

Neutral Citation No. - 2024:AHC-LKO:41409-DB

Court No. - 9

Case :- APPLICATION U/S 378 No. - 89 of 2024

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

Opposite Party :- Chandram

Counsel for Applicant :- G.A.

Hon'ble Vivek Chaudhary,J.

Hon'ble Narendra Kumar Johari,J.

1. Present application under Section 378 (3) Cr.P.C. has been filed along with Government Appeal assailing the judgment and order dated 15.02.2024, passed by the learned Additional District & Sessions Judge, F.T.C.-II, Faizabad in Sessions Trial No.54/2019 (State Vs. Chandram), arising out of Case Crime No.306/2018, under Section 376 I.P.C., at Police Station - Rudauli, District Faizabad. By the said judgment and order, the learned Additional Session Judge has acquitted the accused Chandram from the charge of offence under Section 376 I.P.C.

2. The brief facts of the case are that the prosecutrix moved an application under Section 156 (3) Cr.P.C. before the Magistrate concerned contending that she along with her husband had gone at the house of Vijay Yadav to attend a function. Vijay Yadav is the friend of her husband. On 28.06.2017 at 7.30 hours, when the prosecutrix was returning from toilet along with her daughter, the opposite parties Ram Awadh, Urmila, Chandram, Kamlesh, Jaishanker, Chotu and Guddu kidnapped her and took her away in a Bolero vehicle. When the prosecutrix opposed and resisted with cry, Ram Awadh put a handkerchief near her nose, consequently she became unconscious. At that time all the opposite parties were under the influence of liquor. Thereafter, Ram Awadh took her to his house. In that house, all the opposite parties committed rape and unnatural intercourse with her. The

opposite party Urmila caught hold her hands and legs at the time of committing intercourse by the opposite parties. The opposite parties kidnapped her and kept in that house for 6-7 months. Meanwhile they continuously raped her. The opposite parties telephonically called her husband and demanded Rs.10.00 Lakhs as ransom. Husband of the prosecutrix took help of the police. Police recovered the prosecutrix along with her minor daughter from the residence of the opposite parties and handed over the prosecutrix to her husband.

3. The Magistrate concerned after considering the averments, allowed the application under Section 156 (3) Cr.P.C. and passed the order to register the F.I.R. and conduct the investigation. Accordingly, an F.I.R. was lodged in the police station concerned on 10.07.2018 at 18.23 hours Vide Crime No.306/2018, under Sections 344, 365, 368, 376(D), 377, 387, 506 I.P.C.

4. The Investigating Officer, after investigation, exonerated all the other accused persons, except accused Chandram. He submitted the charge sheet against accused Chandram under Section 376 I.P.C. The Trial Court framed the charge of offence against the accused Chandram, who denied the charge and requested for trial.

5. On behalf of prosecution, PW 1 - Prosecutrix, PW 2 - Ravi Singh, PW 3 Dr. Anju Jaiswal, PW 4 - Pradeep Kumar Singh, PW 5 - Lady Constable Ragini Devi, PW 6 - Chatriya Singh, PW 7- S.I. Shamshad Ali, PW 8 - Avanish Kumar Chauhan have deposed as prosecution witnesses.

6. After conclusion of the evidence of prosecution, statement of accused under Section 313 Cr.P.C. was recorded, in which he stated that the prosecutrix had solemnized marriage with him in the temple on 18.06.2017. At that time, father of prosecutrix and father of the accused, namely, Ram Awadh were also present. Thereafter, a memorandum of marriage was also executed by the parties in the court compound

Faizabad which was duly attested by Notary. The prosecutrix was living with him and was performing the duties as his wife.

7. Learned trial court, considering the facts, circumstances and evidence on record and after proper discussion, acquitted the accused/respondent vide judgment and order dated 15.02.2024, which has been challenged by the State/appellant by way of present Government Appeal along with application under Section 378 (3) Cr.P.C.

8. Learned A.G.A. has submitted that trial court has wrongly and illegally passed the judgment acquitting the accused respondent. There was sufficient evidence on record. The prosecution witnesses of fact PW 1, PW 2 and PW 6 have fully proved the prosecution case showing the complicity of the accused but the trial court has adopted the hyper technical view and acquitted the accused from the charge of offence. The judgment of trial court is bad in the eye of law. There are fair chances of success in appeal. Hence, the application of the State/appellant under Section 378 (3) Cr.P.C. is liable to be allowed.

9. We have heard the arguments of learned A.G.A. and perused the record.

10. The contention of the prosecutrix in the F.I.R. was that the accused persons Ram Awadh, Urmila, Chandram, Kamlesh, Jaishanker, Chotu and Guddu had kidnapped and kept her in their house. All the male accused persons committed rape and unnatural intercourse with her many times in which Urmila Devi facilitated by catching hold her hands and legs. All the persons had kept her in the house of Ram Avadh for 6-7 months. In the prosecution evidence, the fact came into light that Ram Avadh was the father of Chandram and other named persons. Urmila Devi was the mother of Chandram. Therefore, it cannot be believed that father and all sons were indulged in committing the offence which is defined under Section 375 I.P.C. in which the wife of Ram Avadh and mother of other named accused persons had provided active help. On behalf of the accused-respondent the memorandum of marriage duly

attested by notary was produced in the case and the defence put another story that the prosecutrix was earlier married with PW 2, but aggrieved by his misbehaviour and atrocities she was not happy with her husband, consequently, she left her matrimonial home along with her minor daughter and reached at the house of accused Chandram by her own free will. She solemnized her marriage with the accused Chandram and was living peacefully and willingly in the house of accused-respondent as his wife. After few months, she informed her husband to bring her back. Consequently, with the aid of the police, PW 2 took prosecutrix and her daughter to his house back. He has also executed a *Supurdaginama* (memorandum of handing over) in this regard.

