

CRA-AD-141-2020

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2023:PHHC:081254-DB

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

CRA-AD-141-2020

Date of Decision : 01-06-2023

Kanchan Lata Mishra

.....Appellant

VERSUS

State of Haryana and another

.....Respondents

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE KULDEEP TIWARI**

Present : Mr. Ankur Lal, Advocate
for the appellant.

KULDEEP TIWARI. J.

1. The instant appeal is directed against the order of acquittal dated 10.1.2020 passed by the learned Additional Sessions Judge, Fast Track Court, Faridabad vide which respondent No.2 has been acquitted from the charges framed against him under Sections 376, 380, 506, 120B IPC in case FIR No.570 dated 30.9.2017 registered at Police Station SGM Nagar, Faridabad.

2. The appellant has challenged the order of acquittal on the ground that the learned trial Court has not appreciated the evidence in its right perspective whereas, the statement of the prosecutrix (identity of prosecutrix is withheld in view of the provisions of Section 228A of IPC, however, hereinafter the complainant is referred to as the prosecutrix) is alone sufficient to bring home the guilt of the accused.

3. Learned counsel for the appellant has mainly placed reliance

upon the statement of the prosecutrix to submit that she has fully corroborated the version of the prosecution and her statement is further corroborated by the Investigating Officer and the medical evidence placed on record by the prosecution. However, the learned trial Court did not take into consideration all this positive evidence which could bring home the guilt of the accused.

4. Before dealing with the illegality of the impugned order of acquittal, it is apposite to first examine the entire factual matrix of the present case.

FACTUAL MATRIX

The prosecution has set up the case against the respondent No.2 on the ground that the prosecutrix was subjected to sexual assault from the year 2014 to 2017 and on the basis of her complaint dated 6.9.2017 Ex.PF, the prosecution agency was set into motion and the above mentioned FIR was registered at Police Station SGM Nagar, Faridabad. The relevant extract of the FIR reads as under:-

“Application for taking legal action against (1) Ram Ashray Yadav S/ Sh. Sofi Yadav; (2) Satya Yadav; (3) Raj Narain Yadav; (4) Ram Yadav Sunil Yadav s/o Sh. Ram Ashray Yadav; (5) Rama s/o Sofa. Sir it is submitted that I applicant Kanchal Lata w/o Sh. Arvin Kumar Mishra d/o Sh. Achwar Pandey am resident of Quarter n 1427, Type 1, NH-S CRPF, Quarter NIT Faridabad and submits a follows: That my husband Arvind Kumar Mishra is working in CRP and aforesaid accused is also working in CRPF. That in the year 2012 Ram Ashray Yadav who works in CRPF took me to his

house for help of his ailing wife. On his asking, I along with my three children came to that house No. 314, Type NH 4, Faridabad. After some day his wife went to her village. And Ram Ashray forcibly committed rape with me against my wishes from 2014 to 2017. When I told to report the matter to police then he extended threats to kill me and my children. He kept me in his house and after alluring me forcibly bring my articles to his quarter from the quarter allotted in the name of my husband. Due to fear I am residing in is quarter. Aforesaid accused is committing rape forcibly with me. That in the year 2017 I had gone to my in-laws during vacation in May. When I returned back on fracture of my husband's foot I saw that aforesaid accused took away all my household articles. I tried to search aforesaid accused a lot but could not get to know anything about him. It is prayed before you sir to take strict legal action against aforesaid accused and justice to be provide to me.”

INVESTIGATION

5. On the basis of the above extracted statement Ex.PF, a formal FIR Ex.PH was registered on 30.9.2017. Thereafter on 20.12.2017, the statement of prosecutrix Ex.PL under Section 164 Cr.P.C. was recorded before the Ilaqa Magistrate. The accused-respondent No.2 was arrested on 20.12.2017 and was subjected to medico-legally examined by Dr.Sadan, Medical Officer, B.K.Hospital, Faridabad, who prepared MLR Ex.PD. Lateron, he stepped into the witness box as PW4. The prosecutrix was also medico-legally examined on 21.12.2017 by Dr.Poonam Gaur, Medical Officer, B.K.Hospital, Faridabad, who prepared MLR Ex.PF and lateron she was examined as

PW5 by the prosecution. Upon completion of investigation, final report under Section 173 Cr.P.C. was presented before the Ilaqa Magistrate. Thereafter the Ilaqa Magistrate finding the case to be exclusively triable by the Court of Sessions, committed the same to the Court of Sessions vide committal order dated 11.5.2018.

