

36.5
IN THE COURT OF R.P.GOYAL, ADDITIONAL SESSIONS
JUDGE, GURGAON

CIS-SC/69/2015

Sessions case No. : 24 of 2015.

Date of Institution : 18.02.2015.

Date of Decision : 10.11.2015.

State Versus

Brijesh Kumar Verma son of Sh. Suresh Kumar
Verma, aged 30 years, resident of House No.
865, E-35, Janta Colony, Rohtak.

..... Accused.



FIR No. 782 dated 24.12.2014.

U/ss : 376,323,342,324,506 of Indian Penal
Code.

P.S. : DLF Qutab Enclave, Gurgaon.

G.No. 16711

Corrected copy of order dt 10-11-15

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26/12/15

P.T. 2

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State vs. Brijesh

Present: Shri Yashpal Dhankhar, PP for the State assisted by Shri D.K. Saini,
Advocate for the complainant.
Accused Brijesh on bail with Shri Harish Bhardwaj, Advocate.

Reply to application for additional evidence not filed. Nor the application
for additional evidence is pressed. Therefore the application is dismissed as being
not pressed.

Per separate judgment of the even date accused Brijesh has been
acquitted of the charges framed against him, as indicated in the judgment

His bail bonds and surety bonds stand discharged. Consign the file to
records.

Announced:
Dated: 10.11.2015

— 5d —
(R.P.Goyal)
Additional Sessions Judge
Gurgaon

CERTIFIED TO BE TRUE COPY

Harinder
Examiner
Distt. & Sessions Judge, Gurgaon
Authorised Under Section-76
of the Indian Evidence, Act. 1979

26/12/15

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Date of Preparation of Application 24/12/15
Record Received 26/12/15
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IN THE COURT OF R.P.GOYAL, ADDITIONAL SESSIONS
JUDGE, GURGAON

CIS-SC/69/2015

Sessions case No. : 24 of 2015.

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G.No. 167

State Versus

Brijesh Kumar Verma son of Sh. Suresh Kumar
Verma, aged 30 years, resident of House No.
865, E-35, Janta Colony, Rohtak.

..... Accused.

FIR No. 782 dated 24.12.2014.

U/ss : 376,323,342,324,506 of Indian Penal
Code.

P.S. : DLF Qutab Enclave, Gurgaon.

.....

Case committed to the Court of Sessions by
Sh. Rajesh Kumar Sharma II, Chief Judicial
Magistrate, Gurgaon per order dated
05.02.2015.

Present : Sh. Yashdev Dhankar, Public Prosecutor for
the State assisted by Sh. D.K.Soni, Advocate, counsel
for complainant.

Accused on bail with Sh. Harish Bhardwaj, Advocate.

JUDGMENT

The above named accused has been charge-sheeted by
the Court for the offences punishable under Sections 342, 375(2)
(n), 324, 323, 506 of Indian Penal Code consequent upon
committal of the case from the court of Sh. Rajesh Sharma II,
learned Chief Judicial Magistrate, Gurgaon on 05.02.2015.

2. It is the case of prosecution that on 24.12.2014, lady
ASI Babita was called by Sub Inspector Balwant in Police Station.
She reached the police station where the victim along with her
father was present there and she moved an application against
Brijesh Kumar son of Suresh Kumar, resident of H.No. 856 E/35,
Janta Colony, Rohtak for ravishing her under the pretext of

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marriage and to avoid the legal action, marrying her and for mentally and physically torturing her.

She detailed in her application that she was engaged to one Brijesh son of Suresh Kumar Verma on 3rd of December, 2012 and after their engagement, Brijesh forcibly started talking to her on mobile phone. At that time, she was doing MCA and was living in hostel at Rohtak whereas Brijesh was working in E-Dynamic Company at Gurgaon. After some time of the engagement, father of Brijesh called her father and raised a demand of Rs. Fifty lacs in the marriage. Her father was quite shocked and promised for a good marriage but expressed his inability to expend Rs. Fifty lacs.

She also detailed that Brijesh kept on meeting her and assured that he would marry her and on 28th of February, 2013, she was called at his friend's house under the pretext that there is a dispute between the couple and when she went there, there was no body in the house and there accused forcibly ravished her. She also detailed that she was forcibly ravished by accused on 13th of April, 2013 and he kept on saying that he would marry her if she would keep on meeting him. She also alleged that accused used to threaten her that he had made her videos and would put the same on internet. He had once tried to stab her with a knife which hit on her wrist and she was got admitted in the hospital. She had earlier moved a complaint against accused in DLF Sector 29, Gurgaon where the matter was compromised and accused promised to marry her and finally performed marriage with her on 4th of February,

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2014. However, immediately after the marriage, she was being maltreated for demand of Rs. Fifty Lacs lacs. Accused and his family members used to maltreat her by saying that he had married her just to avoid that case.

On the basis of her detailed complaint, a case for commission of offences punishable under Sections 498-A, 376, 323, 342 and 506 of Indian Penal Code, was lodged.

