

[Neutral Citation No. - 2024:AHC-LKO:56772-DB]

Court No. - 9

Case :- APPLICATION U/S 378 No. - 134 of 2024

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

Opposite Party :- Museebat Ali

Counsel for Applicant :- G.A.

Hon'ble Vivek Chaudhary,J.

Hon'ble Narendra Kumar Johari,J.

1. The present application under Section 378(3) Cr.P.C. alongwith the Government Appeal has been filed by the learned AGA against the judgment dated 23.02.2024 passed by Additional Sessions Judge/FTC (OAW), Sitapur in Sessions Trial No. 21 of 2023, Case Crime No. 383 of 2022, under Sections 457, 376, 506 IPC, Police Station Mahmoodabad, District Sitapur. By the impugned judgment, the trial court has acquitted the accused Museebat Ali from the charges of above Sections.
2. According to the prosecution case, on 07.08.2022 when the informant/victim was sleeping in her house alongwith her three children, at about 11:30 p.m., the accused Museebat Ali entered into her house and on the point of firearm, he committed rape with the prosecutrix and also threatened her to life. The occurrence has been witnessed by her daughter, aged about 13 years. The accused also threatened her daughter for life. On the next day of occurrence, the prosecutrix telephonically informed to her husband who at that time, was in foreign. On getting the knowledge, he returned from foreign on 18.08.2022 and on 26.08.2022 he gave an application to lodge the FIR before the police Station Mahmoodabad but no action was taken by the police. Further, he gave an application to the Superintendent of Police, Sitapur and after his order the FIR against the accused was lodged vide Case Crime No. 383 of 2022, under Sections 457, 376, 506 IPC on 31.08.2022 at about 1920 hours at police Station Mahmoodabad, District Sitapur.

3. After completion of investigation, the chargesheet was filed in the court against the accused-respondent. The court concerned framed the charges against the accused under Sections 376, 457, 506 IPC. The accused denied the charge and requested for trial.
4. On behalf of the prosecution, alongwith documentary evidence, PW-1 prosecutrix, PW-2 Khushnuma, PW-3 Mohd. Jabir (all witnesses of fact), PW-4 Indra Singh, PW-5 Dr.Meenakshi, PW-6 Constable Aman Chaurasia and PW-7 Vijendra Singh (I.O.) have been examined orally.
5. After completion of evidence of prosecution witnesses, the evidence of statement of accused was recorded by the court under Section 313 Cr.P.C. in which he has denied the occurrence and submitted that the husband of the prosecutrix has borrowed Rs.20,000/- from him on the pretext of his tour needs to Saudi Arabia but he did not return the same when accused demanded his borrowed money. The husband of prosecutrix Mohd. Jabir started quarreling on 26.08.2022, then he had given an application for complaint against Mohd. Jabir at police station Mahmoodabad where Mohd. Jabir and the prosecutrix both were also present. The police has initiated proceedings under Section 107/117 Cr.P.C. against the persons of both the sides. The accused has stated that the prosecutrix has falsely lodged the FIR in question.
6. On behalf of the prosecution, only three witnesses of fact PW-1, PW-2 and PW-3 have been examined. Witness PW-1 is the prosecutrix who has stated that on the date of occurrence i.e. on 07.08.2022, she was sleeping in her house alongwith 3 children. There at about 11:00 p.m., the accused Museebat Ali came and on the gun point he has committed rape with her. When the prosecutrix opposed and raised her noise, her daughter woke up, the accused took her daughter also on his gun point and threatened her also for life. She gave an application to the police station Mahmoodabad to lodge the FIR but no action was taken by the police persons, then her husband gave an application to the Superintendent of Police, Sitapur and after the order of S.P. Sitapur, the FIR of the occurrence was lodged.

7. Witness PW-2 has stated that at the time of occurrence, she alongwith her mother was sleeping in Veranda of her house. The accused entered into her house and after putting the firearm on her mother, took her inside and performed the bad activity. Hearing her noise from inside the house, she woke up and entered into inside the residential accommodation quickly, then the accused put her on gun point too. The accused performed bad activities with her mother and returned back. She became fearful after seen the occurrence. When, her father returned from foreign, he lodged the FIR of the occurrence.
8. Witness PW-5 Dr. Meenakshi has stated in her evidence that on 02.09.2022, she had examined the prosecutrix. There was no sign of injury as a result of forceful activity. There was no injury on the body of the prosecutrix and no symptoms were found about any forceful penetration activity, even no spermatozoa was found from the vaginal slide.
9. Witness PW-4 Indra Singh has proved the radiological investigation of the prosecutrix and witnesses PW-6 and PW-7 have proved the GD entry as well as proceedings of investigation.
10. In oral submission, learned AGA has submitted that the accused has committed the offence of rape with prosecutrix by entering her house in the night and also he threatened the prosecutrix and her daughter to kill them. The prosecution case has been duly proved by the witnesses but the learned trial court has committed material illegality and irregularity by acquitting the accused from the charge of offence. The judgment passed by the trial court is bad in the eye of law. The appellant has every hope that the appeal be allowed, hence the application under Section 378 Cr.P.C. for leave to appeal deserves to be allowed.
11. We have heard the submission of learned AGA for the State and perused the record.
12. Witness PW-1 is the victim. She has reiterated the FIR version in her examination-in-chief but we find that there are substantial discrepancies

