

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

CRA-AD-151-2022

Date of Decision: 31.08.2022

G**(NAME WITHHELD)**

..... Appellant(s)

Versus

STATE OF PUNJAB AND OTHERS

..... Respondent(s)

**CORAM:- HON'BLE MRS. JUSTICE LISA GILL
HON'BLE MR. JUSTICE HARSH BUNGER**

Present: Mr. Gurcharan Dass, Advocate
for the appellant.

LISA GILL, J.

Appellant-prosecutrix seeks to appeal against judgment dated 24.01.2022, passed by learned Additional Sessions Judge (Fast Track Special Court), Ludhiana, whereby respondent no.2 has been acquitted of the charges against him in FIR No.13 dated 07.02.2020, registered under Sections 376, 506, 201 of IPC.

Brief facts necessary for adjudication of the matter are that above said FIR was registered on the statement of the prosecutrix, recorded on 07.02.2020 to the effect that she was married with two children and used to work on commission basis for getting loans sanctioned. For this purpose, she used to give her mobile number to customers, who used to call her for the purpose of obtaining loan. Earlier, loan was obtained for one Mukesh Kumar. Respondent no.2, a friend of Mukesh Kumar approached the prosecutrix for the purpose of obtaining loan and took her mobile number. It is stated that 7/8 months prior to registration of FIR, respondent no.2 called her from mobile no.7888348368 upon her mobile number as mentioned in the FIR and asked her to come to his house. When prosecutrix reached his

house, respondent no.2 was all alone and he offered a cold drink to her. After consuming the same, she fell unconscious and on regaining her senses she found herself in nude condition. Respondent no.2 disclosed that he had made a movie/video of the prosecutrix and in case she raised any alarm or disclosed about the occurrence to anyone, he would upload the same on social media. He further proclaimed that prosecutrix thereafter had to come as and when he would call her. It is further stated that respondent no.2 started black-mailing her on the pretext of making the aforesaid movie viral and extorted money. He also called the prosecutrix at various places and established physical relations with her. A sum of Rs.2.50 lakhs is stated to have been extorted by respondent no.2 with continuing threats to the prosecutrix and demand of more money. It is further stated that a cousin of respondent no.2 namely Sukhvir Singh used to click photographs of the prosecutrix even alongwith her family members and send the same through Whatsapp to respondent no.2, which were further forwarded by respondent no.2 to the prosecutrix through Whatsapp. It is further alleged that 2 to 3 months prior to registration of FIR, respondent no.2 physically assaulted the prosecutrix outside her house and opposite a stall of slippers adjacent to ATM of HDFC Bank, Basti Jodhewal. Statement of the prosecutrix was recorded under Section 164 Cr.P.C., on 26.02.2020. After completion of investigation, final report/challan under Section 173 Cr.P.C. was presented. Case was committed to the Court of Sessions and charge-sheet framed against respondent no.2 under Sections 376(2)(n), 506, 201 of IPC.

Respondent no.2 pleaded not guilty and claimed trial. Prosecution examined as many as 15 witnesses to buttress its case. The accused was confronted with the entire incriminating evidence. He denied

the same claiming innocence and pleaded false implication. His statement was recorded under Section 313 Cr.P.C. It was pleaded by respondent no.2 that there was a money dispute between him and the prosecutrix regarding some committee amount (chit fund) and some product amount. It was only in order to escape liability of payment of the amount that he had been falsely implicated in the matter. No evidence was led in defence.

Learned trial Court finding material discrepancies in the statement of the prosecutrix, mother of the prosecutrix (PW4) and vital contradictions coupled with the unexplained delay in lodging of the FIR besides the fact that no photographs/video clips were recovered, concluded that sufficient evidence was not available on record to convict respondent no.2, who was accordingly acquitted of the charges against him. Aggrieved therefrom, present appeal has been filed.

Learned counsel for the appellant vehemently argues that learned trial Court has grossly erred on facts and in law in acquitting respondent no.2 of the charges against him. It is submitted that statement of the prosecutrix in examination-in-chief has not been considered in its entirety wherein prosecutrix has categorically stated that respondent no.2 had called her to his house on the pretext of issuance of a loan and that when prosecutrix had reached the house of respondent no.2, he was alone in the said house and offered her a cold drink. Consuming the same, she became unconscious. It is submitted that prosecutrix has clearly stated that respondent no.2 admitted to have ravished her and photographed the incident and he also showed her the said video clip, while threatening that in case any alarm was raised the video would be uploaded on the social media.

