

Court No. - 16

Case :- APPLICATION U/S 378 No. - 68 of 2024

Applicant :- State Of U.P Thru. Prin. Secy. Home Deptt. Lko.

Opposite Party :- Rajendra Nishad And 4 Others

Counsel for Applicant :- G.A.

Hon'ble Mohd. Faiz Alam Khan,J.

1. Heard learned AGA appearing for the State and perused the record.
2. The instant application under section 378 (3) CrPC has been moved on behalf of the State to grant leave to appeal against the judgment and order of date 31st January, 2024 passed by the Additional Sessions Judge/Special Judge (POCSO Act), Court No. 12, Sultanpur in Special Sessions Trial No.495/2020 pertaining to Case Crime No.0147/2020, under Sections 323, 354, 504 and 506 IPC read with Section 7/8 POCSO Act, lodged at Police Station Gosainganj, District Sultanpur whereby respondent- Rajendra Nishad has been acquitted of all the charges framed against him.
3. Learned counsel for the State, while drawing attention of this Court towards the impugned judgment and order, vehemently submits that the trial court has committed manifest illegality in appreciating the evidence of the two prosecution witnesses of fact produced before it and though the case of the prosecution was proved beyond reasonable doubt but the trial court has given much weightage to the minor contradictions, which have emerged in testimony of two prosecution witnesses of fact.
4. Elaborating further, it is submitted that some discrepancies/minor contradictions are bound to occur in the evidence of the witnesses and no prosecution witness is expected to give evidence in a videographic manner and, therefore, the trial court appears to have given much importance to the trivial contradictions which had emerged in the testimony of the two prosecution witnesses of fact. It is further submitted that the trial court has ignored the fact that the prosecutrix/victim has also sustained an injury in the alleged incident which was, *prima facie*, proved and, thus, having regard to quality of evidence produced before the trial court, the State be granted leave to challenge the impugned judgment and order passed by the trial court.

5. Having heard learned counsel for the State and having perused the impugned judgment and order passed by the trial court, it is reflected that the FIR of the instant case has been lodged by father of the prosecutrix/victim on 18.04.2020 alleging therein that on 17.04.2020 at about 7 p.m. his daughter (prosecutrix/victim) had gone out of home to ease-out and she met with the respondent-accused and one of his associate, who was not known to her and, they both started dragging her towards agricultural field and when the prosecutrix/victim raised alarm, the informant and other villagers came to her rescue and, after seeing them, the accused-respondent and his associate fled away from the scene of occurrence, intimidating the prosecutrix/victim.

6. After recording statements of the prosecutrix/victim under Sections 161 and 164 CrPC and, after conducting medical examination of the prosecutrix/victim, charge-sheet was filed by the investigating officer under sections 323, 354, 504 and 506 IPC read with section 7/8 POCSO Act.

7. It is also worthwhile to recall at this stage that the prosecutrix/victim was medically examined by PW-4- Dr. Girish Chandra on 18.04.2020 at 4.10 p.m. and multiple linear abrasions were found on her right wrist-joint and she also complained of pain on her right leg. During the course of investigation, on the basis of educational credentials, date of birth of the prosecutrix/victim has been found as 08.12.2005.

8. The trial court had framed charges against the respondent-accused under sections 323, 354, 504 and 506 IPC read with section 7/8 POCSO Act to which the respondent-accused denied and claimed trial.

9. During the course of trial, the prosecution, to prove its case, had produced informant as PW1, prosecutrix/victim as PW-2, Sub-Inspector- Shri Sayyed Naseeruddin as PW-4, Dr. Girish Chandra as PW-4 and Shri Dharendra Bahadur Singh as PW-5.

10. Apart from oral testimony, the prosecution also relied on the documentary evidence i.e. statement of the prosecutrix/victim under section 161 CrPC, site-plan, injury report of the prosecutrix/victim, charge-sheet, SR Registrar of the School as well as Transfer Certificate of the prosecutrix/victim.

