

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-A-743-2019 (O&M)

Reserved on:15.09.2022

Date of decision:23.09.2022

Reena Rani

...Applicant/appellant

Versus

State of Haryana and others

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE N.S. SHEKHAWAT

Present: Mr. J.S. Toor, Advocate,
for the applicant/appellant.

Mr. Anmol Malik, DAG, Haryana.

Mr. Chander Pal Tiwana, Advocate,
for respondent No.2.

Ms. Shalini Sharma, Advocate,
for respondent No.3.

N.S. SHEKHAWAT, J.

The instant application under Section 378 (3) of the Code of Criminal Procedure as well as the appeal arise out of the judgment dated 05.11.2018 passed by the learned Additional Sessions Judge, Kaithal, whereby the respondents-accused were acquitted of the charges under Sections 365, 342 read with Sections 34 and 376-D of the Indian Penal Code, by extending the benefit of doubt to them. Feeling aggrieved, the applicant/appellant has moved the present application with a prayer to grant leave to appeal against the impugned judgment.

Shorn of unnecessary details, the brief facts of the case are that

the applicant-appellant has assailed the said judgment by taking various grounds, as pleaded in the grounds of appeal. The FIR in the instant case was lodged by the victim (name of the victim has been withheld as per provisions contained under Section 228-A IPC and has been referred as 'the victim'), aged about 30 years, by alleging that at about 07.00 PM on 25.07.2017, she had gone to the courtyard (Bara) to throw dung and in the meantime the accused Sukhdev Singh @ Sukha (respondent No.2 herein) came there and tried to give a mobile phone to her forcibly. The victim refused to take the mobile phone and on this, accused Sukha (respondent No.2) extended threats to kill her and made her to smell intoxicant substance forcibly; due to which, the victim became semi-conscious. Then accused Sukha (respondent No.2) called co-accused Ran Singh (respondent No.3 herein) at the spot and both of them made the victim to sit on motorcycle and they took her to Kaithal City. Both of them forcibly confined the victim in an abandoned house till 27.07.2017 and committed bad act with the victim. On 27.07.2017, both the accused left the victim near a Gurudwara in Kaithal and threatened that in case, she disclosed anything to anyone, they would kill her and her family. Out of fear, she did not tell anything to any other person and when her parents came on that day, she disclosed everything to her parents and family members. Prior to this also, accused Sukhdev Singh @ Sukha (respondent No.2) had teased her many times and panchayats were held in the village and respondent No.2 also apologized for his mistake in the presence of panchayat. She also alleged that her husband had lodged a missing report in Police Post, Sangatpura in this regard and prayed for a legal action against the accused.

After registration of the FIR, Ex.PU, the police swung into action and visited the place of occurrence. The police inspected the place from where she was kidnapped and also the place, from where she was abducted by the accused. Scaled site plans, Ex.PN and Ex.PO were prepared and the statement of the victim was recorded under Section 164 Cr.P.C. on 05.08.2017 by the Court of learned Judicial Magistrate 1st Class, Kaithal. The statements of the witnesses were also recorded and finally, the challan was presented in the court of competent jurisdiction against respondents No.2 and 3. Since the offences under Sections 328/365/342/376-D and 506 IPC were exclusively triable by the Court of Session, the case was committed to the Court of Session for trial. Finding a prima facie case against accused/respondents No.2 and 3, they were charge sheeted for the offences punishable under Sections 365, 342 read with Sections 34 and 376-D IPC vide order dated 16.02.2018 passed by the learned trial Court, to which they pleaded not guilty and claimed trial.

During the course of trial, the prosecution rested its case on the testimonies of 16 prosecution witnesses; however, the accused did not lead any evidence to prove their defence. Vide the impugned judgment of acquittal dated 05.11.2018, the learned trial Court noticed various discrepancies in the case of the prosecution; held the prosecutrix/victim to be unreliable and found that the medical evidence did not support the case of the prosecution, finally acquitted respondents No.2 and 3.

Learned counsel for the applicant-appellant vehemently contended that without any rationale or reason, the learned trial Court wrongly disbelieved the version of the prosecution and committed grave

error in acquitting the accused-respondents No. 2 and 3. All the prosecution witnesses had supported the version of the victim (PW-1), who herself had made a consistent statement against the accused and the evidence led by the prosecution was trustworthy. The learned trial Court overlooked the settled law to the effect that seeking corroboration of the statement of a victim in a crime against woman amounts to adding insult to the injury. Still further, it has been submitted that the victim was a mother of three children and she was medico legally examined after almost one week of the commission of the crime and in that eventuality, no common poison/drug could be detected in the urine. Moreover, the accused had made the victim to smell some intoxicating substance and it was not swallowed by the victim and she had only become semi-conscious due to the smell of the said substance. It has further been contended that the delay in reporting the matter stood well explained by the prosecution and the learned trial Court had made observations, which are apparently unsustainable.