PROCEEDINGS OF THE TRIAL COURT

6. Finding a prima facie case, the trial court framed charges against the respondent no. 2-accused under Sections 376, 380, 506 of IPC, vide order dated 21.07.2018, to which the respondent no. 2-accused pleaded not guilty and claimed trial. In order to prove its case, the prosecution examined as many as 10 witnesses. The respondent no. 2, in his statement recorded under Section 313 Cr.PC, pleaded innocence and false implication in the present case. The respondent no. 2, in his defence, also examined 3 witnesses who brought on record Ex-DB, Ex-DC, Ex-DD, Ex-DE, Ex-DF, Ex-DW3/A. After completion of trial, and, upon appreciation of the entire evidence available on record, the learned trial Court recorded the order of acquittal, which is now being challenged before this court in an appeal filed by the prosecutrix.

ANALYSIS

7. There is no dispute that this Court can re-appreciate the entire evidence while dealing with a order of acquittal. The High Court has full power to appreciate the entire evidence to reach its own conclusions and it is also open for the High Court, to re-determine the question of facts and law. For this, we place reliance upon the judgment

passed by Hon'ble Supreme Court in *State of Maharashtra vs. Sujay Mangesh Poyarekar, 2008 (9) SCC 475*.

8. Ordinarily, the order of acquittal will not be interfered with, lightly, merely because other view is possible. Upon passing of an order of acquittal, presumption of innocence in favour of the accused gets reinforced and strengthened, as laid down by Hon'ble Supreme Court in *Harijana Thirupala vs. Public Prosecutor, High Court of A.P., (2002) 6 SCC 470*.

9. In view of the above settled proposition of law, let us examine the evidence led by the prosecution.

10. From the statement of the prosecutrix and the evidence led by both the parties, it transpired that the prosecutrix was serving as a Constable in CRPF and she was dismissed from service in the year 2006-07 and whereas, accused Ram Ashray was also serving as Sub Inspector in CRPF. The accused was allotted quarter No.314 and was living with his family in that official quarter. It is also not in dispute that the prosecutrix is between 35 to 40 years of age and is a married lady having three children. In the backdrop of this professional and personal profile of the prosecutrix and the accused, let us examine the allegations levelled by the prosecutrix.

11. The first statement of the prosecutrix after registration of FIR was recorded under Section 164 Cr.P.C. by the Ilaka Magistrate, who stepped into the witness box as PW9. The relevant extract of the said statement reads as under:-

“I was living in the quarter of Ram Ashray. Earlier I was residing on rent. Ram Ashray had given his quarter No.314 to me. From 2014 to 2017 I resided with him. Thereafter I had gone to my parents house in UP. The quarter belonged to him. Baggage belonged to me. Ram Ashray Yadav after breaking open the lock took the entire baggage. Thereafter I made a complaint to police. The police lodged a FIR. Thereafter I used to visit the Commissioner Office but no action was taken. He used me for three years and committed rape. The police have pressurized me to compromise. Till today I was not medically examined and no statement has been recorded. I have not got my baggage till today.”

12. From the reading of the above extracted statement under Section 164 Cr.P.C. the following facts transpired:-

- i) That the accused Ram Ashray has given his quarter to the prosecutrix where she subsequently shifted;
- ii) She remained in that quarter from 2014 to 2017. Thereafter she went to her parents' house in Uttar Pradesh. The quarter belong to the accused and the entire articles were belonging to the prosecutrix which the accused after breaking open the lock stolen away and;
- iii) For the three consecutive years, the accused kept on using her and committed rape.

13. However, when she stepped into the witness box as PW10, she made material improvements in her statement and infact, does not inspire the confidence of this Court. Initially in the FIR, she stated that

the accused Ram Ashray took her in order to take care of his ailing wife in the year 2012, whereas, in her cross-examination, she stated that the accused kept her in his quarter from the year 2014 to 2017, whereas, in the examination-in-chief, she omitted to state that she was taken by Ram Ashray for the purpose of taking care of his ailing wife. She also made allegations against the entire family members of Ram Ashray regarding taking her entire baggage from the quarter. However, neither the Investigating Officer arraigned them as an accused nor these allegations against the family members of accused-respondent were levelled in the statement recorded under Section 164 Cr.P.C.

