

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

CRA-AD-61-2021

DECIDED ON: 15th JULY, 2022

VANITA

.....APPELLANT

VERSUS

RAJPREET SINGH @ VICKY AND OTHERS

.....RESPONDENTS

**CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH
HON'BLE MR. JUSTICE SANDEEP MOUDGIL**

Present: Mr. Adarsh Jain, Advocate,
for the appellant.

SANDEEP MOUDGIL, J

This appeal has been filed against the judgment dated 01.09.2021 passed by learned Additional Sessions Judge, Patiala (for short 'Trial Court'), whereby, respondents No.1 & 2 have been acquitted of the charges framed against them under Sections 4 & 17 of the Protection of Children From Sexual Offences Act and 376(3) read with Section 109, 506 & 120-B IPC.

Briefly stated, the present case was registered on the statement of the appellant, who stated that she was a house wife who along with her husband and four children, was residing in the rented house of Gagan Singh in village Sheikhpura Kamboa. Her sister i.e. prosecutrix aged about 12 years studying in 7th class was also residing with them since her childhood.

On 13.04.2019, prosecutrix told her that Bharat Tiwari @ Ravi, who was residing in their neighbourhood, used to harass her sister as and when she goes to school. She disclosed the said fact to her husband who got lodged a report against Bharat Tiwari @ Ravi at Police Station Sadar, Patiala. On the next day, with the intervention of village Panchayat, the matter was compromised between them.

On 07.05.2019 the prosecutrix felt pain in her stomach and on enquiry the prosecutrix started crying and told that their neighbour Bharat Tiwari @ Ravi had been committing rape upon her for the last about 3-4 months by threatening her. When she used to come back from school, he used to take her forcibly to his house and thus committed rape upon her six/seven times. After recording of above statement, complainant thumb marked the same and her husband countersigned it. On the basis of this complaint, investigation started and the prosecutrix was taken to Rajindra Hospital, Patiala for her medical examination. Accused Bharat Tiwari @ Ravi was arrested. Medical examination of the accused was also got conducted.

The statement of prosecutrix was got recorded under Section 164 Cr.P.C in which she narrated that she and her family were on visiting terms with family of neighbour Bharat Tiwari @ Ravi. About 3-4 months ago, one day at about 8.00 a.m., she was going to her school on foot. Accused Bharat Tiwari @ Ravi came there on a motorcycle and asked her as to why she was going on foot. When she replied that her auto rickshaw had not come to pick her up, he proposed to drop her by his motorcycle but she did not readily agree. However, on being insisted by accused Bharat Tiwari @ Ravi, she agreed. The accused Bharat Tiwari @ Ravi telephonically

called his friend Vicky who brought a car there after some time. Then Bharat Tiwari @ Ravi parked his motorcycle there and made prosecutrix to sit in the car. They took the car towards the plots which were in village Sheikhpura. On being questioned, accused Bharat Tiwari @ Ravi told that he had some work in the village, thereafter he would drop her in the school. Thereafter, they took her in a big room in which shutter was installed. Bharat Tiwari @ Ravi gave her a glass of water and went away. One boy namely Johny was also there whose mobile phone was lying on the shelf of that room. Immediately, on drinking water, she became unconscious. When she regained consciousness at about 3.30 pm on that day, she found that Bharat Tiwari @ Ravi was there but other two boys were not there. Then Bharat Tiwari @ Ravi showed her a video in which he was naked and was committing rape upon her. Then Bharat Tiwari @ Ravi threatened to make that video viral if she disclosed the incident to anyone. Thereafter, Bharat Tiwari @ Ravi, Vicky and Johny dropped her under the bridge of Bahadurgarh. Prosecutrix was frightened and did not disclose about the incident at her home. Thereafter, various times, after calling her in his house, Bharat Tiwari @ Ravi had forcible sexual intercourse with prosecutrix by threatening and blackmailing her with regard to said video. Two months ago, Bharat Tiwari @ Ravi called her in a hotel and told her that he would delete the entire video, but did not do so. Then on 13th-14th May, she disclosed about the said incident to her parents as she could not bear the pain anymore. On the basis of statement of prosecutrix, accused Johny and Vicky were nominated in the present case and offence under Section 120-B IPC was added.

After completion of investigation, final report under Section

173 Cr.P.C. was submitted against the accused.

Initially the accused were charge-sheeted for the commission of offence punishable under Sections 120-B, 376 (N) read with Section 120-B and Section 506 IPC on 14.08.2019. However, later on vide amended charge sheet Section 120-B IPC and Sections 4 & 17 of the Protection of Children From Sexual Offences Act or in the alternative under Section 376(3) read with Section 109, 506 & 120-B IPC were added, vide order dated 27.08.2021 to which accused-respondents pleaded not guilty and claimed trial.