On the other hand, learned counsel for the State as well as respondents No.2 and 3 have vehemently opposed the submissions made by learned counsel for the applicant-appellant and prayed for dismissal of the application for leave to appeal as well as the appeal.

We have heard the learned counsel for the parties at length and minutely examined the case file including the lower court record.

This Court has perused the testimonies of the various prosecution witnesses who supported the case of the prosecution as well as the exhibits, which were placed before the learned trial Court by the prosecution to prove its case. PW-1, the victim, was the most material

witness of the prosecution and her sole testimony could be the basis of conviction of the accused, if it inspired confidence. We agree with the findings recorded by the learned trial Court that the victim herself had self contradicted and had made substantial improvements at every stage. Initially, she lodged the FIR, Ex.PU, by alleging that accused-Sukhdev Singh @ Sukha (respondent No.2) made her to smell some intoxicating substance and she became semi-conscious at that time. He called Ran Singh (respondent No.3) and both of them took her on motorcycle to Kaithal City and she was confined in an abandoned house till 27.07.2017, where both of them committed bad act with her. On 27.07.2017, she was dropped near a Gurudwara in Kaithal City and was threatened not to disclose anything to any other person. She stated that when her parents and family members came on that day, she disclosed everything to them and the matter was reported. It was also stated that her husband had reported the matter regarding her missing from home in Police Post Sangatpura. However, her statement under Section 164 Cr.P.C. (Ex.PB) was recorded on 05.08.2017 by the learned Judicial Magistrate 1st Class, Kaithal, in which she had entirely changed her version. She stated that on 25.07.2017 at about 07.00 PM, she had gone to the courtyard (Bara) to throw the dung and accused-Sukhdev Singh @ Sukha (respondent No.2) tried to give mobile phone to her forcibly and threatened to kill her. Then he called co-accused Ran Singh (respondent No.3) and both of them made her to sit on the motorcycle and thereafter she was made to smell some intoxicating substance and she became unconscious. When she gained consciousness on 27.07.2017, she was lying on the road in front of Gurudwara Baba Ladhana.

Then she went to the house of her parents and disclosed everything to her parents and reported the matter to the police. In the said statement under Section 164 Cr.P.C., there is no allegation of rape against respondents No.2 and 3. Rather a cumulative reading of the FIR, Ex.PU, and statement under Section 164 Cr.P.C. (Ex.PB), would establish that both the statements are mutually destructive.

Another blow to the case of the prosecution was given by PW-1, the victim herself, while appearing as a witness before the learned trial Court. She considerably improved her earlier statement and stated that at about 07.00 PM on 25.07.2017, she had gone to the courtyard (Bara) for putting dung, where accused-Sukhdev Singh @ Sukha (respondent No.2) came and tried to give her a mobile phone. She refused to take the same. She turned back and started walking and in the meantime, accused-respondent No.2 made her to smell some intoxicating substance from a cloth carried by him. Respondent No.2 called a person and took her on motorcycle to an unknown place where accused-respondent No.2 (Sukha) committed rape on her there. When she gained consciousness, she was dropped near a Gurudwara by accused-respondent No.2 (Sukha). She called her family members and was taken to her house. She disclosed all the incident on 28.07.2017 to her mother and also told her husband that she was willing to initiate legal action against the accused. Thereafter, on 29.07.2017, she alongwith her family members went to Police Station Women, Kaithal and reported the matter by moving an application, Ex.PA, on the basis of which, FIR, Ex.PU, was finally registered. On 01.08.2017, she came to the Court premises, where another application was scribed by

Karambir and she and her husband had put signatures on the said application. One application was given to Superintendent of Police, Kaithal and another application was given to the person sitting on a window, but no action was taken.