3. During investigation, ASI Babita along with lady Constable Raj Bala took the prosecutrix at the place of occurrence where the victim identified the place of occurrence and prepared site plan. On 25.12.2014, she took the prosecutrix before learned Illaka Magistrate for recording her statement under Section 164 of Cr.P.C. and she was also got medico legally examined from GH, Gurgaon. After medical examination, the victim was handed over to her father. She recorded the statements of witnesses under Section 161 of Cr.P.C.

Thereafter, ASI Balwant Singh arrested the accused Brijesh. During investigation, accused suffered disclosure statement and in pursuance thereof, he got demarcated the place of occurrence. He prepared demarcation memo and recorded the statement of witnesses under Section 161 of Cr.P.C. at the spot. He got the accused medico legally examined from GH, Gurgaon. After medical examination, doctor handed over the sealed parcels.

During investigation, offence under Section 498-A of Indian Penal Code was deleted as already a case for commission of

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offences punishable under Sections 498-A, 406, 506, 34 of Indian Penal Code was registered in Police Station Sector 7, Faridabad and added sections 323, 342 and 506 IPC.

On 29.12.2014, he obtained the opinion of injuries of Punita from Fortis Hospital, Gurgaon whether the injuries can be inflicted by other person. He got prepared the scaled site plan from draftsman. On conclusion of investigation, final report under Section 173 of Cr.P.C. was prepared by Inspector/SHO Ashok Kumar and the same was presented in the court of learned Illaqa Magistrate to face trial for the commission of alleged crime by the accused and he was charge-sheeted by the court for the offences as aforesaid by the procedure of this court consequent upon committal of the case.

4. Prosecution examined prosecutrix as PW1, Girish Kumar Draftsman as PW2, Dr. Sanjiv Kukkal, Medical Officer as PW3, Constable Naresh Kumar as PW4, Dr. Rashim Sharma, Medical Officer, posted in 8 Block Dispensary Geeta Colony, Gurgaon as PW5, HC Satbir Singh as PW6, Dr. Sarita Rani, Medical Officer, GH Gurgaon as PW7, Sh. Rajinder Singh Soni as PW8, Sub Inspector Balwant Singh as PW9 and Lady ASI Babita as PW10. Thereafter, prosecution evidence was concluded per separate statement dated 13.10.2015 made by learned Public Prosecutor for the State.

5. Statement of accused under Section 313(1)(b) of the Code of Criminal Procedure was recorded by the court in which

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incriminating matter was put to him coming out against him in the prosecution evidence and he denied all the instances against him and pleaded his false implication.

6. Accused Brijesh has taken a defence that he is innocent. He has been falsely implicated in the present case. All the allegations levelled by the prosecutrix are totally baseless, fabricated and Manipulated. Accused opted to lead evidence in defence.

7. In his defence, accused has examined Sh. Prikshit Singh Dagar as DW1 and tendered in evidence photographs from Ex.D1 to Ex.D12 and certified copy of affidavit as Ex.D13, copy of bail application as Ex.D14 and other documents Ex.D15 to Ex.D26 and closed the same.

8. I have heard learned defence counsel and learned Public Prosecutor for the State assisted by learned counsel for complainant and perused the evidence both oral as well as documentary and also the case file and the relevant law.

9. The charge against the accused is under Sections 342, 376(2)(n), 324, 323 and 506 of Indian Penal Code. The point for determination in this case is that :

(1) Whether the accused had repeatedly raped the prosecutrix by confining her at his friends's house and had caused her simple hurt with a sharp edged weapon and threatened to kill her and her family members ?

(2) Whether the accused had succeeded in probablizing his defence.

10. Before we reach to the conclusion, let us probe

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the prosecution evidence and defence evidence in brief.

11. Prosecutrix deposed as PW1 stating that she was engaged with the accused on 03.12.2012 when she was doing her MCA at Rohtak and was residing in Hostel at Rohtak. On 19.12.2012, the engagement was on the verge of break on the point of dowry of Rs. Fifty lacs but accused Brijesh had assured her that it would not be broken at any cost. The prosecutrix further states that the accused had called her at the flat of his friend Prikshit Dagar where he had raped her by cheating her and tendered apology from her and at the same time, threatened her to display her video clips on the screen of the mobile in case she disclosed the incident to anybody. She was advised to present the story to her parents that she was late from the company, therefore, she was not able to come to her house on that day and he assured her to marry her. Even she was raped by the accused in Sector-49, Gurgaon on the assurance that he would marry her. She did not accompany the accused on 28.10.2013 as per his telephonic request to Ambiance Mall, Gurgaon. Then on 30.10.2013, accused threatened her that he had uploaded her video clips prepared by him at the time of rape with her. Then she reached E-Dynamic Company from where the accused took her by his bike at the back of PG, a secluded area. He had beaten her and then attempted to give knife blow in her belly as soon as she retracted, he gave a knife blow on her hand. She started bleeding profusely and also started crying loudly and ran towards

