice under Section 91, Cr.P.C. to the Manager to provide copy of visitor entry register and CCTV footage along with certificate under Section 65-B of the Indian Evidence Act, regarding visit of the accused Satish Bisht and the prosecutrix to their hotel on 09.08.2019, 01.09.2019 & 02.09.2019. On 01.10.2020, the concerned Manager handed over copy of the relevant entries Ex.P1 of their register, which were taken into police possession vide memo Ex.P2. CCTV footage was not available because of expiry of fifteen days period prescribed for their CCTV footage system. On 10.10.2020, scaled site plan Ex.P3 was got prepared. On 14.10.2020, the accused Satish Bisht was joined in the investigation and was formally arrested. During interrogation, the accused suffered disclosure statement Ex.P10 and in pursuance of his disclosure statement, got demarcated the place of occurrence. The accused Satish was then taken to General Hospital, Gurugram for his medical examination and got him medico-legally examined. On 10.02.2021, the prosecutrix came in the police station and handed over her bank account statement Ex.P13 and copy of screenshot of photograph Ex.P14 showing injury on her hand, which were

taken into police possession. Statements of the witnesses under Section 161, Cr.P.C. were recorded and the case property was got deposited in the malkhana. After completion of the investigation and other formalities, challan against the accused person was presented in the court, for trial.

3. After finding a prima facie case against the accused, he was charge-sheeted for the offences punishable under Sections 323, 376(2)(n) and 406 of IPC, to which he pleaded not guilty and claimed trial.

4. In order to prove its case, the prosecution examined PW1 Inspector Garima, who deposed about preparing the final report under Section 173 Cr.P.C. and filing the same in the Court.

PW2 Shamshad Alam, who was working as Manager in the Legrend Hotel, DLF Phase-1 Gurugram deposed that on asking of I.O., he handed over copy of relevant entries in their register (Ex.P1) regarding visit of the accused along with prosecutrix to their hotel on 09.08.2019, 01.09.2019 and 02.09.2019. He further deposed that CCTV footage was not available because of expiry of 15 days.

PW3 SI Naresh Kumar, Draftsman, deposed about preparing of scaled site plan Ex.P3 of the place of occurrence.

PW4 Rajiv Gulati, was working as Manager in Bed and Breakfast Facility Place, Sector 44, Noida. He deposed about visit of accused and prosecutrix to their place from 16.07.2020 till 18.07.2020 and also proved copy of entry in their check-in register.

PW5 Constable Pradeep was also associated in the investigation of this case and he had arrested the accused. He also got the accused medico legally examined.

PW6 L/ASI Vijeta, took into possession copy of account

statement Ex.P13 and copy of screenshot of photographs Ex.P14, which were handed over by the prosecutrix to her.

PW7 Dr. Kuldeep, Medial Officer, General Hospital, Sector-10 Gurugram, proved MLR of the accused as Ex.P2. He deposed that after clinically examining the accused, nothing was found to suggest that the accused was not capable of doing sexual intercourse.

Prosecutrix herself stepped into the witness box as PW8 and deposed in detail about the physical and mental torture received by her at the hands of the accused. She stated that she met the accused in the month February 2016, during an interview for a job, where he was one of the judges. Though, she did not get that job but she was approached by the accused for another job in May, 2016. She agreed and started that job in June, 2016. Meanwhile, they started liking each other as the accused got her sympathy by stating that he was not having good relations with his wife. As a result, both of them also started making physical relations. However, soon thereafter, in the month of June, 2016 itself, the prosecutrix caught accused having affair with another woman and on confronting about the same, he befooled her on one pretext or the other and continued having physical relations with her as well. Thereafter, on many occasions, the accused was caught by the prosecutrix, either on the basis of having good relationship with his wife or having affair with another woman but she could not report anything to anyone because the accused had threatened her to defame her image by making viral some of her objectionable photographs. Family of the accused and his wife also came to know about their relationship. Even then, the accused kept on promising to marry the prosecutrix after taking divorce from his wife. After being harassment for about four years, she lodged a

police complaint in January, 2020. Initially, it appeared that the matter would be compromised but later on the accused told the prosecutrix that his family was his first priority. Hence, the prosecutrix moved complaint Ex.P17 on 28.09.2020.

PW9 Dr. Upasana Dahiya, Medical Officer, General Hospital, Sector-10, Gurugram proved MLR of the prosecutrix as Ex.P19. She also deposed that after clinical examination of the prosecutrix, possibility of sexual assault could not be ruled out.