Prosecution, to prove the charge against accused, examined as many as 10 witnesses including the victim and the doctor who medico-legally examined the prosecutrix, produced material documents and objects, which were exhibited.

While recording the statement of accused under Section 313 Cr.P.C., they denied all the allegations and pleaded false implication and claimed innocence.

Learned trial Court vide judgment dated 02.09.2021 convicted accused Bharat Tiwari @ Ravi only under Section 6 of POCSO Act and Section 376(3) IPC for rigorous imprisonment of 20 years with fine of Rs.50,000/- but acquitted Vicky-respondent No.1 and Jujhar Singh @ Johny-respondent No.2 of the charges framed against them,

Present appeal has been filed by the complainant challenging the acquittal of respondents No.1 & 2.

It is worth noticing here that against the judgment of conviction and order of sentence, accused Bharat Tiwari @ Ravi has filed appeal No. CRA-D-616-2021, which stands admitted.

Counsel for the appellant submits that qua respondents No.1 & 2, the trial Court erroneously passed the said judgment without discussing the factual position. There is a cogent and reliable evidence on the record that respondents No.1 & 2 were the accomplices in conspiracy to the commission of the offence. The compromise (Mark B-1) bears the signatures of respondent No.2 as a witness which belies the stand taken by respondents that they had no acquaintance with accused Bharat Tiwari @ Ravi.

It is asserted that a white car was brought by accused Vicky who drove the victim to the shop of Johny., It was Johny who put the shutter down, after entry of the said car. They were very much present on the spot at the time of commission of rape by Bharat Tiwari @ Ravi. So, the factum of conspiracy by respondents No.1 & 2 by aiding the main accused is very much proved on record, which has been wrongly discarded by the learned trial Court on the premise that they were not named in the first version given by the complainant. It is further asserted that a detailed statement cannot be said to be an improvement of the earlier version. The impugned judgment is against principles of Criminal jurisprudence as the learned trial Court while passing the judgment has not appreciated the legal and factual position in right perspective in view of the evidence having been recorded.

We have considered the submissions made by the learned counsel for the appellant and with his assistance, have gone through the judgment passed by the trial Court, but are not able to accept his assertions.

Before advertng to the facts of the case, it would be worthwhile to refer to the scope in acquittal appeals. It is well settled in catena of decisions that an Appellate Court has full power to review, re-appreciate and consider the evidence upon which the order of acquittal is founded.

However, the Appellate Court must bear in mind that in case of acquittal, there is prejudice 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 reaffirmed and strengthened by the trial Court.

From the evidence, it is clear that complainant was confronted with her previous statement Ex.PW-5/1 in which she had not attributed any role to respondents No.1 & 2 and this very fact has been admitted before the learned Trial Court. She also admitted that she had disclosed the facts containing allegations against respondents No.1 & 2 for the first time in the Court but she did not give any explanation for their omission. So, the improvement made by her was taken very rightly as material one. Even the victim in her first statement given to police on 07.05.2019 (Mark DA) had not named either respondent No.1 or respondent No.2. The Investigating Officer (PW-9) admitted that prosecutrix had not raised any allegation against respondents No.1 & 2. Not only that, the prosecutrix while appearing in the Court had disowned her supplementary statement dated 09.05.2019 which allegedly contained names of respondents No.1 & 2. The car allegedly used in the commission of crime was never taken into possession by the police. No details of the car were ever brought on record. Even the investigating officer admitted that no connection of accused with the vehicles involved in the present case was established.

Learned trial Court has further observed that no document was brought on record to establish if respondent No.2 had any connection with

the shop, the place where rape was allegedly committed. No evidence has been adduced with regard to mobile phone allegedly used by respondent No.3 .

We, on a scientific examination of evidence and chronological discussion of factual aspects, are convinced to uphold the judgment dated 01.09.2021 passed by the learned Additional Sessions Judge, Patiala as the prosecution story stands derailed in totality against the respondents-accused who have been rightly acquitted of the charges under Sections 4 & 17 of the Protection of Children From Sexual Offences Act and 376 (3) read with Section 109, 506, & 120-B IPC framed against them.

In the view of the facts and circumstances as considered and discussed hereinabove, the present appeal being devoid of any merit is dismissed.

(SANDEEP MOUDGIL)
JUDGE

(AUGUSTINE GEORGE MASIH)
JUDGE

15th JULY, 2022
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<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>