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the road. The accused said to her that she would be hospitalized in Forits Hospital, Gurgaon with the condition that she would not disclose the story of causing injuries to her by way of knife by him. When she did not agree, then he repeated the same threat of uploading the video clip. She called her parents in the hospital. He slipped away from the hospital after staying for 2-4 minutes on the pretext of withdrawal of money from the bank. She narrated the entire incident to her father. Her father had talked to the family members of the accused but in vain. Thereafter, she moved the application in P.S. Sector 29, Gurgaon. The police called family members of the accused beside the accused and they compromised the matter with her and promise to marry with her. She was married with accused on 04.02.2014 for the sake of honour of the family. On 11.05.2014, the family members of the accused misbehaved with her brother and she was sent to her parental home forcibly. She moved two applications one before Commissioner of Police, Gurgaon on 01.12.2014 and another before Incharge, Women Cell, Gurgaon on 16.12.2014. The accused did not listen to the Incharge Women Cell and he told her father that they were free from the effect of rape case. They could not do anything. The police lodged the FIR against the accused. She got her statement recorded before the Illaqa Magistrate on 25.12.2014. She was got medico legally examined by lady police officer from General Hospital, Gurgaon.

12. Prosecution examined Sh. Rajinder Singh Soni

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father of the prosecutrix as PW8 who had deposed that he had engaged his daughter with the accused on 03.12.2012 and after the engagement, accused established physical relations with his daughter. On 28.02.2013, accused Brijesh had called his daughter at the house of his friend Prikshit where he raped her by confining her in a room and on 30.10.2013, he took his daughter near her PG in a secluded place and he physically assaulted her. She narrated the entire incident to him. He reported the incident of rape to the police but the family members of the accused had compromised the matter. Later on he had married his daughter with accused on 04.12.2014. He had given sufficient dowry and spent money beyond his capacity. After few days of marriage, accused started harassing his daughter mentally and physically and started demanding dowry of Rs. 35 Lacs from her. He lodged a complaint under Sections 498-A, 406 and 506 IPC in P.S. Sector-7, Faridabad. Copy of the said FIR has already been given to Gurgaon Police. Accused had cheated his daughter and ruined her life because his intention was malafide from the beginning.

13. Prosecution examined lady ASI Babita as PW10 who deposed that on 24.12.2014, she was called by SI Balwant in the police station and she lodged an FIR at the instance of victim who was present with her father and made her endorsement. She went to the place of occurrence and prepared the rough site plan at the instance of the prosecutrix. She also got

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her statement recorded under Section 164 Cr.P.C. from learned Illaqa Magistrate. She also got herself medico legally examined from Medical Officer, Government Hospital, Gurgaon. She recorded the statement of the witnesses.

14. Prosecution examined SI Balwant Singh as PW9 who is said to have arrested the accused and the accused got the place of occurrence demarcated as per his disclosure statement. He also got the accused medico legally examined. He obtained sealed parcels from the doctor after the medical examination. He had deleted Section 498-A IPC as the case was already registered in P.S. Sector-7, Faridabad and added Sections 323, 342 & 506 IPC. He also got the MLR of injured prosecutrix Punita Soni and also moved the Medical Officer, Fortis Hospital, Gurgaon for taking the opinion of injuries. He got prepared site plan from Draftsman Girish Kumar and he handed over the case file to Inspector/SHO Ashok Kumar for preparing the final report which was prepared by him.

15. Prosecution examined Dr. Sanjeev Kukkal, Medical Officer, GH, Bahadurgarh as PW3 who proved his affidavit as Ex.PW3/A and MLR of the accused as Ex.PF.

16. Prosecution examined Dr. Rashim Sharma, Medical Officer posted at Dispensary Geeta Colony, Gurgaon as PW5 who proved her affidavit Ex.PW5/A and discharge summary of Punita Soni as Ex.PK and MLR as Ex.PK.

17. Prosecution examined Dr. Sarita Rani, Medical

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State Vs Brijesh
:-10:-

Officer, GH, Gurgaon as PW7 who proved her affidavit as Ex.PW7/A and MLR of the prosecutrix as Ex.PM.

18. Statement of the accused under Section 313 of Cr.P.C. was recorded in which the incriminating material was put to the accused and the accused pleaded his false implication and opted to lead evidence in defence.

19. In his defence, accused has examined Sh. Prikshit Singh Dagar as DW1 and tendered into defence evidence photographs from Ex.D1 to Ex.D12 and certified copy of affidavit as Ex.D13, copy of bail application as Ex.D14 and other documents Ex.D15 to Ex.D26 and closed the evidence.

20. Accused has examined Sh. Prikshit Singh Dagar as DW1 who has deposed that Brijesh was his friend who used to work in a private company at Gurgaon. He had also attended his marriage. He did not purchase or took on rent any flat, house etc. in Gurgaon. He did not possess any rented accommodation in Galleria market or nearby Galleria market, DLF Phase-1, Gurgaon in the year 2013. He was married and relations with his wife are cordial. No dispute took place between them in the month of February, 2013.