Specific allegation regarding Sukhvir Singh had also been levelled by the

prosecutrix in her statement before the learned trial Court. It is submitted that the prosecutrix clearly deposed that respondent no.2 had assaulted her when she was alone with him. Detail of the money which was obtained from Hardeep Singh, Dharmesh and Arjun Kumar, to be given to accused has also been given in the statement. Learned counsel submits that evidence of the prosecutrix in examination-in-chief has unnecessarily been negated and statement of the prosecutrix in itself is enough and sufficient for conviction of the accused and there is no need/requirement of any further proof. Therefore, learned trial Court erred in acquitting respondent no.2. It is further submitted that specific allegation was raised against one Sukhvir Singh, who was summoned under Section 319 Cr.P.C. but later discharged erroneously. Police authorities did not take necessary steps for proceeding against the said co-accused.

In the same vein, it is argued that police authorities did not conduct proper investigation in the matter as it was the duty of the police authorities to have collected record from the cellphone companies regarding photographs and video clips as it is the specific case of the prosecutrix that video clips etc. in her mobile had been deleted by her. Learned counsel further argues that recording of statement under Section 164 Cr.P.C. to the effect that she did not have any dispute with any person, is of no value inasmuch as the same was admittedly recorded in the presence of her husband. Appellant's husband did not want her to pursue the matter, therefore, it cannot be said that said statement was voluntary or without any pressure or coercion. Benefit thereof is thus not available to respondent no.2, therefore, reference to the same by learned trial Court is misplaced. It is submitted that appellant has been subjected to rape multiple times at the

hands of respondent no.2, she has faced traumatic circumstances and in the given circumstances acquittal of respondent no.2 should be set aside and he should be convicted for the offences as charged and sentenced in accordance with law.

We have heard learned counsel for the appellant and have gone through the file as well as photocopy of the evidence produced by him in Court today.

It is a matter of record that prosecutrix, aged about 30 years, stated at the first instance as recorded in the FIR that 7 to 8 months prior to registration of FIR, she proceeded to the house of respondent no.2 when he had called her in connection with obtaining of a loan. She was administered a cold drink laced with some intoxicant, on consuming of which, she lost consciousness. When she regained consciousness, she found herself in a nude condition and was purportedly told by respondent no.2 that a video clip of hers had been prepared and under threat of making it viral, he started extorting money from her and also called her at various places for sexual favours. In her examination-in-chief before the learned trial Court, it is stated by the prosecutrix that she was subjected to rape by respondent no.2 on the occasion when she had gone to the house of respondent no.2. At this stage, it is relevant to note that PW4 - mother of the prosecutrix has been examined by the prosecution, who stated that respondent no.2 forcibly took her daughter in a room and committed rape upon her after locking it, without her consent and wishes, besides threatening them with uploading of the video of the prosecutrix on social media. It is pertinent to note that prosecutrix in her cross-examination has categorically denied presence of her mother at the time of said incident. It is specifically stated by the

prosecutrix that her mother did not accompany her when she visited the house of the accused. Prosecutrix further stated that she never raised any hue or cry when the incident in question took place. Apart from the above, it is to be noted that the prosecutrix who is admittedly a mature married woman with two children, never deemed it appropriate to complain about this matter or raise any objection for a number of months and continued to succumb to the alleged wishes of respondent no.2 as per his whims and fancies.

Another peculiar aspect to be noted at this stage is that in the examination-in-chief prosecutrix has stated that she was subjected to physical abuse at the hands of respondent no.2 when she was alone with him. In her cross-examination prosecutrix has stated that she was beaten by the accused in her house 3 – 4 times in the presence of her husband and then stated that she was beaten only once in the presence of her husband but no complaint was ever filed before the police with regard to this assault carried out in the presence of her husband. There is no medical evidence to substantiate such allegations. It is relevant to note that narration as above of the prosecutrix does not inspire much confidence. It is highly improbable that a third person would come and assault the prosecutrix in the presence of her husband, but still no action would be initiated and the person would be allowed to go scot free. The argument that consent, if any, was given under fear of the video being made viral, is devoid of any merit, hence rejected. It is a matter of record that no video clip or photograph etc. has come on record. It is the categoric case of the prosecutrix that video clips/photographs in question were not only shown but sent to the prosecutrix on her mobile phone. No such video clip/photograph has been

presented in evidence. Plea that such photographs and video clips had been deleted by the prosecutrix, thus it was the duty of the investigating agency to have collected the relevant data from the cellphone provider, is clearly devoid of any merit. There is nothing on record to indicate that any application whatsoever had ever been moved in this regard by the prosecutrix. Entire narration by the prosecutrix in the factual matrix of the case fails to inspire confidence. Doubtlessly sole testimony of the prosecutrix in certain circumstances can be sufficient to convict an accused but her testimony should be blemish free and inspiring confidence. Testimony of the prosecutrix can be acted upon without corroboration in material particulars, as admittedly, she is not an accomplice but the victim, however in a given factual matrix, it is open to the Court to seek assurance in respect to the testimony. Reference in this regard can gainfully be made to the judgments of the Hon'ble Supreme Court in ***State of Himanchal Pradesh Vs. Shree Kant Shekari, 2004 (4) RCR (Criminal) 345 (SC)*** and ***State of Haryana Vs. Basti Ram 2013(4) SCC 200***. In the present case, testimony of the prosecutrix is such which does not inspire such confidence which dispels the need and requirement of assurance thereof from the attending circumstances and evidence on record.

