

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Criminal Revision No.535 of 2005

Reserved on: April 08, 2015

Date of Decision: May 29, 2015

Savita d/o Sh.Shyam Lal Saini

.....Petitioner

Versus

State of Haryana and another

.....Respondents

CORAM:- HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA

Present: Mr.AK Jindal, Advocate for the petitioner.

Mr.MS Sidhu, Additional Advocate General, Haryana.

Mr.Ashwani Bhardwaj, Advocate for respondent No.2.

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TEJINDER SINGH DHINDSA, J.

Harish-respondent No.2 has earned acquittal vide impugned judgment of learned Sessions Judge, Narnaul dated 17.12.2004 in case FIR No.22 dated 26.1.2004, under Sections 452, 376, 511 of the Indian Penal Code, registered at Police Station City, Narnaul. He was charged for offence under Sections 452 and 376 of the Indian Penal Code.

2. The record reveals that the State of Haryana has not preferred any appeal against the aforesaid judgment of acquittal.

3. Learned counsel for the parties have been heard at length and even the records of the case have been perused.

4. Brief case of the prosecution was that the prosecutrix (name withheld) was 14 years old, her father was a confectioner and mother used to work as a labourer. On 22.1.2004, the prosecutrix was alone at the house, father had gone to village Pawta in connection with his work and the mother had gone to her parental home at village Badot. Brothers of the prosecutrix, namely, Yogesh and Manish and sister Nitu were away to school. It was alleged that between 10 to 11 a.m., accused Harish, who otherwise resided in the same Mohalla, entered the house of the prosecutrix and proceeded upstairs in the Chaubara. Prosecutrix was stated to be wiping the floor and the accused is stated to have enquired as regards whereabouts of her mother, upon which she responded that she had gone to the house of her maternal uncle. Thereafter, accused Harish is stated to have switched on the TV and having held the prosecutrix from her hand made her to fall on the cot. As per version of the prosecutrix, accused broke the string of her salwar forcibly and attempted to commit rape. He is also alleged to have slightly closed the door. Thereafter, an alarm having been raised, grand-mother of the prosecutrix came from the ground floor and upon which accused Harish is stated to have fled. Such occurrence is stated to have been revealed by the prosecutrix to her grand-mother. Thereafter, on 26.1.2004, when mother of the prosecutrix Smt.Santosh came back, the prosecutrix is stated to have narrated the occurrence to her. A formal complaint, Exhibit PK,

was lodged by the prosecutrix, whereupon FIR, Exhibit PL, came to be registered.

5. The learned trial Court after appreciating the evidence adduced on record has disbelieved the version of the prosecutrix. In such regard, it has been reasoned that in the initial complaint, Exhibit PK, submitted by the prosecutrix, the allegation was with regard to attempt of rape. Even as per such complaint, the prosecutrix had stated that while she was working in the Chaubara, accused Harish had entered and made enquiries with regard to her mother, to which she had responded by saying that she was away to the house of her maternal uncle. Thereafter, accused is stated to have switched on the TV and even closed the door slightly. At none of such junctures, any alarm was stated to have raised by the prosecutrix. This is inspite of the fact that the prosecutrix was aware that her grand-mother was present on the ground floor of the house. Trial Court has even taken notice of the fact that the prosecutrix had been medicolegally examined by Dr.Alka Bishnoi, PW2 on 26.1.2004 and no external marks of injury had been found anywhere on the body of the prosecutrix. Furthermore, prosecutrix is stated to have narrated the occurrence to her grand-mother on 22.1.2004 itself, but no complaint was filed. Prosecutrix is also stated to have gone to school on the following day i.e. on 23.1.2004 and had further alleged that in School, accused Harish had visited her and even threatened her not to disclose about the occurrence to any one. As per version of the prosecutrix, her mother Smt.Santosh had come back home on 26.1.2004. It is a plausible view taken by the

trial Court that the prosecutrix even though having shied away from revealing the complete story before the police authorities, should have confided at least in her mother on 26.1.2004. However, it is only on 6.2.2004 that mother of the prosecutrix filed an affidavit, Exhibit PR, before the police and upon which a supplementary statement was recorded wherein a clear improvement was made and an allegation of rape was raised. As such, offence under Section 376 of the Indian Penal Code was added only upon supplementary statement of the mother of the prosecutrix having been recorded on 6.2.2004 in relation to an alleged occurrence that took place on 22.1.2004. Under such circumstances, the issue with regard to delay having occurred in the first instance as regards lodging of FIR after four days i.e. on 26.1.2004 and recording of a supplementary statement on 6.2.2004 raising the allegations of rape for the first time has rightly weighed with the trial Court to disbelieve the prosecution version.