21. Learned Public Prosecutor assisted by Sh. D.K.Soni, Advocate had argued that the accused had fulfilled the promise of marriage just to save his skin or just to save himself from the effects of the complaint of the prosecutrix and later on after marriage, he had kicked her out from the matrimonial home. It is

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crystal clear that accused had a modus operandi to save himself from the clutches of law after committing the crime. He had malafide intention from the very inception of commission of crime. Accused was given several chances to compromise the matter at Women Cell (East) at Gurgaon and Faridabad as well as before registration of the case but the accused was committed to get rid of her after spoiling her life. The accused had confined the prosecutrix in a room at Gallaria Market to commit the offence of rape. The allegations has also been proved beyond reasonable doubt that the accused had inflicted knife injury on the wrist of the prosecutrix. Doctor (PW5) had proved the injury vide discharge slip Ex.PJ and MLR Ex.PK but he referred to cross-examination of this witness wherein the doctor had stated that patient had disclosed about the injury as self inflicted for the reasons of promise by accused to marry her. In this case men srea of the accused is proved beyond reasonable doubt. The copies of E-mails and photographs of the accused and prosecutrix are required to be proved. As per Section 65-B of Indian Evidence Act, mere placing on record some photo copies of E-mails and photographs as exhibits did not serve the purpose unless the same is proved legally under the Evidence Act. He has relied upon:

**2013(3) RCR (Criminal) 96 (SC), titled as
Deepak Gulati versus State of Haryana ;**

**2013(4) RCR (Criminal) 653 (SC) titled as Sushil
Sharma versus State of N.C.T. of Delhi ;**

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**2015(2) RCR (Criminal) 246 (SC), titled as
Deepak versus State of Haryana ; and**

**2014(1) RCR (Criminal) 173 (SC), titled as State
of U.P. versus Naushad.**

Let us deal with the arguments with the help of evidence and case laws.

22. Firstly, there was engagement of the accused with the prosecutrix and after engagement, the accused and prosecutrix developed physical relations and according to prosecution, there was some dispute on the point of dowry but the accused is stated to assure the prosecutrix that the matter would be resolved amicably and he is stated to have raped the prosecutrix once in the flat of his friend in Galleria Market. Then he had called her and took her by his bike at the back of her PG, a secluded area where he has given knife blow on his hand and later on, she was hospitalized in Fortis Hospital, Gurgaon by the accused and the prosecutrix is stated to have disclosed the incident to her father. Her father tried to contact the family members of the accused but when nothing positive had happened, then they contacted the police. The accused is stated to have married the prosecutrix only to save himself from the effects of her complaint in which she had alleged rape with her by the accused by way of cheating and thereafter she was kicked out from her matrimonial home. But some of her cross-examination is very much material. It is admitted by her that she had got recorded to the police in the complaint Ex.PB that

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accused Brijesh used to visit her at Hostel daily by a car. There are rules and regulations of girls hostel that nobody except female family member can enter the hostel to see their ward but the accused met her outside the hostel. The accused used to take her outside and they roamed freely for half an hour. She was not present at the time of demand of dowry of Rs. Fifty lacs by the father of the accused. It was told to her by her father. They did not lodge any complaint regarding demand of Rs. Fifty lacs against the family members of the accused. It was not lodged due to the reason that accused continued to assure her that he would marry her. Accused Brijesh had phoned her on 28.02.2013 during noon time. Thereafter, she met him at Iffco Chowk as per his direction. He took her at the flat of his friend Parikshit in Galleria Market. They went in the room and accused bolted the room inside and raped her forcibly. Accused had developed the video clip through I-phone and he had shown the video clip after raping her. The accused had also raped her on 13.04.2013 at his residence. It is incorrect to suggest that they had broken the engagement because there were searching for another boy. It is incorrect to suggest that she was having relations with Sudhanshu Shukla or she was chatting with Parveen and accused had serious objection. The incident of assault upon her by accused by knife is dated 30.10.2013 at the back of PG in a secluded area of South City Phase-1 near HUDA City Centre, Gurgaon. She was hospitalized by accused where she called her

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parents and the accused went away from there after chatting 2-4 minutes with her parents for withdrawal of money.

23. Ex.D4 was put to the prosecutrix where prosecutrix got recorded that the injury on her hand was self inflicted. She volunteered that due to the fear of being blackmailed by the accused due to his video clip. It is incorrect to suggest that she had given affidavit at the time of bail of the accused regarding compromise of all matters pending in District Courts, Gurgaon and Faridabad. She had given affidavit because the parents of the accused had told them that Brijesh would be got released on bail, thereafter, they would settle the matter but the accused party resiled from settlement. It is incorrect to suggest that she had got Rs. Ten lacs at the time of bail of the accused or as permanent maintenance. It is incorrect to suggest that accused Brijesh had not cheated him or that he had not raped her or that his family members had never broken the engagement.