11. In her evidence as PW 1, the prosecutrix has admitted that she had executed a memorandum of marriage which was attested by the notary. She had identified her signature as well as photo over the aforesaid memorandum but she stated that the deed was forged. The trial court has noticed that the memorandum of marriage was containing the signature of father of prosecutrix named Chitman and the signature of Ram Avadh, who is the father of accused Chandram. The court also observed that the prosecutrix has tried to mislead the fact by saying that name of her father is Jay Prakash. She has never tried to know the living status of his father, which is unnatural.

12. The defence has submitted the information obtained by him from the concerned School under right to information Act regarding the High School marks-sheet of the prosecutrix, in which, it has been mentioned that in marks sheet of prosecutrix the name of her father was mentioned as Chitman Singh. The Investigating Officer during investigation had found that Chitman Singh was living and he had stated to Investigating Officer that the prosecutrix is his daughter and he had identified his signature in the memorandum of marriage also. He had also stated that he along with his daughter (prosecutrix) had stayed at the house of Chandram for approximately 5-6 months. The witness PW 2, who is the husband of prosecutrix never tried to search his wife for

considerable long time and for the first time he has moved the application under Section 156 (3) Cr.P.C. on 29.03.2018 while handing over the prosecutrix and her daughter to informant, the informant had executed *Supurdaginama* in which he had stated that his wife had gone with Chandram. He has not mentioned the story of kidnapping as mentioned in the application under Section 156 (3) Cr.P.C., as well as allegation of rape of victim in the *Supurdaginama*. Even the informant has not filed any application under Section 319 Cr.P.C. after deletion of name of other named accused persons in charge sheet.

13. Learned trial court after discussing the evidence on record has concluded that prosecutrix herself had left her matrimonial home and started living with the accused Chandram by executing the memorandum of marriage. She lived at the house of accused for 07 months but she never tried to inform anybody regarding the offence. Thereafter, after some difference with accused the prosecutrix left his house and returned back to her husband's house and the story of kidnapping as well as rape was concocted by the informant/applicant.

14. So far as the evidence of PW 6 is concerned, the fact transpired from his evidence that he has narrated the story of kidnapping as told by the prosecutrix, thus, the evidence of PW 6 is the hearsay evidence. Also at the time of occurrence, he was living at Surat, Gujrat. Regarding the offence, the prosecution evidence has discrepancy and contradiction on substantial points. Hence, in the light of the evidence on record, the learned trial court has concluded that the prosecution has failed to prove its case against the accused, therefore, the trial court acquitted the accused from the charge of offence.

15. Having regard to the above evidence and discrepancy in the evidence of the prosecution witnesses, the judgment passed by the learned trial court is just, proper and without perversity. The view taken by learned trial court is possible and justified which is in accordance with law.

16. While considering the interference in appeal against the acquittal, it has been held by the Apex Court that if two views are reasonably possible, one supporting the acquittal of accused and other indicating the conviction and the trial court has acquitted the accused, in such circumstances, the High Court should not reverse the order of acquittal recorded by the trial court.

17. In the case of *State of Karnataka vs. K. Gopalkrishna (2005) 9 SCC 291*, it has been held by Apex Court as under :

"In such an appeal the Appellate Court does not lightly disturb the findings of fact recorded by the Court below. If on the basis of the same evidence, two views are reasonably possible, and the view favouring the accused is accepted by the Court below, that is sufficient for upholding the order of acquittal. However, if the Appellate Court comes to the conclusion that the findings of the Court below are wholly unreasonable or perverse and not based on the evidence on record, or suffers from serious illegality including ignorance or misreading of evidence on record, the Appellate Court will be justified in setting aside such an order of acquittal."

18. In the case of *Chandrappa Vs. State of Karnataka [2007 (4) SCC 415]*, the Apex Court has observed that :

(1) An appellate court has full power to review, reappraise and reconsider the evidence upon which the order of acquittal is founded.

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

(3) Various expressions, such as, "substantial and compelling reasons", "good and sufficient grounds", "very strong circumstances", "distorted conclusions", "glaring mistakes", etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of "flourishes of language" to emphasise the

reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court."

19. Therefore, it can be concluded that the appellate court should not ordinarily interfere with the order of the trial court, unless the approach of the trial court is vitiated by manifest illegality. The appellate court should not interfere with the order of acquittal merely because on evaluation of the evidence different possible view may arise and the view taken by the trial court is not correct. There is a double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence and the accused having secured his acquittal the presumption of his innocence is further reinforced and reaffirmed by the trial court.

20. Taking into consideration the submission of learned A.G.A. and also taking into consideration the facts, circumstances of the case in the light of fundamental principle of criminal jurisprudence, we are of the considered view that the trial court is justified in acquitting the accused/respondents. No illegality, irregularity or perversity is found in the judgment of learned trial court.

21. Hence, the prayer for leave to appeal, as made by State/appellant, is hereby rejected. Consequently, the government appeal is also dismissed.

22. Let a copy of this judgment be sent to the learned trial court.

(Narendra Kumar Johari,J.) (Vivek Chaudhary,J.)

Order Date :- 29.5.2024

ML/-