

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Case No. : CRA-AD No. 789 of 2019

Date of Decision : January 14, 2020

Samina Appellant

vs.

State of Haryana and another Respondents

**CORAM : HON'BLE MRS. JUSTICE DAYA CHAUDHARY.
HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA.**

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Present : Mr. Atul Prataap Dhankar, Advocate
for the appellant.

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MEENAKSHI I. MEHTA, J. :

Feeling aggrieved by the judgment dated 05.08.2019 as rendered by learned Additional District and Sessions Judge, Fast Track Court, Sonapat whereby respondent no. 2 Rahisu had been acquitted of the charges as levelled against him under Sections 365, 376, 506, 201 IPC, the appellant has preferred the present appeal.

2. Shorn and short of unnecessary details, the facts leading to the prosecution of respondent no.2 in the instant case, are that on 26.11.2016, respondent no.2 went to the house of the prosecutrix and asked her to give him Rs.1000/- or Rs.1500/- for the repair of his vehicle which had broken down near the pond of the village. She arranged for the said amount and went to the pond to hand over the same to respondent no.2 but he forcibly pulled her inside the car and put some cloth on her mouth and she fell

unconscious. On regaining the consciousness, she found herself at an unknown place and respondent no.2 raped her while threatening that if she disclosed this incident to anyone, he would kill her as well as her family members. On the next day, respondent no.2, along with his relatives Sattar and Irshad, brought her to the Police Station Sadar, Sonapat and while threatening her, he asked her to make a statement before the police regarding her having voluntarily gone with him. She signed some documents at the said Police Station and then, she was taken to Police Station Kundli and her husband and brother, who had come there, took her to Village Jatwara, Sonapat.

3. On the basis of the complaint containing the afore-mentioned allegations of the prosecutrix, a formal FIR was registered and respondent no.2 was arrested. The statement of the prosecutrix was also got recorded under Section 164 Cr.P.C. Respondent no.2 as well as the prosecutrix were got medico legally examined. The site plan of the place of occurrence was prepared and the statements of the witnesses under Section 161 Cr.P.C. were also recorded. On completion of the necessary investigation, the final police report under Section 173 Cr.P.C. was prepared and was forwarded to the Court. Learned Trial Court, after perusing the entire material available on the record, charge-sheeted respondent no.2 for having committed the offences punishable under Sections 365, 376, 506 IPC.

4. The prosecution, in order to substantiate its allegations against respondent no. 2, examined as many as eighteen witnesses including the prosecutrix as well as her husband and sister and respondent no.2 also

examined four witnesses in his defence evidence.

5. Learned Trial Court, after the appraisal and evaluation of the evidence as led on the file, acquitted respondent no. 2 of the charges as framed against him while concluding that the prosecution had not been able to establish its allegations against him beyond reasonable doubt and rather, it was a case of the consent of the prosecutrix and not of the rape committed upon her by him.

6. We have heard learned counsel for the appellant in the present appeal and have also perused the file thoroughly.

7. Learned counsel for the appellant has contended that while appearing as PW-1, the prosecutrix has fully supported her earlier version as set forth in the formal FIR and her testimony has been duly corroborated by PW-2 Sahid, her husband and PW-5 Sanno, her sister as well as the other material witnesses. The delay in lodging the formal FIR had occurred due to the threat given by respondent no.2 to the prosecutrix to eliminate her and her family members in the eventuality of her disclosing the factum of her having been raped by him, to the police or any other person but however, learned Trial Court did not appreciate and evaluate the testimonies of the prosecution witnesses in the right perspective and acquitted respondent no.2 of the charges framed against him and hence, the impugned judgment is liable to be set aside.

8. Before advertng to the discussion on the merits of the present appeal, we deem it expedient and appropriate to mention here that undoubtedly, the Court of Appeal can sift through the entire evidence as led

by the parties on the file and re-evaluate and re-appreciate the same. However, in the eventuality of an appeal against a judgment of acquittal, the Appellate Court is required to be more circumspect/vigilant as there exists a presumption of the innocence of an accused person and this presumption gets fructified in case of his acquittal by the Trial Court and in these circumstances, the interference by the Appellate Court is warranted only if the findings, as recorded by the Trial Court, are erroneous to the extent to be termed as perverse.

9. It has been held by Hon'ble Apex Court in **Mahavir Singh vs. State of Madhya Pradesh 2017(1) RCR (Criminal) 414** that –

“12. In the criminal jurisprudence, an accused is presumed to be innocent till he is convicted by a competent Court after a full-fledged trial, and once the Trial Court by cogent reasoning acquits the accused, then the reaffirmation of his innocence places more burden on the appellate Court while dealing with the appeal. No doubt, it is settled law that there are no fetters on the power of the appellate Court to review, reappreciate and reconsider the evidence both on facts and law upon which the order of acquittal is passed. But the court has to be very cautious in interfering with an appeal unless there are compelling and substantial grounds to interfere with the order of acquittal. The appellate Court while passing an order has to give clear reasoning for such a conclusion.”

10. Further, in **Gangabhavani vs. Rayapati Venkat Reddy and**

others 2013 (4) R.C.R. (Criminal) 853, the limitations have been placed upon an Appellate Court while examining a judgment of acquittal, in the following para :-

“6. This Court has persistently emphasised that there are limitations while interfering with an order against acquittal. In exceptional cases where there are compelling circumstances and the judgment under appeal is found to be perverse, the appellate court can interfere with the order of acquittal. The appellate court should bear in mind the presumption of innocence of the accused and further that the acquittal by the lower Court bolsters the presumption of his innocence. Interference in a routine manner where the other view is possible should be avoided, unless there are good reasons for interference.”