24. Now what we find from the statement of the prosecutrix is that from examination in chief as well as her relevant portion of cross-examination that she had got engaged with the accused and she had established physical relations with the accused and she continued to visit the accused at his call and had sexual intercourse with him.

25. As per her allegations, the engagement was broken on the issue of dowry. But she is not a witness of demand of dowry by the accused. She is hearsay witness to that extent. But

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her marriage with the accused was performed on 04.02.2014. If the marriage of the prosecutrix with the accused had taken place on 04.02.2014 after her engagement with the accused, any quarrel between the prosecutrix and the accused and the family members of both the parties, stand finished from the engagement to the date of marriage of the accused with the prosecutrix. After marriage of the prosecutrix with the accused on 04.02.2014, she becomes a wife of the accused. If she becomes a wife of the accused, then any incident of sexual intercourse prior to her marriage with the accused can not be called the incident of rape. If the dispute between the members of the family of the prosecutrix and that of the accused, was not serious, accused and prosecutrix continued to meet each other and enjoyed sexual intercourse and later on it culminated into their marriage.

26. Now the question arises whether it amounts to rape with a legally wedded wife if the parties are separated from each other after some time of their marriage due to the fact that the relations between them became strained and they started living separately from each other.

27. Ex.D13 is the affidavit of Punita Soni which is reproduced as under:-

I, Puneeta Soni wife of Brijesh age 27 years resident of 1350, Sector-3, Faridabad, haryana do hereby solemnly affirm and declare as under:-

1. That I have compromised the present matter and all other matter pending in different courts with my husband Brijesh.

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2. That due to the intervention of relatives and friends, I and my husband have decided to take divorce mutually and to file quashing before the Hon'ble high Court at Chandigarh in pending matters.
3. That I got married with Brijesh on 04.02.2014 and due to temperamental differences we are residing separately from each other since 11.5.2014.
4. That I am filing present affidavit out of my free Will.

sd/-
Deponent.

Verification

Verified that the contents of the above said affidavit are true and correct to the best of my knowledge and belief and nothing has been concealed therein at all.

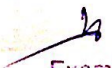
sd/-
Deponent.

28. Ex.D14 is the copy of order of bail granted by the court of Ms. Alka Malik, Additional Sessions Judge, Gurgaon vide order dated 12.02.2015. The relevant portion of the bail order is re-produced as under:

2. The facts in order dated 07.01.2015 be read as part of this order to avoid unnecessary repetition.

3. It has been inter-alia claimed on behalf of learned counsel for the petitioner-accused that prosecutrix is wife of petitioner-accused. They have settled the matter to take divorce mutually and they would seek quashing of the First Information Report before Hon'ble Punjab & Haryana High Court at Chandigarh. A request for bail is therefore,

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made in this backdrop as investigation is stated to be complete by now as challan has already been furnished.

4. It has been urged on behalf of learned counsel for complainant that complainant has no objection if in the given circumstances request of the petitioner-accused is allowed and has placed on record an affidavit of complainant in this regard. Learned Public Prosecutor has requested that the offence is not compoundable, therefore, petitioner is not entitled to his request.

5. Keeping in view the fact that accused and complainant are husband and wife. They had settled to take mutual divorce in pursuance of a compromise between them, investigation is complete by now and petitioner is languishing in jail since his arrest, no purpose would be served by keeping him in custody any more as he is not needed for any kind of custodial interrogation since challan has already been put in for trial, therefore, without commenting anything on merits, this court is inclined to grant request of the petitioner.

6. The bail application is consequently allowed. Petitioner-accused shall be admitted to bail on furnishing personal and surety bonds to the entire satisfaction of the area/duty Magistrate. Information be sent in this regard to Area Magistrate. Consign the file to records.

Announced.
12.02.2015.

sd/-
(Alka Malik)
Additional Sessions Judge,
Gurgaon.

29. The accused has tried to take the plea of alibi for the

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dates on which sexual intercourse is alleged by the prosecutrix by the accused. Assuming without admitting that the sexual intercourse had not taken place between the accused and the prosecutrix on the dates given by the prosecutrix in her complaint to the police and in her deposition before the court, even then it can not be said that they had no sexual intercourse with each other because it is a clear cut case of the prosecutrix that they had established physical relations with each other after engagement and their sexual intercourse also continued even during their marriage. Therefore, the plea of alibi taken by the accused is of no help to him.