Learned trial Court on appreciation of the evidence on record has indeed correctly concluded that prosecution has failed to prove its case beyond reasonable doubt against respondent no.2. It is to be noted that the prosecutrix claimed that she came in contact with respondent no.2 when he approached her in connection with obtaining a loan. In this respect, testimony of PW7 Hardeep Singh is relevant. PW7 – Hardeep Singh in his cross-examination categorically stated that he is running a committee/chit

fund and that the prosecutrix as well as respondent no.2 are members of the said committee/chit fund. It is in fact, stated by PW7 that the committee was started through respondent no.2.

It is further to be noted that there is an unexplained delay in lodging of FIR. The occurrence as per the prosecutrix took place in July or August, 2019 whereas her statement was recorded before the police on 07.02.2020. Medical evidence on record also does not support the prosecution. It is a matter of record that no male genetic contribution was found on the vaginal swabs and slides of the prosecutrix. PW2 Dr. Lakhwinder Kaur, who conducted the medical examination of the prosecutrix found no mark of injury external or internal. Though, delay in lodging of FIR or absence of injuries etc. on the person of the prosecutrix by itself may not be sufficient to throw out the case of the prosecution but in the given circumstances when combined with other attending circumstances, the same come forth as some of the contributing factors shattering the veracity of the prosecution version. There is indeed no evidence on record to indicate that the prosecutrix was subjected to rape at the hands of respondent no.2. The ingredients of rape as set out in Section 376 IPC are not made out on the basis of evidence on record. Statement of the prosecutrix, PW-6 and PW-7 in fact reveal the chinks in the prosecution case not only in respect to the allegation of extortion of sum of Rs.2.5 lacs by respondent no.2, but in regard to allegations of rape as well.

It is further to be noted that learned trial Court has taken in account the statement of the prosecutrix recorded under Section 164 Cr.P.C. on 26.02.2020 wherein she stated that she did not have any dispute with any person and wished to finish everything but she sought that the accused

should not interfere in her life in future. It is further stated that this statement is given by her out of her own freewill and volition. Learned counsel has sought to argue that this statement is not voluntary as husband of the prosecutrix was present at that time and that her husband did not want her to take any action in this matter. It is pertinent to note that this ground/stand regarding husband of prosecutrix not wanting her to come forward apart from being highly improbable has not been raised at any stage by the prosecutrix before the learned trial Court and the same is being sought to be argued before this Court for the first time. Prosecutrix did not state any such fact before the learned trial Court in her testimony. Moreover, a full fledged trial has taken place after recording of statement of the prosecutrix under Section 164 Cr.P.C. Therefore, it is not that acquittal of respondent no.2 is based on the said statement itself. At best, it can only be taken as one of the contributing factors, if at all. Perusal of the facts and circumstances clearly point out that prosecution has been unable to prove its case against respondent no.2 beyond reasonable doubt. In the given factual matrix, learned trial Court has rightly proceeded to acquit respondent no.2 of the charges against him.

It is a settled position that there have to be strong, compelling and substantial reasons to set aside acquittal of the accused. Simply because another view may be possible, cannot be a ground for reversing a judgment of acquittal. Hon'ble Supreme Court in *Arulvelu v. State represented by the Public Prosecutor 2009 (10) SCC 206* held that :-

“ Unquestionably, the Appellate Court has power to review and re-appreciate the entire evidence on record. The appellate court would be justified in reversing the judgment of acquittal only if there are substantial and compelling reasons and when the judgment of the trial

court is found to be perverse judgment. Interfering in a routine manner where other view is possible is contrary to the settled legal position crystallized by aforementioned judgments of this Court. The accused is presumed to be innocent until proven guilty. The accused possessed this presumption when he was before the trial court. The trial court's acquittal bolsters the presumption that he is innocent. This fundamental principle must be kept in view while dealing with the judgments of acquittal passed by the trial court."

Reference in this regard can also be made to judgment of Hon'ble Supreme Court in **Criminal Appeal No. 2119 of 2010 (State of Rajasthan versus Kistoora Ram)** decided on 28.07.2022, wherein it is held that it is not permissible to interfere with finding of acquittal unless it is found that view taken by Court is impossible or perverse.

Learned counsel for the appellant is unable to point out any illegality, infirmity or perversity in the impugned judgment dated 24.01.2022, passed by learned Additional Sessions Judge (Fast Track Special Court), Ludhiana, which calls for any interference by this Court in this appeal.

No other argument has been raised.

Accordingly, appeal is dismissed with no order as to cost.

(LISA GILL)
JUDGE

(HARSH BUNGER)
JUDGE

31.08.2022
Sunil

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No