

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

209

CRA-AD-91-2022

Decided on : 25.07.2022

Ikram

... Appellant

Versus

Mukaram and another

... Respondents

**CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA
HON'BLE MR.JUSTICE VIKAS SURI**

Present: Mr. Harsh Mehla, Advocate for the appellant.

G.S. Sandhawalia, J. (Oral)

The appellant is in appeal against the judgment dated 25.11.2021 of acquittal passed by the Special Court, Yamuna Nagar at Jagadhri, whereby respondent No.1 has been acquitted of the charge under Sections 376 (3), 506 of Indian Penal Code (for short 'IPC') and Section 4 of the Protection of Children from Sexual Offences Act, 2012 (for short 'POCSO Act').

The reasoning given by the Special Court as such is that since the victim was not minor at the time of offence, therefore, the charge under Section 4 of the POCSO Act could not be applicable and secondly the Court came to the conclusion that the victim was a consenting party and being an adult it could not be held that the rape had been committed upon her.

Counsel for the appellant has tried to persuade us to the extent that there was medical evidence in the form of DNA Report, which goes on to show that human semen was detected on the shirt of the victim, which co-related to respondent No.1 and, thus, the judgment of the trial Court is not sustainable. He submits that there is a presumption as such under Section 114A of the Indian Evidence Act, 1872 regarding offence under Section 376 (2) (f) IPC and, therefore, the Court failed to take into

consideration the fact that the statement of the victim was sufficient to show that rape had been committed. Reliance is placed upon the judgment of the Apex Court passed in **Yedla Srinivasa Rao Vs. State of A.P., (2006) 11 SCC 615** and **State of H.P. Vs. Shree Kant Shekari, (2004) 8 SCC 153** to further contend that the statement of victim was not to be treated as an accomplice but as an injured witness and, therefore, once the prosecutrix has supported the case, there is no ground for the trial Court to acquit respondent No.1.

We have gone through the judgment of the trial Court in detail. The factual matrix which arises out of the incident would go on to show that the parties are closely related and they are first cousins. The incident is of 10.04.2019, whereas the FIR was lodged only on 13.04.2019 and respondent No.1 was also arrested on the said date. It is the case of the victim herself as noticed by the trial Court that respondent No.1 is son of her uncle (*Tau*), who had asked her to come to his house as he wanted to solemnize marriage with her. She had gone to his house and respondent No.1 had committed bad act with her and threatened to kill her. His parents reached at the spot and saw them but did not say anything, but his father called up her *Mausa* (maternal uncle).

It is apparent as noticed by the trial Court that on account of the fact that the relationship having been discovered as such by close relatives and the factum being revealed to everyone, the FIR had been lodged after a period of 3 days. Thus, the benefit of doubt has to go to respondent No.1 and delay in such circumstances is fatal, as apparently

the FIR was then lodged after a period of 3 days. It has come on record that the present appellant, father of the victim, was not keen to solemnize the marriage of his daughter with respondent No.1, rather she was already married with Noorden.

It is not disputed that it is common practice in the community as such to marry *inter se* amongst cousins and it has also come on record which the trial Court had also noticed that the victim had stepped into the witness-box and clarified that she still wants to solemnize marriage with respondent No.1. It has also been recorded that the father of the prosecutrix did not want to solemnize the marriage of the victim with respondent No.1 and it was in such circumstances the FIR was apparently got registered. The same would be also clear from the statement of PW-5, the appellant himself, which has been placed on record as Annexure A-1, wherein it has been stated that he did not want to solemnize the marriage of her daughter with the accused since the very beginning. In the cross-examination, PW-5 had admitted that the entries regarding his entire family were mentioned in the family register maintained by Department of Birth & Death and he had not given the record of family register to the police during the investigation.

It has also come on record that the prosecutrix was already married to one Noorden about 1½ years back and as pointed out by the counsel for the appellant that the said marriage has not consummated. It is, thus, apparent that the victim was also aware that she was already married at that point of time and, thus, there was no question of her being

allured on the ground of marriage by respondent No.1.

The date of birth of the victim/prosecutrix is 21.01.2001 as per the family register maintained in Gram Panchayat, Lakhnauti, which was proved as Ex.D2 by DW1 Vikrant Tyagi, Panchayat Officer, since the record was called from Gram Panchayat Lakhnauti, District Saharanpur, Uttar Pradesh. It has also come on record that the complainant/appellant could not deny the factum of said date of birth and further admitted that all his children were born in village Lakhnauti. In such circumstances, the other proof regarding the date of birth being 01.06.2003 had been rightly discarded by the trial Court, which was a School Leaving Certificate of Government Primary School, Sakroor, District Saharanpur, since it was noticed that the age which had been mentioned had been disclosed by the parents. It was also noticed by the trial Court that the date of birth of two brothers of the victim namely 'Tauf' and 'Taus' has also been mentioned as 19.08.2005 and 07.08.2005 and then the witness herself stated that the entry relating to Tauf had been made in the year 2004 with pencil and, thus, the said entry was validly discarded.

Once the age as such has not been proved to be below 18 years, the offence under Section 4 of the POCSO Act would not be made out and, therefore, the trial Court has rightly acquitted respondent No.1. The view which has been taken cannot be stated to be a perverse view and there is a double presumption of innocence in favour of respondent No.1 now. The trial Court had also noticed that the victim had stated that

she is still wanting to marry respondent No.1 and even her family members are ready to solemnize the marriage, but the relatives of the accused were not agreeable. The trial Court had noticed that a different version had been given in her previous statement and the statement recorded in the Court and remaining silent regarding the fact that the couple had been seen by the parents of respondent No.1, who in turn informed her *Mausa*.

It can, thus, be said that the said evidence of the victim is not of sterling in nature, which would inspire confidence and, therefore, the judgment relied upon by the counsel in **Shree Kant Shekari (supra)** as such would not be applicable. Even otherwise that was a case of a teacher having sexual intercourse with his student, wherein the Apex Court had set aside the judgment of the High Court which had allowed the appeal of the appellant and set aside the conviction which had been handed out by the trial Court. Similarly in **Yedla Srinivasa Rao (supra)** it was a case where the victim had become pregnant on account of consensual intercourse on the pretext of marriage, which has led to the proposition of law being laid down that consent was not obtained willingly and had been obtained by holding a false promise, which the accused never intended to fulfill.

In the present case we have noticed that it is more on account of the fact that the relationship was discovered by the close relatives and on account of the said fact in order to save face amongst themselves, apparently the FIR was lodged after a period of 3 days. The issue of

delay as such which would be thus fatal to the case of the complainant and the prosecution and is an additional feature that would not persuade us to interfere in the well reasoned order passed by the trial Court, which apparently does not suffer from any perversity. It is settled principle that until the judgement is perverse and has not addressed all the factors, the Appellate Court shall not interfere in the judgement of acquittal.

Accordingly, keeping in view the cumulative discussion, we are of the considered opinion that no case is made out to interfere in the well reasoned order passed by the trial Court. Resultantly, the appeal is dismissed.

(G.S. SANDHAWALIA)
JUDGE

(VIKAS SURI)
JUDGE

July 25, 2022
Naveen

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No