14. The allegation that Ram Ashray has taken away the entire articles from quarter No.314 in the year 2017 was falsified by the prosecution witness PW1 Naresh Kumr. According to him, both Ram Ashray and the prosecutrix got a room in his house on rent by informing him that both have retired from the service and they required to vacate their Government quarter. Both Ram Ashray and the prosecutrix kept their personal articles in the house and it was the accused-respondent, who used to pay Rs.5,500/- as monthly rent to him. The key of the house was with the prosecutrix and in the absence of the accused-respondent, the prosecutrix used to take the articles with her and the accused did not take any article from his house. This statement completely demolished the prosecution case that Ram Ashray took away the entire articles of the prosecutrix from quarter No.314 whereas, it was the prosecutrix and the accused who both vacated the Government quarter, after the retirement of

the accused from service and shifted their abode to the rented accommodation belonging to PW1 Naresh Kumar.

15. In cross-examination, this witness also admitted that the prosecutrix and the accused never resided together in his house.

16. The prosecutrix was subjected to medico-legal examination by Dr. Poonam Gaur, MO, B.K.Hospital, Faridabad, who stepped into the witness box as PW5. She categorically stated that no injury external or internal was found on the prosecutrix. She also admitted that no vaginal swab was taken during examination. In cross-examination, she specifically admitted that she only opined that there is a possibility of sexual intercourse. However, she did not opine that there is a possibility of sexual assault/rape. A perusal of record further reveals that no effort was made by the doctor to take the samples for matchings by the DNA expert. Therefore, there is no scientific or medical evidence on record which could corroborate the case of the prosecution. As per the prosecutrix, the accused kept her into his rented quarter from the year 2014 to 2017 and during that period he committed rape upon her against her consent and also extended threats to kill her and her children whereas, when she was subjected to cross-examination, she admitted that the accused during the year 2014 to 2017 remained on duty outside Faridabad for 8 months in a year and he only used to reside at Faridabad for a period of 4 months and in that period also her husband was residing with her, meaning thereby that there was ample opportunity and time with the prosecutrix to lodge a complaint if she was subjected to sexual assault

during any time between 2014 to 2017 specifically when for a long 8 months in a year, the accused remained absent from that quarter. It seems that there was no pressure or threat exerted by the accused upon the prosecutrix, rather it is a case of a consensual sexual overtures, if any, amongst the two adults.

17. When the husband of the prosecutrix also remain present with the prosecutrix thereby no question arises for committing any sexual assault on the prosecutrix. Further from the evidence led by the accused, it is clear that the prosecutrix had lodged one complaint Ex.DA against some persons before the Court of Addl. Chief Judicial Magistrate, Ajamgarh, UP and in that complaint the accused Ram Ashray was cited as a witness. This aspect was also admitted by the prosecutrix in her cross-examination. If the accused was forcefully committing sexual assault for the last 3 years, therefore, there was no occasion for the prosecutrix to cite the accused Ram Ashray as a witness to support her allegations in that complaint Ex.DA. However, during cross-examination, she tried to ignore the specific query by stating that she did not know how the name of the accused was reflected in the list of witnesses in the above complaint. All the above contradictions and improvements made by the prosecutrix render the version of the prosecutrix to be totally unreliable.

18. In a case involving sexual offences, the statement of prosecutrix is of utmost importance, and, is a vital piece of evidence, which, if, in the opinion of the Court carries any credence, does not

warrant any corroboration for basing the conviction of the wrong doers. However, in the present case, we do not find the statement of prosecutrix as credible to hold the accused-respondent guilty. Though we have also examined the entire evidence led by the prosecution but we do not find any evidence thus purportedly corroborating the un-inspiring testification of the petitioner.

19. Therefore, this Court does not find any ground to interfere with the order of acquittal. In sequel, the application for leave to appeal is, hereby, declined, it being bereft of merit and the order of acquittal rendered by the learned Additional Sessions Judge, Fast Track Court, Faridabad is, hereby, upheld.

20. The case property, if any, be dealt with in accordance with law. The record be forthwith be sent down.

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

01-06-2023

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Whether speaking/reasoned.	:	Yes/No
Whether Reportable.	:	Yes/No