and contradictions in the evidence of the witnesses of fact. In the FIR, the prosecutrix has not mentioned the place where she was sleeping at the time of occurrence. In her statement she has stated that at the time of occurrence, she was sleeping on a wooden Plank (Takhat) in the Hall area of her house. Beside the wooden Plank, there was a cot on which her three children were sleeping. On the above point, the witness PW-2 has stated in her statement that on the day of occurrence, she was sleeping on a Cot alongwith her mother (prosecutrix) in Veranda area of her house. The prosecutrix has given her statement before the doctor that she alongwith her children was sleeping under the thatch (Chhapper). Witness PW-1 has further stated that when the accused started rape, she did not raise any voice for help. Her daughter also could not shout due to fear of firearm. The prosecutrix resisted the accused but she did not have injury on her hand and leg, even no bangle was broken in scuffle. By perusal of spot map, it is evident that house of the prosecutrix is adjacent to the house of the brother of her husband as well as houses of other persons are there, but she did not shouted nor she could inform the brother and nephew of her husband, even she did not go to the police station alongwith her brother-in-law (dewar) or nephew of her husband. The fact has also been brought by PW-1 and PW-3 that on telephonic information on 08.08.2022, her husband returned India on 18.08.2022 and on 26.08.2022, the prosecutrix alongwith her husband went to the police station to lodge the complaint against the accused. On the point of occurrence of rape, the witness PW-2, who is daughter of prosecutrix as well as the eye witness of the occurrence, has stated in her evidence that at about 11:30 p.m. the accused came to her house and lay down on the Cot where her mother was sleeping. He started bad activities with her mother but neither her mother nor she raised any voice for help. She further stated that after return from foreign, her father went to the police station alongwith her mother after a week of his arrival. The accused Museebat Ali was arrested and police challaned him under Section 107/116 of Cr.P.C. When the accused released, he came at her house and started quarreling.

13. Witness PW-3 is the husband of the prosecutrix. He is not a witness of the occurrence but he has admitted in his evidence that on 26.08.2022 he had gone to the police station alongwith his wife and informed to police that accused Museebat Ali is quarreling on the matter of money. On that very day, the accused Museebat Ali was also reached on police station and there police challaned him under Section 107/116 Cr.P.C.
14. In view of above discrepancy on the substantial point, it can be concluded that the FIR in question has been lodged with inordinate delay and the reason of delay has not been explained properly. There is discrepancy and contradictions in the statements of the witness of fact and the place of occurrence where the alleged occurrence of rape took place. No injury has been found on the body of the prosecutrix. She has not raised any voice for help at the time of occurrence. The occurrence of rape took place on 07.08.2022 and on 26.08.2022 the prosecutrix alongwith her husband went to police station but she has not informed the police about any such occurrence of rape, rather she gave a complaint to police station that on the matter of money, the accused Museebat Ali is quarreling. At the same time, accused Museebat Ali himself reached at the police station and made a complaint against the prosecutrix and her husband, resultantly, the police challaned the accused under Section 107/116 of Cr.P.C. There is no documentary evidence in support of allegation of rape.
15. In view of above fact and evidence, the learned trial court has concluded that the prosecution has failed to prove the charge of evidence against the accused, therefore the trial court acquitted the accused from the charges.
16. 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. No illegality or irregularity has been found in the judgment. The view taken by learned trial court is possible and justified which is in accordance with law.

17. 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.

18. 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."

19. 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."

20. 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.
21. Taking into consideration the submission of learned AGA 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-respondent. No illegality, irregularity or perversity is found in the judgment of learned trial court.
22. Hence, the prayer for leave to appeal, as made by State-appellant, is hereby rejected. Consequently, the Government Appeal is also **dismissed**.
23. Let a copy of this judgment be sent to the learned trial court.

[Narendra Kumar Johari,J.] [Vivek Chaudhary,J.]

Order Date :- 21.8.2024

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