6. Prosecution had placed reliance upon certificate, Exhibit PF/1, issued by PW4 Shri Mool Chand Yadav, Principal, Government Girls Senior Secondary School, Narnaul to drive home the fact that the date of birth of the prosecutrix as per school record was 7.3.1990 and as such, on the date of alleged occurrence, she was less than 16 years of age. The trial Court while discarding the certificate, Exhibit PF/1, was very much alive to the settled position in law that birth certificate or school certificate would be in the nature of primary and best evidence and the medical evidence in the nature of an ossification test

would have the margin of error and such medical evidence should be taken into consideration only when primary evidence is not available. In this regard, trial Court has recorded cogent reasons. It has been observed that the prosecution did not produce any birth certificate of the prosecutrix. Even the application seeking admission in the school was not produced so as to demonstrate with regard to the basis of date of birth i.e. 7.3.1990 having been entered in the school record. Even father of the prosecutrix did not enter the witness box to depose with regard to the basis of date of birth of the prosecutrix having been recorded as 7.3.1990. Furthermore, records of the case would reveal that mother of the prosecutrix Smt.Santosh having been examined as PW15 did not state the date of birth of the prosecutrix, but deposed clearly that she was married with Sham Lal, father of the prosecutrix on 12.2.1985 and the prosecutrix was born three years after marriage. Such statement was a pointer towards the year of birth of the prosecutrix being 1988 as opposed to the date of birth reflected in the school certificate, Exhibit PF/1, being 7.3.1990. Still further, prosecutrix upon being examined as PW14 also did not reveal her own date of birth but deposed clearly that she was elder to her brother Yogesh and whose date of birth was 30.8.1990. Under such circumstances, the trial Court has rightfully disbelieved and discarded the certificate, Exhibit PF/1, as regards date of birth of the prosecutrix being 7.3.1990. Dr.Lalita, who conducted the ossification test of the prosecutrix as also her report, Exhibit PO, has found age of the prosecutrix to be 16-1/2 to 17 years as on 5.4.2004.

7. I do not find any infirmity in the impugned judgment on any count which would call for interference of this Court while exercising its revisional jurisdiction. The impugned judgment is well reasoned and based on appreciation of entire evidence.

8. The scope of revision against acquittal has been examined by the Hon'ble Supreme Court of India in **Bindeshwari Prasad Singh @ B.P.Singh and others v. State of Bihar (Now Jharkhand) and another, 2002(4) RCR (Criminal) 61** wherein their Lordships of the Apex Court had observed that in the absence of any legal infirmity either in the procedure or in the conduct of the trial, there would be no justification for the High Court to interfere in exercise of its revisional jurisdiction. It was further observed that the High Court should not re-appreciate the evidence to reach a finding different than the one arrived at by the trial Court. In the absence of manifest illegality resulting in grave miscarriage of justice, exercise of revisional jurisdiction in such cases is not warranted. It was further observed by their Lordships that in exercise of revisional jurisdiction against an order of acquittal at the instance of a private party, the Court exercises only limited jurisdiction and should not convert itself into an appellate Court which has a much wider jurisdiction to go into questions of facts and law and to convert an order of acquittal into one of conviction. It cannot be lost sight of that when a re-trial is ordered, the dice is heavily loaded against the accused and that itself must caution the Court exercising revisional jurisdiction.

9. Taking into consideration the facts of the case in hand and following the dictum laid down by the Hon'ble Supreme Court

in **Bindeshwari Prasad Singh's** case (supra), the present revision petition is found to be devoid of merit and as such, is dismissed.

10. Petition dismissed.

May 29, 2015

SRM

**(TEJINDER SINGH DHINDSA)
JUDGE**

Note: Whether to be referred to Reporter? (Yes/No)