We have also examined her above statement made before the learned trial Court as PW-1. In her statement as a prosecution witness, she did not level any allegation at all against co-accused Ran Singh (respondent No.3) and allegations of rape were levelled only against accused Sukha (respondent No.2). Even she was declared hostile and was allowed to be cross-examined by the Public Prosecutor. She stated in her cross-examination that she had mentioned the name of Ran Singh (respondent No.3) in her application Ex.PA, but application was scribed by Karambir and she had not disclosed the name of accused Ran Singh to said Karambir. Even the other family members of the victim, i.e. her husband Manu Ram (PW-3), her father Prem (PW-4) and her mother Premo Devi (PW-8) also did not level any allegations against accused Ran Singh (respondent No.3) during the course of trial. It is observed that a victim of rape would be the last person to spare an accused, who is accused of committing rape with her. Still further, she changed her version at every stage and her three statements are on record, which were made before the learned trial Court/police in the shape of Ex.PA, Ex.PB and PW1 and the learned trial Court has rightly held that she had given three different versions even against Sukhdev Singh @ Sukha (respondent No.2) and benefit of doubt was correctly extended to respondents No.2 and 3. Still further, the statement of the victim had inherent infirmities, creating doubt about its veracity and the same has

rightly been disbelieved by the learned trial Court.

It also requires mention at this stage that accused-Sukhdev Singh @ Sukha (respondent No.2 herein) had taken a specific stand/defence that the victim had an extra marital relation with him. When this fact came in the knowledge of her husband, he got the present case lodged against Sukha (respondent No.2) and Ran Singh (respondent No.3). In fact, no such incident had taken place with the victim and the family members of the victim concocted a false story and implicated him in a false case. The husband of the victim caught his wife red-handed while talking to him on phone. Even though, Sukhdev Singh @ Sukha (respondent No.2) produced no evidence to prove the said fact, but, it is hard to find any direct evidence to that effect. However, while the victim/prosecutrix was being cross-examined, the accused got a pen drive played with the permission of the Court to prove the conversation between the victim and him. The victim replied that her voice was not there in the conversation. When she was asked as to whether she was ready to give her voice sample to compare with the voice contained in the pen drive Mark D1, she denied to give her voice sample. Certainly, an adverse inference needs to be drawn against the victim and in favour of respondents No. 2 and 3.

Still further, normally the delay in lodging of First Information Report is not of much significance, because sometimes, the family is not prepared to report the matter immediately to save the honour of the victim or to avoid the social stigma. However, in the instant case, the victim is a married lady, aged about 30 years and is having children. As per the FIR, Ex.PU, she was dropped near a Gurudawara in Kaithal City on 27.07.2017

and was threatened. She informed her family about the incident and still she got the FIR registered on 03.08.2017. Even in the FIR, there is no reference with regard to any reason for delay in reporting the matter to the police. As per her statement under Section 164 Cr.P.C.(Ex.PB), it is stated that she regained consciousness on 27.07.2017 and she went to the house of her parents and told them about the incident. But again, it is apparent that the FIR was lodged after a delay of more than 07 days.

Still further, even as per her testimony, the victim disclosed all incident on 28.07.2017 to her mother and she reported the matter by moving an application, Ex.PA, bearing her signatures. On 01.08.2017, she again came to the court premises and got two applications scribed from Karambir. The said two applications were moved to the office of Superintendent of Police, Kaithal and also to a person sitting on a window, but no such applications were placed on record by the prosecution. Moreover, she stated in the FIR, Ex.PU, that her husband had submitted a complaint regarding the missing report of the victim to Police Post, Sangatpura. However, during the course of trial, no such application was exhibited by the prosecution and this casts a cloud of suspicion on the entire prosecution case.

Still further, the medical record and the reports of Forensic Science Laboratory also do not support the case of the prosecution. PW-5 Dr. Suman Lata, who had medico-legally examined the victim, opined that the possibility of sexual intercourse cannot be ruled out. However, in cross-examination, she admitted that all the symptoms as recorded in the MLR of the victim usually find in all the married women and she had not noticed

any distinguished mark during medical examination of the victim to form her opinion. Apart from that, even the scientific evidence produced by the victim do not support the case of the prosecution. It was alleged by the victim that accused-respondent No.2 (Sukha) made her to smell some intoxicating substance, however, this allegation stands belied by the Forensic Science Laboratory report Ex.PM, which clearly shows that the urine sample of the victim was sent to FSL, Madhuban (Karnal) and as per the result of examination, no common poison/drug could be detected in the same. Thus, the case of the prosecution is also falsified on that count as well.

We have perused the testimonies of PW-3 Mamu, husband of victim, PW-4 Prem, father of the victim and PW-8 Premo Devi, mother of the victim and also find that they had also resiled from their earlier statements recorded under Section 161 Cr.P.C. with regard to Ran Singh, respondent No.3 and also made material improvements in their respective testimonies. However, when we find that the testimony of PW-1, the victim, does not inspire confidence, there is no need to go in detail and discuss their testimonies. However, it can never be stated that the evidence of above-named witnesses is of corroborative nature and rather demolishes the case of the prosecution further.