PW10 L/ASI Rekha deposed about registration of FIR by L/ASI Munesh Kumari in her CCTNS account.

PW11 L/ASI Munesh Kumari is the Investigating Officer, who deposed about various proceedings conducted during the investigation.

5. Statement of accused under Section 313 Cr.P.C. was recorded in which all the incriminating evidence was put to him, which he denied and pleaded innocence and false implication. However, no defence evidence was led by the accused.

6. 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 02.03.2024.

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

8. Learned counsel for the appellant vehemently contended that the trial Court failed to appreciate that the appellant was victimized by accused/ respondent No.2 and he lured the appellant into physical

relationship on basis of the false promise of marriage, which stands corroborated from complaint filed by the prosecutrix Ex.P7 as well as from her testimony when she appeared as PW8. Respondent No.2 after misusing his superior position being his employer and giving false promise of marriage lured the appellant to develop relationship with him. Respondent No.2 lied to appellant that he was not having any relationship with his wife for the last 12 years. Learned trial Court did not appreciate that the appellant informed her spouse about their relationship and life of the appellant had been spoiled by respondent. Earlier in month of January 2020, when appellant lodged a complaint against the respondent the matter was compromised and respondent No.2 ensured that he would give divorce to his wife and would marry the appellant. He argued that respondent No.2 exploited the appellant emotionally, physically and financially and converted money of Rs.12,00,000/- entrusted to him by prosecutrix to his own use. The prosecutrix was compelled on many occasions to establish physical relations with accused. He urged that the whatsapp chat was placed on record along with application under Section 311 Cr.P.C., which was dismissed by the Court. The accused never produced any material on record to counter said whatsapp chat. As the accused lied to the appellant since beginning and developed physical relations after giving false promise of marriage, then the said consent of the appellant cannot be termed as a willful consent. 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. He thus prayed that this appeal be accepted, judgment dated 02.03.2024 be set aside and accused be convicted for the offences as charged with and be punished accordingly.

9. 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.

10. So far as physical relations between the appellant and respondent No.2 were concerned that is an admitted fact. The argument raised is that consent, if any, cannot be construed as such, because it was obtained on false assurance of marriage.

11. 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."

12. In the backdrop of the above legal position, 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.

13. Now adverting to the present case, the veracity of the prosecution story is to be determined under the aforesaid principles and also keeping in view the facts and circumstances and the evidence led in the

present case.

14. It is also trite law that statement of victim carries immense significance and accused can be convicted solely on her statement, if her statement is unblemished, consistent and dehors concoction. 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 correlation 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."

15. This is the admitted fact that both the appellant and respondent No.2 were already married persons, when they met each other. Prosecutrix was a married lady, when she met respondent No.2 for the first time and entered into physical relationship. In the instant case, it is pertinent to note that the complainant/ victim was a major educated woman, who was gainfully employed. The prosecutrix stepped into the witness box as PW8 and alleged that accused promised to marry her and she was lured into relationship by the accused on the basis of such promise and he also disclosed to her about his miserable matrimonial life. Trial Court has rightly observed that though, she has alleged that the appellant disclosed to her about his poor matrimonial life, but it is not explained that what prompted her to enter into relationship with the accused, when she was already a married lady and it is unexplained that what were the reasons for her to seek solace in the relationship alleged to be offered by the accused.

16. As both the parties, the appellant and respondent No.2 were educated persons and were having living spouses, so they knew it very well that they could not marry each other, without getting divorce from their respective spouses. This fact was even admitted by the prosecutrix, during

her cross-examination. She also admitted that both of them had not filed any divorce proceedings against their respective spouses till registration of the FIR and the prosecutrix was still residing with her husband. It has been further rightly observed that though she concealed her relationship with the accused from her husband when she entered into physical relationship with the accused, yet the future of the said relationship was absolutely uncertain from the very beginning and by any means, the accused or the prosecutrix were not sure that they would be able to get divorce from their respective spouses to marry each other. Nothing has come on record that there was any consent from their respective spouses for giving the mutual divorce and as such they could not be certain that they would be able to get divorce in the Court in a contested case. In such eventuality, neither the accused nor the prosecutrix was in the position to confirm their marrying each other.

17. This fact also cannot be brushed aside that the prosecutrix herself being a married lady was having a legal inability to marry the accused, when she entered into relationship with him. Admittedly, her marriage was still subsisting, even at the time of the registration of the FIR and thus there were legal impediments in their marriage. So, it cannot be said that when the prosecutrix established physical relations with the accused for the first time, it was just on the promise of marriage, there being legal impediments for marriage, because of marital status of both the accused as well as the prosecutrix.