11. To add to it, while examining the issue of two views being possible on the basis of the evidence available on the record, Hon'ble Apex Court has made the following observations in Brahm Swaroop and another vs. State of U.P. 2010 (4) R.C.R. (Criminal) 898 –

“26. It is well established in law that the appellate court should not ordinarily set aside a judgment of acquittal in a case where two views are possible, though the view of the appellate court may be more, the probable one. While dealing with a judgment of acquittal, the appellate court must consider the entire evidence on record, so as to arrive at a finding as to whether the views

of the trial Court were perverse or otherwise unsustainable. The appellate court is entitled to consider whether in arriving at a finding of fact, the trial Court had failed to take into consideration any admissible evidence and/or had taken into consideration evidence brought on record contrary to law. Similarly, the incorrect placing of the burden of proof may also be a subject matter of scrutiny by the appellate court. The court of appeal may not interfere where two views are possible for the reason that in such a case it can be held that prosecution failed to prove the case beyond reasonable doubt and accused is entitled for benefit of doubt.”

12. Coming to the merits of the present appeal, it is pertinent to mention here that as highlighted in para no.35 of the impugned judgment, the stand as taken by the prosecutrix while making statement under Section 164 Cr.P.C. and at the time of deposing in the Court as PW-1 has not been consistent on various material particulars as in her statement under Section 164 Cr.P.C, she has stated that she was alone in her house when respondent no. 2 came to her house asking for the amount of Rs.1000/- or Rs.1500/- for the repair of his car and during her cross-examination as PW-1, she has stated that her daughter, aged 14 years, was also present in the house at that time but however, the daughter of the prosecutrix has not been examined by the prosecution as its witness whereas she could have been the best person to corroborate the version of the prosecutrix regarding the visit of respondent no. 2 to their house. Further, during her examination-in-chief as

PW-1, the prosecutrix has stated that the police had taken her inside the Police Station whereas respondent no.2 and his two relatives had remained outside the Police Station but during her cross-examination, she has stated that none had accompanied respondent no.2 when he dropped her at Police Station Sadar, Sonapat. She has also deposed that the complaint Exhibit PW-1/A was got typed by her husband but later on, she stated that it had been typed by the typist on her dictation. These discrepancies cannot be said to be minor in nature and when taken together, these cast a shadow of doubt on the version of the prosecutrix.

13. Moreover, learned Trial Court has also observed that the prosecutrix, while deposing as PW-1, has also stated that prior to the date of occurrence, she had not noticed or observed that respondent no.2 was having an evil eye upon her and she has also admitted that in photographs Exhibits D-1 to D-4, she was seen with respondent no.2 and her child. Though she has tried to explain that these photographs were clicked by respondent no.2 forcibly but learned Trial Court has categorically observed in para no.35 in the impugned judgment that in photographs Exhibits D-2 and D-3, the prosecutrix was looking in joyful mood and respondent no.2 had put his hand on her shoulder and there was no impression of any threat to her at his instance. These facts and circumstances also make the prosecution version highly doubtful.

14. To cap it all, the alleged occurrence is stated to have taken place on 25.11.2016/26.11.2016 whereas the formal FIR has been lodged on 04.01.2017, i.e. after an inordinate delay of 40 days. Though the

prosecutrix, while appearing as PW-1, has tried to explain this delay by deposing that respondent no.2 had threatened her with dire consequences in case she reported the matter to anyone. Thereafter, she mustered courage and disclosed about the entire incident to her husband and other family members and then, she moved the complaint Exhibit PW-1/A before Superintendent of Police, Sonapat. It is worthwhile to mention here that PW-2 Sahid, the husband of the prosecutrix, has stated that he had moved a complaint at Police Station Kundli regarding his wife having gone missing and then, he received a phone call from Police Station Kundli and had gone there along with his brother-in-law Harun. PW-5 Sanno, the sister of the prosecutrix has also deposed that the prosecutrix had disclosed at Police Station Kundli regarding a quarrel having taken place between her and her husband and thereafter, her having left her matrimonial house. From the above discussed evidence, it is explicit that at Police Station Kundli, the husband and brother of the prosecutrix were also present and she could have disclosed about the alleged incident at that time also. Moreover, being present at the Police Station, she could not be expected to be under any pressure or threat at the hands of respondent no.2. To add to it, her sister, PW-5, has stated that after 3-4 days of the incident, she again inquired from the prosecutrix and then, she disclosed to her (PW-5) about the entire alleged occurrence, meaning thereby that her sister had also come to know about this occurrence just after 4-5 days and as such, the prosecutrix cannot be presumed to be under any threat at that time. These facts and circumstances speak volumes of the fact that the above said delay in lodging

the FIR does not stand justifiably and plausibly explained and it eats into the vitals of the entire case of the prosecution.

15. All the facts and circumstances as discussed in the preceding paragraphs, when applied on the touchstone of the principles as laid down by the Hon'ble Supreme Court in Mahavir Singh (supra), Gangabhavani (supra) and Brahm Swaroop (supra), make it crystal clear that the findings of learned Trial Court do not suffer from any infirmity, illegality or perversity and there are no cogent reasons to interfere with the same.

16. As a sequel of the foregoing discussion, this appeal being devoid of any merit, is hereby dismissed.

(DAYA CHAUDHARY)
JUDGE

(MEENAKSHI I. MEHTA)
JUDGE

January 14, 2020
monika

Whether speaking/reasoned ?	Yes/No.
Whether reportable ?	Yes/No.