11. After completion of evidence of the prosecution, statement of the respondent-accused was recorded under section 313 CrPC wherein he denied the evidence produced against him and said that the proceeding of the case has been initiated against him on the basis of prior enmity. The respondent-accused, in his

defence, has also produced Shri Palloo as DW-1 and Shri Rakesh Kumar as DW-2, who had denied the occurrence.

12. The trial court, as stated herein before, has found that the prosecution has failed to prove its case beyond reasonable doubt and, thus, has acquitted the respondent-accused by passing the impugned judgment and order.

13. Perusal of the impugned judgment and order passed by the trial court would reveal that the trial court has not found the evidence of PW-1 (complainant/father of the prosecutrix/victim) as reliable and trustworthy on account of various contradictions emerging in his testimony. It is also reflected that the trial court, while considering the injuries allegedly sustained by the prosecutrix/victim, which were of simple in nature, has found a major contradiction in the evidence of the prosecutrix/victim on the score that she had given statement under section 164 CrPC contradictory to her statement given under section 161 CrPC as well as before the trial court and, has found the testimony of the prosecutrix as unreliable. It is also reflected that the trial court has also noticed a major contradiction in the testimony of the prosecutrix/victim of improving the story in terms that the respondent-accused shown possessing a knife at the time of alleged incident, while no such allegation had been levelled by her or complainant either in the FIR or in her statements recorded under sections 161 and 164 CrPC.

14. The trial court has also discussed statement of DW-1- Shri Palloo and DW-2- Shri Rakesh Kumar in arriving at a conclusion that the statement of the prosecutrix/victim recorded under section 164 CrPC is unreliable and the same had been recorded after two months of her statement recorded under section 161 CrPC. It is also discussed by the trial court that at the time of alleged incidents latrine was constructed in the house of the informant and, thus, the trial court has inferred that reasonable doubt is emerging in the testimony of the prosecution witnesses and has given the benefit of the same to the accused person.

15. It is to be recalled that a criminal trial proceeds with the initial presumption of innocence in favour of an accused person and the same is fortified by his acquittal by the trial court and, thus, no interference in the judgment of acquittal passed by the trial court may be made by the appellate court unless the judgment of acquittal passed by the trial court is patently erroneous and is not based on proper appreciation of evidence. It is also to be recalled that if a probable/possible view has been adopted by the trial court, only on that score, the judgment of

the trial court cannot be termed as 'erroneous' and it is also to be recalled that if two views are emerging on the basis evidence produced before the trial court and, if a possible and probable view has been adopted by the trial court, the same may not *ipso facto* render the judgment of the trial court as 'erroneous' or not passed on the basis of evidence available on record.

16. Perusal of the impugned judgment and order passed by the trial court, in the background of above mentioned factual and legal matrix would show that the trial court has adopted a possible and probable view as there cannot be two views about the fact that the statement of the prosecutrix/victim was recorded after two months from her statement recorded under section 161 CrPC and, therefore, apprehension of the trial court that the occurrence might have been manipulated may not be said to be without any basis, more so, when no concrete explanation has been given of such a huge delay in recording statement of the prosecutrix/victim under section 164 CrPC. The law, with regard to statement of a witness recorded under section 161 CrPC, is well settled and the statement of the witness recorded under section 161 CrPC could only be used for contradiction. Thus, there appears no illegality in the exercise undertaken by the trial court whereby the trial court has doubted the evidence of the prosecutrix/victim recorded before the trial court vis-a-vis her statement recorded under section 161 CrPC to assess the contradictions emerging in her testimony. Thus, having regard to all the facts and circumstances of the case and reasons mentioned herein above, I find no illegality or to say any irregularity/infirmity committed by the trial court in appreciation of the evidence adduced before it.

17. In result, the instant application moved under Section 378(3) CrPC preferred on behalf of the State appears to be without any basis/force and, the same is hereby **rejected**.

18. Rejection of the instant application, filed on behalf of the State under Section 378 (3) CrPC, would have no effect upon any appeal, which may be filed by the prosecutrix/victim under Section 372 CrPC.

Memo

Since the application under Section 378(3) CrPC preferred on behalf of the State has been rejected, the memo of appeal is also **dismissed**.

Order Date :- 2.5.2024

MVS/-