

Court No. - 46

Case :- GOVERNMENT APPEAL DEFECTIVE No. - 472 of 2023

Appellant :- State of U.P.

Respondent :- Manoj S/O Dhoom Singh Saini

Counsel for Appellant :- Ashutosh Kumar Sand

Hon'ble Ashwani Kumar Mishra,J.

Hon'ble Ms. Nand Prabha Shukla,J.

This Government Appeal has been filed by the appellant along with delay condonation application for grant of leave to appeal against the judgement and order of acquittal dated 01.06.2023 passed by the Additional Sessions Judge/Special Judge (POCSO) Bijnor in Sessions Trial No. 215 of 2022 (State vs. Manoj son of Dhoom Singh Saini) arising out of Case Crime No. 53 of 2022 under Sections 376(2), 323, 506 IPC and Section 3/4(2) of POCSO Act, Police Station Najibabad, District Bijnor.

A written report (Ex.-Ka-1) is filed by the informant, who happens to be father of the victim and has appeared as P.W.-1. As per the informant, her daughter was looking disturbed for the last 8-9 days and, on enquiry, his wife came to know that the daughter has been subjected to sexual assault by the accused when she was going to the market on 01.02.2022. The victim was also extended threats by the accused on account of which timely report was not registered. The First Information Report ultimately was registered on the basis of the written report and investigation proceeded. The victim denied her consent for her medical examination. She also stated that the cloths worn by her at the time of incident were got burnt. The statement of the victim was recorded by the Investigating Officer under Section 161 Cr.P.C. and thereafter the victim was produced before the Magistrate for recording her statement under

Section 164 Cr.P.C. Before the Magistrate, the victim only alleged physical assault by the accused and made no allegation with regard to rape. On the basis of evidence collected during the course of investigation, the Investigating Officer ultimately submitted charge-sheet under Sections 376(3), 323, 506 IPC read with Section 3/4(2) of POCSO Act. Cognizance was taken by the Special Court whereafter charges were framed against the accused.

P.W.-1 and 3 are the parents of victim who have supported the prosecution case. It is admitted to both the witnesses that they have not seen the incident and their statement before the Court was based upon the information received from the victim. The Trial Court, therefore, has not found the evidence of P.W.-1 and 3 to be significant. So far as the victim is concerned she has appeared as P.W. 2 and has supported the prosecution case with regard to sexual assault upon her by the accused. She has been confronted with her statement under Section 164 Cr.P.C. wherein she has not alleged rape during her statement recorded by the Magistrate. This is sought to be explained on the ground that the victim was threatened. The victim, moreover, has been confronted with the fact that she had denied her consent for her medical examination. The victim, however, has feigned ignorance about her being called repeatedly for her medical examination. The victim has also stated that her cloths were got burnt by the family members.

The Trial Court has evaluated the evidence on record and has found the testimony of the victim not to be of sterling witness for it to be relied upon even in the absence of any corroboration. The Trial Court has observed that there is no medical evidence on record to corroborate the allegation and there are material improvements in the version of the victim at different stage of the proceedings. There was no allegation of rape while statement of

victim was recorded under Section 164 Cr.P.C. The Trial Court has thus disbelieved the version of the victim as on material aspects her statement was not found consistent.

Learned AGA has placed the judgement of acquittal in extenso to submit that there are apparent perversity in it which is liable to be corrected in the present appeal. Though learned AGA states that the victim is a minor but that itself would not be material. Unless the prosecution is able to prove the incident of sexual assault, the mere minority of the victim would not suffice.

We have carefully examined the judgement of acquittal and have also perused the materials on record. The fact that victim had denied her consent for her medical examination and her cloths, which could corroborate the incident, are not available. There is thus no independent corroboration of the incident and the only material left is the statement of the victim herself. There are material contradictions in the version of the victim which has been elaborately considered by the court below. The findings returned by the court below that the version of the victim is not wholly credible and is thus based on the materials on record. The view taken by the court below is clearly permissible view and in view of the law settled just because a different view could be taken in the matter would hardly a ground by this Court to interfere with the prayer so made for grant of leave to appeal is, therefore, refused.

Consequently, the appeal fails and is dismissed.

Order Date :- 3.11.2023

Puspendra