18. While appearing as PW8 prosecutrix deposed that accused had taken her objectionable pictures and was blackmailing her and also established forcible physical relations on few occasions. Trial Court has rightly observed that there is no explanation as to why the prosecutrix was

willing to marry her own tormentor and established physical relations with him till July 2020. It is the admitted fact by the prosecutrix that she approached the police in January, 2020 and filed complaint against the accused. After January 2020, there was no reason with the prosecutrix not to approach the police if the accused had continued blackmailing her or forcing himself upon her. As per testimony of prosecutrix, she had already disclosed about her relationship to her husband and approached the police by January, 2020, so in these circumstances, when she had nothing to hide, then there was no reason with her to keep tolerating her blackmailing by the accused and to scumb to the forcible physical relations.

19. No evidence has been led on record that any obscene pictures of the prosecutrix were available with the accused. PW11 L/SI Munesh Kumari deposed that nothing incriminating was found in the mobile phone of the accused. The prosecutrix while appearing as PW8 also denied about having any proof of her obscene pictures with the accused. No such objectionable pictures have been produced on record by the prosecution to substantiate the allegations of blackmailing by the accused on this pretext.

20. Print out of whatsapp chat Ex.P14 was relied upon by the prosecution regarding the allegation that accused gave beatings to the prosecutrix in November, 2017. Trial Court has rightly held that as along with the said print out of whatsapp chat Ex.P17, no certificate under Section 65-B of the Indian Evidence Act was attached, so it has not been proved in terms of the provisions of the said act. No phone number was displayed thereupon, in order to prove that she was chatting with the accused. Moreover, when the entire whatsapp chat has not been produced on record, then it cannot be concluded that in which context they were texting each

other. Just from one or two lines of chat, the nature of the conversation cannot be proved and there is every chance of it being misunderstood.

21. No medical evidence has been produced on record to corroborate the allegations of causing physical injuries to the prosecutrix by the accused. Trial Court has thus rightly held that the evidence produced by the prosecution is not conclusive enough to show that the accused had caused any injury to the prosecutrix at any point of time.

22. It has also been alleged by the prosecutrix that she had spent Rs.14 lakhs while she was in relationship with the accused and she also invested some money in partnership firm on asking of accused. However, in her cross-examination it has been admitted that the accused did not get any benefit from that partnership firm. Learned trial Court has rightly observed that the alleged amount spent by the prosecutrix during her relationship with the accused would not amount to entrustment, as said amount was not handed over to the accused for the purpose of entrustment and as such, no question of misappropriation or criminal breach of trust in respect of the said amount arises.

23. Prosecutrix alleged that she had filed complaint against the accused in January, 2020 before the police and compromise was effected by the accused, but no such complaint or said compromise has been placed on record by the prosecution to prove the aforesaid allegations. Complaint Ex.P17 was filed by the prosecutrix before the police on 28.09.2020. It has been rightly observed by the trial Court that, it is clear from the FIR Ex.D2 and stamp of the police Ex.D4, that accused filed complaint against the prosecutrix prior to her complaint Ex.P17, which gave a motive to the prosecutrix to file the complaint Ex.P17 against the accused.

24. Thus, it emerges from the evidence on record that prosecutrix maintained physical relations with the accused for a long period of about four years out of her own free will and volition and her consent cannot be said to have been obtained on account of a false promise of marriage or misconception or misrepresentation on the part of the accused. It is opposed to all probabilities and reasonableness that a mature educated lady like the prosecutrix would have continued in a physical relationship with the accused for such a long period on the false pretext as alleged.

25. Under the given circumstances, it can be fairly inferred that the prosecutrix was not under any misconception of facts and was in a consensual relationship with the accused and such consensual sexual relationship cannot be termed as a rape and it appears that when subsequently differences arose between the two then she opted to implicate the accused on allegations of rape which are not proved by the evidence on record.

26. 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.

27. After analyzing the evidence on record it can safely be 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 with and he has been rightly acquitted by learned trial Court.

28. 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 02.03.2024 which calls for interference.

29. In view of the above, the appeal being bereft of any merit is dismissed with impugned judgment dated 02.03.2024 passed by learned trial Court being upheld.

30. Pending applications, if any, also stand disposed of.

(SUKHVINDER KAUR)
JUDGE

(ANOOP CHITKARA)
JUDGE

11.12.2025.

Komal

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