30. Ex.D16 is a document which would show that Punit Soni wife of Brijesh Kumar Verma had filed a complaint under Sections 12/18/19 and 21 of Prevention of Women from Domestic Violence Act, 2005 against the accused wherein she had shown Brijesh as her husband and Suresh Verma as father in law and Smt. Bimla Devi as mother in law and in the same complaint, she stated that she was married to accused on 04.02.2014 and her parents had spent Rs. fifteen lacs on her marriage and after her engagement, she was doing her MCA in Rohtak. All had started meeting her from the date of her engagement. Her father in law had asked her father to spend Rs. Fifty lacs in her marriage but her father refused but her father in law stated that there was no issue of dowry. Her husband had established physical relations with her prior to the marriage and

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prepared the video clip. They remained in a proper manner after the marriage for few days but later on, they started beating her. her mother in law had beaten her. All started saying that they had married their son to save from the rape case and they demanded Rs. 35 lacs in dowry and even they misbehaved her brother on 11.05.2014 and she was turned out from her matrimonial home and she demanded her maintenance and she also demanded her Jewellery and Istridhan from her in-laws as she sought her protection from the accused to her life and property. All the documents proved that the accused and prosecutrix are husband and wife.

31. Now what is culled out from the above said evidence is that the date of engagement of accused with the prosecutrix was 03.12.2012 and it culminated into marriage on 04.02.2014.

32. Ex.D19 would show that they had E-mail talk with Udit Verma on 05.02.2013 & 06.02.2013.

33. Ex.D20 is in continuation of talk between Punita Soni and Brijesh Verma dated 07.12.2012, 10.12.2012, 07.02.2013, 05.04.2013, 09.05.2013 and 13.05.2013.

On 15.05.2013, Punita Soni is stated to be talking to one parul darling wherein she stated that pass ho gyi 72%.

She had a talk with parul darling on 16.05.2013. She stated to parul darling that dear aapko nahi lagta k hme alag ho jana chahiye ab. yr. bhot majak ho gaya hai ab... me aaj ye

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hi soch rhi hu morning se.....yr.....sach me thak chuki hu mei
hmare is nazayaz relation ko chalute-2..... jaan punita ko
hamesha sirf or sirf pyar chaiye tha paisa nah....but aapko
kabhimera pyar nazar nhi aaya..or na hi amajh aaye...thats I
want to loose you yr. me akele kab tak is relation ko
chalaugi.....one sided love kabhi sucess nahi hota
darling....abhi nahi choda mena aapko to kabhi nahi chod
paungi. Yr....mera aapke liya ye phyar or gehra hota jayega
day by day...or aapse alag hone k liye mujhe aapki hi help
chaiya plz.

On 16.05.2013, at about 12.26 a.m. she writes to
parul darling. sab theek ho jayega yr...aaram se bhool sakte
hm ek dusra ko....abhi bhi jada late nahi hue hai hm....6
months hi hue hai hme mile hue bs....I can forget you
easily..dunia to 10-10 saal ka pyar bhula deti hai to me kya 6
mnths ka nhi bhula sakti hu....vaise bhi yr....aap bolte ho k
aapke pass ladkio ki line hai...to meri kya jarurat hai yr
aapko...aapke pass mast wali ladkio ki line hai. mast salary
hai aapki brand hai, supportive family hai, mast friends
hai...sb kuch tohai na yr. aapke pass..so ab or kya chaiye.

34. Then on 18.05.2013 at 11.14 a.m. there is talk
between Brijesh Verma and Punita Soni and also on 23.05.2013,
27.05.2013. On 04.06.2013, 02.07.2013, 10.11.2013, there is
also talk between Punita Soni and Parul darling. She is also in
touch with Parveen Sharma, Sudhanshu Shukla, Sumnan Soni in

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connection with her job.

35. Ex.D26 is also a chatting on-line perhaps between the accused and the prosecutrix.

36. Cross-examination of Investigating Officer Sub Inspector Balwant would also show that he did not visit the girls hostel in which prosecutrix used to stay during her MCA. He did not visit the company of the accused after his arrest. When he was investigating the matter, there was no divorce between the parties. It was revealed from the complaint, they were married with each other. The date of marriage was also mentioned in the complaint. The marriage had taken place in Ballabgarh. He had gone to the Hon'ble High Court in response to notice in petition in quashing of FIR before Hon'ble High Court. It would also stand revealed from his statement that during the investigation of the case, he had deleted Section 498-A IPC in the instant case because the case was already registered in PS Sector-7, Faridabad. He had added Sections 323, 342 and 506 IPC. He took certified copy of Ruput Roznamcha Ex.PL from MHC Sector-29, Gurgaon.

37. **Section 8 of The Indian Evidence Act, 1872** provides that :

" Motive, preparation and previous or subsequent conduct.-

Any fact is relevant which shows or constitutes a motive or preparation for any fact in issue or relevant fact.

The conduct of any party, or of any agent to any party, to any

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suit or proceeding, in reference to such suit or proceeding, or in reference to any fact in issue therein or relevant thereto, and the conduct of any person an offence against whom is the subject of any proceeding, is relevant, if such conduct influences or is influenced by any fact in issue or relevant fact, and whether it was previous or subsequent thereto.

