

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl. Appeal No. S-4535-SB of 2014

DATE OF DECISION: 08.12.2015

Bijender Rana

.....Petitioner

Versus

State of Haryana and another

.....Respondents

BEFORE:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

1. **Whether reporters of local newspaper may be allowed to see judgment? (Yes/No)**
2. **To be referred to reporters or not? (Yes/No)**
3. **Whether the judgment should be reported in the Digest? (Yes/No)**

Present:- Mr. JS Saneta, Advocate
for the appellant.

DAYA CHAUDHARY, J.

The present appeal has been filed to challenge judgment of acquittal dated 18.7.2014 passed by Judicial Magistrate Ist Class, Gurgaon, vide which, accused-respondent No.2, namely, Durga Dutt Sharma has been acquitted of the charge in case FIR No. 249 dated 13.10.2007 registered under Sections 293 and 506 IPC at Police Station 56, Gurgaon.

Briefly the facts of the case as made out in the present appeal are that accused-respondent No.2 called the son of the complainant to his house for preparation of 15th August function scheduled to be held in their

society i.e. Rail Vihar. On that pretext, accused-respondent No.2 forced the son of the complainant to watch blue movies and even assaulted him sexually on several occasions. The son of the complainant told these facts to him, on the basis of which, aforesaid FIR was registered against accused-respondent No.2. The police conducted the investigation and arrested the accused. After completion of usual formalities of investigation, challan under Section 173 Cr.P.C. was presented against the accused. Thereafter charge was framed under Sections 293 and 506 IPC against accused, to which, he pleaded not guilty and claimed trial.

The prosecution in order to prove its case examined as many as five witnesses, namely, Bijender Singh Rana (PW-1), Seema Singh (PW-2), Suyash Partap (PW-3), EHC Krishan Kumar (PW-4), EASI Surender Singh (PW-5).

Thereafter, statement of the accused under Section 313 Cr.P.C. was recorded. Accused in his defence evidence examined four witnesses, namely, Bijender Aggarwal (DW-1), Ms. Suman (DW-2), Sudesh Sharma (DW-3), Chiranji Lal (DW-4) and Krishan Lal, ASI (Retd.) as DW-5.

On appraisal of evidence available on record and after hearing counsel for the parties, the trial Court acquitted the accused of the charge vide judgment dated 18.7.2014, which is the subject matter of challenge in the present appeal.

Learned counsel for the appellant contends that judgment has been passed without proper appreciation of evidence as the statement of complainant was duly corroborated by the statements of other prosecution witnesses. Learned counsel further contends that during pendency of the trial, an application for framing of charge under Section 377 read with Section 511 IPC against the accused was moved, which was allowed and charge was framed under Section 377 IPC. Thereafter, order of framing of

charge was challenged by accused-respondent No.2 by way of filing revision petition before the Additional Sessions Judge, Gurgaon, which was allowed vide order dated 12.7.2012. It was found that no offence was made out under Section 377 PC. Learned counsel also contends that the CDs and the computer, which were recovered from the house of the complainant were not taken into consideration by the investigating agency and non-production of case property has prejudiced the case of the complainant. The investigating agency helped the accused person and did not produce the CD and other documents, which were part and parcel of the case property due to which benefit of doubt was given to accused-respondent No.2 and accordingly he was acquitted of the charge by the trial Court. It is also the argument of learned counsel that the learned trial Court has wrongly relied upon the statements of DW-2 and DW-3. Suman while appearing as DW-2 stated that she was staying at the house of her parents as she was pregnant at that time and the victim did not visit her father's house. Similarly Sudesh Sharma (DW-3) has stated that she remained in the house to take care of her pregnant daughter. In fact, Suman (DW-2) gave birth to the child in the month of April, 2008 and the incident is of September 2007. The pregnancy at that time was of two months only and constant attention was required at that stage. The complainant has specifically stated in his statement that accused-respondent No.2 threatened his son not to tell about the incident to anyone otherwise he will kill him. The statement of victim has been supported by the statement of the complainant but still the accused has been acquitted.

Heard the arguments advanced by learned counsel for the appellant and have also gone through the judgment of the trial Court and other relevant record available on the file.

Sections 293 and 506 IPC are relevant for resolving the controversy in hand and the same are reproduced as under:-

293. Sale, etc., of obscene objects to young person.—

Whoever sells, lets to hire, distributes, exhibits or circulates to any person under the age of twenty years any such obscene object as is referred to in the last preceding section, or offers or attempts so to do, shall be punished 2[on first conviction with imprisonment of either description for a term which may extend to three years, and with fine which may extend to two thousand rupees, and, in the event of a second or subsequent conviction, with imprisonment of either description for a term which may extend to seven years, and also with fine which may extend to five thousand rupees].

506. Punishment for criminal intimidation.—Whoever commits, the offence of criminal intimidation shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both; If threat be to cause death or grievous hurt, etc.—And if the threat be to cause death or grievous hurt, or to cause the destruction of any property by fire, or to cause an offence punishable with death or 1[imprisonment for life], or with imprisonment for a term which may extend to seven years, or to impute, unchastity to a woman, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

506. Punishment for criminal intimidation.—Whoever commits, the offence of criminal intimidation shall be punished with imprisonment of either description for a term which may

extend to two years, or with fine, or with both; If threat be to cause death or grievous hurt, etc.—And if the threat be to cause death or grievous hurt, or to cause the destruction of any property by fire, or to cause an offence punishable with death or 1[imprisonment for life], or with imprisonment for a term which may extend to seven years, or to impute, unchastity to a woman, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

A perusal of aforesaid sections would show that it is to be proved by the prosecution that the accused was involved in selling, hiring, distributing, exhibiting or circulating to any person under the age of 20 years any obscene object. In the present case, it has not been proved on record by the statements of PWs that the accused was selling or exhibiting any obscene material to the victim. As per the allegations levelled by the complainant, the accused had shown blue film to the victim and has even forced him to do the same act. The prosecution has failed to produce any material to substantiate its arguments as the CDs and computer, which were alleged to be recovered from the residence of the complainant were not produced before the Court and in the absence thereof, merely on the basis of statements of Pws, it could not be proved that accused-respondent No.2 had committed any offence. The prosecution has also not proved that the accused-respondent No.2 had threatened the complainant or criminally intimidated the victim. The prosecution was to prove its case beyond reasonable doubt but neither it has been proved from the statements of PWs nor any recovery was made of such items which were stated to be obscene.

Accordingly, there is no merit in the contentions raised by

learned counsel for the appellant and the judgment of trial Court is based on proper appreciation of evidence and it cannot be said that the same is contrary to the evidence of the complainant.

In view of the above, the appeal being devoid of any merit is hereby dismissed.

December 08, 2015
pooja

(DAYA CHAUDHARY)
JUDGE