

Court No. - 46

Case :- GOVERNMENT APPEAL No. - 458 of 2023

Appellant :- State of U.P.

Respondent :- Raju Alias Riyajuddin And Another

Counsel for Appellant :- Ashutosh Kumar Sand

Hon'ble Ashwani Kumar Mishra,J.

Hon'ble Syed Aftab Husain Rizvi,J.

This appeal is by State alongwith an application for grant of leave to challenge the judgment of acquittal dated 09.08.2023, passed by the court below in Special Session Trial No.03 of 2017 (State of U.P. Vs. Raju alias Riyajuddin and another) arising out of Case Crime No. 371 of 2016, under Sections 506, 376D read with Section 34 I.P.C. and Section 5/6 POCSO Act, Police Station- Dhaulana, District- Hapur.

As per the prosecution, informant Gulam Mohammad is a resident of village Bajhaida Kala, Police Station- Dhaulana, District- Hapur, who works as a labour. The accused is the son of the sister-in-law (sali) of informant. It is alleged that informant's 14 year old minor daughter was enticed by the accused and she became pregnant. This was disclosed to the family of the accused, who assured that the victim would be got married elsewhere. Threat was also extended to the informant. Since the accused persons are influential and have exploited his minor daughter, as such the informant prayed that appropriate action be taken in the matter. On the basis of such report of the informant, Case Crime No.371 of 2016 was registered under Sections 376(2)((i), 506 I.P.C. read with Section 3/4 POCSO Act. The statement of the victim was recorded under Sections 161 and 164 Cr.P.C. The victim was also examined medically. Ultimately, charge-sheet was submitted under Sections 506, 376D read with Section 34 I.P.C. and Section 5/6 POCSO Act. Cognizance was taken on the charge-sheet and charges were framed against the accused. The accused denied the accusation and demanded trial.

During trial, the victim has appeared as P.W.-1, while the doctor who had examined her, has appeared as P.W.-2 and has proved the medico legal report (Ext. Ka-2). P.W.-3 is the constable, who has scribed the F.I.R. P.W.-4 happens to be the brother of the victim. Other witnesses are formal in nature. Statement of the accused was recorded under Section 313 Cr.P.C. The defence also produced four witnesses, namely, D.W.-1 Rashid, D.W.-2 Yunush, D.W.-3 Irfan and D.W.-4 Islam. On the basis of evidence led in the matter, the trial Court has come to the conclusion that prosecution has failed to establish its case beyond reasonable doubt.

The statement of victim has been analyzed by the Court below, wherein she alleged that the incident is of 09.09.2016 and she was at home. At about 11:30'O clock in the morning children came from the house of Shabu to invite her. Shabu's mother happens to be a distant mausi of the victim. When the victim arrived, she found the Raju and Shabu present at the house. Family members were consuming cold drink and the victim was also offered a glass of cold drink. Victim alleged that after having consumed the cold drink, she became unconscious and remained intoxicated. Later, when she woke up, she found that she was on the bed and her trousers (salwar) had been taken off. The victim apprehended that someone has sexually assaulted her. It is then stated that she was threatened by the accused and the sexual assault continued at the hands of accused Raju for the next four months.

The F.I.R. has been lodged on 09.09.2016. The statement of victim has been recorded under Section 161 Cr.P.C. on 10.09.2016 in which she alleged the date of incident to be four months prior to the recording of such statement. No exact date or time, however, was disclosed by the victim to the I.O., while her statement was recorded under Section 161 Cr.P.C. In the statement under Section 164 Cr.P.C. also, the victim alleged the incident to have occurred almost four months earlier. As against her previous statement under Sections 161 and 164 Cr.P.C., the victim while deposing during trial, has alleged the incident to have occurred on 09.09.2016. The trial Court, therefore, has found the testimony of the victim to be unreliable, as her version was contradictory.

The victim has been medically examined in which no injuries of any kind have been found on her. The prosecution case that the victim was carrying pregnancy, has also not found any support in the medical examination report. As per opinion of the doctor, the victim was about 17 years of age and by allowing variation of two years, the possibility of victim being major cannot be ruled out. In the medical opinion, no definite opinion of rape has been expressed and no dead or live spermatozoa has been found. The doctor has specifically stated that the pregnancy test was negative and no external or internal injury has been found on her.

The trial Court primarily relying upon the contradictory statement of the victim which otherwise found no corroboration from the medical evidence on record, has opined that prosecution has failed to establish its case beyond reasonable doubt.

Although, learned AGA has made submissions contending that the judgment of acquittal is not sustainable and is contrary to the weight of evidence on record, but we do not find any substance in such argument.

We have carefully examined the judgment of the court below and upon its examination we find that the view taken by the court below is clearly a permissible view, in the facts of the case, and just because a different view could be taken would ordinarily not be a ground for this Court to interfere with the order of acquittal. In such circumstances, we find that neither any triable issue is raised before us in this appeal nor any perversity is shown, which may persuade this Court to grant leave to assail the judgment of acquittal. Prayer made by the State for grant of leave is, accordingly, refused and the appeal, consequently, fails and is **dismissed.**

Order Date :- 8.11.2023

SP/-