Explanation 1.--The word "conduct" in this section does not include statements, unless those statements accompany and explain acts other than statements; but this explanation is not to affect the relevancy of statements under any other section of this Act.

Explanation 2.--When the conduct of any person is relevant, any statement made to him or in his presence and hearing, which affects such conduct, is relevant.

38. Section 11 of Indian Evidence Act, 1872 is also reproduced as under:

"When facts not otherwise relevant become relevant.-
Facts not otherwise relevant are relevant _

- (1) if they are inconsistent with any fact in issue or relevant fact;
- (2) If by themselves or in connection with other facts they make the existence or non-existence of any fact in issue or relevant fact highly probable or improbable.

39. Section 375 of Indian Penal Code as amended by The Criminal Law (Amendment) Act, 2013 which came into force w.e.f. 3rd February, 2013, defines rape.

As per Section 375 of Indian Penal Code a man is

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said to commit rape if he commits the act detailed under Section 375 (a) to (d) under the circumstances falling under any of the following seven descriptions:

"First.- Against her will.

Secondly.- Without her consent

Thirdly.- With her consent, when her consent has been obtained by putting her or any person in whom she is interested, in fear of death or of hurt.

Fourthly.- With her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.

Fifthly.- With her consent when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent.

Sixthly.- With or without her consent, when she is under eighteen years of age.

Exception: Sexual intercourse by a man with his own wife, the wife not being under fifteen years of age is not rape.

Seventhly.- When she is unable to communicate consent.

Explanation 1: for the purpose of this section, "vagina" shall also include labia majora.

Explanation 2: Consent means an unequivocal voluntary agreement when the woman by words, gestures or any form of verbal or non verbal communication, communicates willingness to participate in the specific sexual act :

Provided that a woman who does not physically resist

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to the act of penetration shall not by the reason only of that fact, be regarded as consenting to the sexual activity.

40. Description sixthly describe that sexual intercourse by a man with his own wife, the wife not being under fifteen years of age, is not rape.

41. Section 376(2)(n) IPC deals with repeated rape on the same woman by the accused.

42. Prosecutrix is twenty-seven years of age. She had gone to the accused at his call. If she had sexual intercourse with the accused after her engagement with him, then she had sexual intercourse with the accused at her own risk and this engagement and their continuous meeting with each other later on culminated into the marriage but after some time, they had got separated from each other because they were at logger heads and the wife got registered the case under Sections 376(2)(n), 342, 323, 324 and 506 IPC and according to Investigating Officer, he had deleted Section 498-A IPC in this case because the case was already registered in PS Sector-7, Faridabad.

43. If we go through the deposition of Doctor who had medico legally examined the prosecutrix for her injuries in Fortis Hospital, Gurgaon, he has stated that the prosecutrix had told that injuries on her person were self inflicted. The accused had also hospitalized the prosecutrix. It means that the prosecutrix was not happy with the accused as she was called by the accused in a secluded area at the back of her PG and where they might have quarrelled with each other over some issue and had caused injuries

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on her wrist and accused got her hospitalized. Therefore, in these circumstances, the offence under Sections 323 and 324 are not proved against the accused.

44. In so far as the offence of wrongful confinement of the prosecutrix by the accused and rape with her by the accused after her confinement is concerned, these offences are also not made out because even if these incidents were after her engagement with the accused, even then the prosecutrix had performed her marriage with the accused, it can be said that the prosecutrix had condoned all the acts of cruelty of the accused prior to her marriage with the accused that is why she had agreed to perform her marriage with the accused. If all the acts of cruelty prior to her marriage have been condoned by her and she had performed marriage with the accused on 04.02.2014, it means that neither the offence under Section 323, nor under section 324, nor under section 342 nor under section 376(2)(n) IPC are proved against the accused simply for the reason that the accused and the prosecutrix are at logger heads with each other.

45. Moreover, the prosecutrix had got registered a case for demand of dowry against the accused at Faridabad. She had also instituted the proceedings against the accused and his family members under the provisions of Domestic Violence Act, 2005.

46. Reliance for this purpose can be placed upon:

2013(2) RCR (Criminal) 896 (SC) in case titled as Dilip versus State of Madhya Pradesh.

In 2003(2) RCR (Criminal) 99 (SC), titled as

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Uday versus State of Karnataka, it was held by Hon'ble Supreme Court that where the accused had performed sexual intercourse with the prosecutrix on promise to marry prosecutrix and the prosecutrix became pregnant, accused did not marry due to stiff resistance from family members of both sides, accused was not found guilty of rape.

47. Even in this case, it can not be said by the prosecutrix that her consent to sexual intercourse was obtained by the accused either under due to fear or due to misconception of fact.

48. Reliance can also be placed upon 2013(3) RCR (Criminal) 365 (SC) titled as Kaini Rajan versus State of Kerala wherein the prosecution version was that accused and prosecutrix had acquittance for two years. Accused promised to marry the prosecutrix and committed rape on her. Prosecutrix became pregnant and gave birth to a child. FIR lodged after ten months of alleged incident. The conviction of the accused was set aside. the version of the prosecution was held to be doubtful.