Even otherwise, the version put forth by the prosecution was highly improbable. From a perusal of the scaled site plans, Ex.PN and Ex.PO, it is apparent that the place from where the victim was allegedly taken away on a motorcycle was situated in a thickly populated area on a wide road. The place of kidnapping was visible to all and was situated in a

village. Similarly the place, where the victim was allegedly subjected to gang rape by respondents No.2 and 3 was also situated in a densely populated area and was surrounded by several houses. Even the said place was situated on a road and was not a secluded place. Apart from that, there were several material contradictions in the case of the prosecution and we do not find it to be a fit case, warranting interference by this Court.

The Hon'ble Supreme Court in **Shyamal Saha and another Vs. State of West Bengal, (2014) 12 SCC 321**, has observed as under:-

"18. The entire case law on the subject was discussed in Chandrappa v. State of Karnataka, 2007(2) RCR (Criminal) 92 : 2007(1) Recent Apex Judgments (R.A.J.) 841: 2007 (4) SCC 415 beginning with perhaps the first case decided by this Court on the subject being Prandas v. State, AIR 1954 Supreme Court 36 It was held in Chandrappa as follows :

"(1) An appellate court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded.

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

(3) Various expressions, such as, 'substantial and compelling reasons', 'good and sufficient grounds', 'very strong circumstances', 'distorted conclusions', 'glaring mistakes', etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of 'flourishes of language' to emphasise the reluctance of an appellate court to interfere with acquittal than to

curtail the power of the court to review the evidence and to come to its own conclusion.

(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court."

19. The principles laid down in Chandrappa were generally reiterated but mainly reformulated in Ganpat v. State of Haryana, 2011(1) RCR (Criminal) 539 : 2011(1) Recent Apex Judgments (R.A.J.) 262 : (2010) 12 SCC 59 though without reference to Chandrappa and by referring to decisions not considered therein. The reformulation of the principles in Ganpat is as follows :

"(i) There is no limitation on the part of the appellate court to review the evidence upon which the order of acquittal is founded and to come to its own conclusion.

(ii) The appellate court can also review the trial court's conclusion with respect to both facts and law.

(iii) While dealing with the appeal preferred by the State, it is the duty of the appellate court to marshal the entire evidence on record and by giving cogent and adequate reasons may set aside the judgment of acquittal.

(iv) An order of acquittal is to be interfered with only

when there are "compelling and substantial reasons" for doing so. If the order is "clearly unreasonable", it is a compelling reason for interference.

(v) When the trial court has ignored the evidence or misread the material evidence or has ignored material documents like dying declaration/report of ballistic experts, etc. the appellate court is competent to reverse the decision of the trial court depending on the materials placed. (Vide Madan Lal v. State of J&K, 1997(4) RCR (Criminal) 89 : (1997) 7 SCC 677, Ghurey Lal v. State of U.P., (2008) 10 SCC 450, Chandra Mohan Tiwari v. State of M.P., 1992(3) RCR (Criminal) 98 : (1992) 2 SCC 105 and Jaswant Singh v. State of Haryana, (2000) 4 SCC 484.)".

The prosecution case, when judged on the touchstone of totality of the facts and circumstances, do not generate the unqualified and unreserved satisfaction indispensably required to enter a finding of guilt against the appellant. Having regard to the evidence on record as a whole, it is not possible for this Court to unhesitatingly hold that the charge levelled against the appellant has been proved beyond reasonable doubt. In our estimate, the view taken by the trial Court is the overwhelmingly possible one. We can never be expected to merely substitute our opinion for that of the trial Court and we have to exercise the discretion very cautiously to correct an error of law or fact, if any, and significant enough to warrant reversal of the verdict of the learned learned trial Court.

In view of the above discussion, we find no ground much less sufficient enough to necessitate the reversal of the verdict passed by the learned trial Court. Consequently, the present application for leave to

appeal is hereby dismissed, being devoid of any merit. Resultantly, the judgment dated 05.11.2018 passed by the learned Additional Sessions Judge Kaithal, is upheld.

Pending application(s), if any, shall also stand disposed off.

Case property, if any, be dealt with, and, destroyed after the expiry of period of limitation. The trial Court record, if any, be sent back.

(SURESHWAR THAKUR)
JUDGE

(N.S. SHEKHAWAT)
JUDGE

23.09.2022

mks

Whether Speaking/Reasoned: YES / NO

Whether Reportable: YES / NO