49. In 2012(3) RCR (Criminal) 66 (SC) titled as Narender Kumar versus State (NCT of Delhi) wherein, it was held by Hon'ble Supreme Court in para no.24 of the judgment that prosecution has to prove its case beyond reasonable doubt and can not take support from the weakness of the case of defence. There must be proper legal evidence and material on record to record the conviction of the accused. Conviction can be based on sole testimony of the prosecutrix provided it lends assurance of her

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testimony. However, the court has reasons not to accept the version of prosecutrix on its face value, it may look for corroboration. In case the evidence is read in its totality and the story projected by the prosecutrix is found to be improbable, the prosecutrix case becomes liable to be rejected.

The court must act with sensitivity and appreciate the evidence in totality of the background of the entire case and not in the isolation. Even if the prosecutrix is of easy virtue/unchaste woman that itself can not be a determinative factor and the court is required to adjudicate whether the accused committed rape on the victim on the occasion complained of.

50. In 2013(2) RCR (Criminal) 346 (SC) titled as **Rajesh Patel versus State of Jharkhand**, it was held by Hon'ble Supreme Court that where the accused and prosecutrix were classmates and had good acquaintance with each other and were in terms of meeting with each other. On the day of occurrence prosecutrix went to the house of accused when no other inmate was in the house. Accused had sex with prosecutrix. Prosecutrix did not raise any alarm. Report was lodged after eleven days. There is a strong circumstances to arrive at the conclusion that it was a consensual sex.

51. In 2013(4) RCR (Criminal) 1022 (Delhi HC), titled as **State versus Saurabh Vashist**, wherein the Hon'ble Delhi High Court has held that where the accused fall in love with prosecutrix and proposed marriage. Both developed physical relationship,

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prosecutrix took conscious decision to establish physical relationship. Marriage could not be fructify due to caste considerations. Accused was not held guilty of offence of rape. It can not be held that he had any fraudulent intention to induce the prosecutrix to establish a physical relationship with him by extending any false promise to marry her.

52. In 2013(1) RCR (Criminal) 70 (P&HC DB) titled as **Gurjit Kaur versus State of Punjab and another**, it was held by DB of Honble Delhi High Court that where the prosecutrix was divorced wife of accused. She lived for nine months with accused as devoted wife on assurance and promise tht divorce decree would be cancelled and marriage would be regularized. But no step was taken in that regard, hence the complaint. It was held that there was no forcible intercourse. Acquittal of the accused was upheld by the Hon'ble High Court.

53. In 2002(1) RCR (Criminal) 444 (SC) titled as **State of Haryana versus Ram Singh**, the Hon'ble Supreme Court has held that evidence tendered by defence witnesses cannot always be termed to be a tainted one. Defence witnesses are entitled to equal treatment and equal respect as that of the prosecution. The issue of credibility and the trustworthiness ought also to be attributed to the defence witnesses at par with that of the prosecution.

54. Now what is culled out from the above discussion is that the prosecutrix had got her engagement with the accused when she was doing her MCA at Rohtak. After her engagement, she

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started meeting the accused who used to come to her hostel and later on they established physical relations and this engagement after a long time culminated into their marriage. They lived as husband and wife and after some time, they are at logger heads with each other and started living separately from each other due to temperamental differences as per the affidavit of the prosecutrix given to learned Additional Sessions Judge, Gurgaon at the time of bail of the accused and if the prosecutrix had sexual intercourse with the accused, it was not a rape rather it was a consensual sexual intercourse with the accused and even if after the alleged incident of rape, she had performed marriage with the accused. Meaning thereby she had condoned the incidents of cruelty and that of alleged incident of rape by the accused that is why she performed marriage with the accused. Some how, their marriage could not be pulled on and she got registered the instant case under Sections 323, 324, 342, 506 and 376(2)(n) of IPC against the accused and her conduct shows that she was a willing party. After her marriage with the accused, the previous acts of sexual intercourse between the prosecutrix and the accused can not be termed as rape.

55. So, in these circumstances, prosecution has failed to prove its case against the accused and the conduct of the prosecutrix does not make me to believe that she was raped by the accused by confining her or under a threat as alleged by prosecutrix. Thus accused had succeeded in probablizing his defence.

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56. Thus, keeping in view my aforesaid discussions and findings, this court is of the view that the prosecution has failed to prove and establish the incriminating circumstances against the accused beyond all reasonable doubt. Hence the accused Brijesh is acquitted of the charges levelled against him in this case by giving him benefit of doubt. Bonds furnished by accused Brijesh stand discharged. File be consigned to record room.

Announced in open court.
Dated :10.11.2015.



(Rajinder Pal Goyal)
Additional Sessions Judge,
Gurgaon.

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Harjinder
Examiner
Distt. & Sessions Judge, Gurgaon
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