

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

CRM-A-369-2021

Date of reserve:01.02.2023

Date of Pronouncement: 10.02.2023

State of Haryana

....Appellant.

Versus

Pardeep

...Respondent.

**CORAM: HON'BLE MR. JUSTICE M.S. RAMACHANDRA RAO
HON'BLE MRS. JUSTICE SUKHVINDER KAUR**

.....

Argued by: Mr. Arun Beniwal, Deputy Advocate General
Haryana, for the appellant.

Sukhvinder Kaur, J.

The appellant-State of Haryana has preferred the instant application under Section 378(3) Cr.P.C. seeking leave to appeal against judgment dated 27.01.2021, passed by learned Additional Sessions Judge Narnaul, vide which respondent/accused-Pardeep has been acquitted.

The facts, as per record, which culminated in registration of this case are that on 01.02.2019, the prosecutrix along with her husband got her statement recorded stating therein that on 25.01.2019 at about 8/8.15 P.M., when she came outside her house to discard dirty water, accused gagged her mouth and dragged her to the old house and forcibly committed rape upon her against her wishes. After the said incident, he left her alone with threat of dire consequences. Even after going back home, due to the fear, she did not disclose about the incident to anyone. Five years prior to the alleged incident, though the victim and accused were on talking terms, but lately the

accused started blackmailing her on the pretext of one photograph and one receipt. On 26.01.2019 at about 6.00 A.M., she disclosed about the entire incident to her husband. The efforts were made to settle the said issue amicably but accused and his family members started criminally intimidating them. Legal action be taken.

On the basis of the statement given by the victim to the police, FIR under Sections 376, 341 and 506 of IPC was registered at Women Police Station, Narnaul. SI Sharda conducted the investigation. She got the victim medico-legally examined, inspected the place of incident and recorded the statements of witnesses under Section 161 Cr.P.C. The Investigation Officer got the statement of the victim recorded before learned Area Magistrate in compliance of Section 164 Cr.P.C. DSP, Headquarter Narnaul, carried out further investigations. On 07.02.2019, the IO arrested the accused and got him medico-legally examined. The accused suffered disclosure statement, in pursuance of which the place of crime was demarcated. After completion of investigation, final report under Section 173 Cr.P.C. was presented before learned Area Magistrate against the accused.

After finding a prima facie case against the accused, he was charge-sheeted for the offence under Sections 376, 341 and 506 IPC, to which he did not plead guilty and claimed trial.

After concluding the trial, the trial Court acquitted the accused Pardeep.

Aggrieved by the said decision, the State of Haryana has preferred the present application for seeking leave, to file an appeal against acquittal of accused Pardeep.

We have heard Mr. Arun Beniwal, Deputy Advocate General, Haryana, and have also perused the record.

It has been strenuously contended by learned State counsel that the accused was acquitted merely on the ground that the prosecutrix and her husband had not supported the case of the prosecution and were declared hostile. The trial Court had erred in not appreciating the statement of the victim which was recorded under Section 164 Cr.P.C., wherein the prosecutrix has entirely supported the case of the prosecution. He has contended that the trial Court has overlooked the fact that the prosecutrix had not supported the case of the prosecution due to the compromise with the accused, who was nephew of her husband and was son of his brother Ramesh Kumar. He has further vehemently contended that the trial Court has also overlooked the fact that in the FSL report, semen was detected on Ex.1d (Petticoat) and Ex.2 (Underwear) of the victim. As per the DNA report, the DNA of the accused was matched with the semen found on clothes of the prosecutrix. But the trial Court has erroneously discarded the FSL report and has believed the deposition of the prosecutrix in the Court to the effect that no rape had been committed upon her by the accused. He has urged that even if the prosecutrix and her husband had not supported the prosecution version and have resiled from their earlier statements even then the medical evidence and the FSL report along with DNA report fully support the case of the prosecution, which calls for conviction of the accused and has prayed that appellant may be granted leave to appeal against the judgment of acquittal qua the respondent.

The law is well settled on the point that judgments of acquittal should not be interfered with lightly and Courts have to be extremely careful while hearing such appeals. The Appellate Court is to interfere with the order of acquittal only, when there is perversity of facts and law.

Now in this context, the facts and circumstances and the evidence in the present case are to be analyzed. The alleged incident in the present case had taken place on 25.01.2019 and the matter was reported to the police on 01.02.2019 and only thereafter, the FIR in the present case was registered. Though this delay has not been explained by the prosecution, but the trial Court has rightly held that as the present case pertains to modesty of a female, the family is by and large reluctant in getting the matter reported to the police fearing their honour in the society, so the case of the prosecution cannot be thrown to the bin, only on account of the said delay in the registration of the FIR and the other evidence that has been brought on record is required to be scrutinized. The most material witness of this case is the prosecutrix herself and as such her statement is of the paramount importance. She has appeared in the witness-box as PW1 and has stated that her marriage was solemnized about 12 years ago. On 25.01.2019 at about 8/8.30 P.M., she had gone outside the house to discard dirty water, when she noticed that 2-3 boys were quarreling and using filthy language, to which she objected and then those boys misbehaved with her and pushed her and her clothes got muddy. On seeing her in such a situation, drenched in dirty water, the wife of accused took the victim inside her house and gave the victim her own petticoat (lehanga) to change. On the next day, at about 6.00 A.M., she narrated the said incident to her husband. On 01.02.2019, she accompanied her husband and co-villagers to the police

station to report the incident and her signatures were obtained on some blank papers. She was medico-legally examined and at that time, she (victim) was wearing the petticoat of the wife of accused and she handed over the same petticoat to the doctor. She had categorically stated that accused did not commit rape upon her. She was declared hostile at the request of the Public Prosecutor and was subjected to cross-examination wherein she had stated that statement Ex.P1 was neither in her hand nor it was her version which she wanted to report to the police. The police had obtained her signatures on some blank papers.

PW-2, husband of the prosecutrix, has also deposed on the similar line and has stated that accused had not committed any wrongful act with his wife. Thus, both the prosecutrix and her husband disowned the story of the prosecution. During the evidence neither the prosecutrix nor her husband, to whom the entire facts were allegedly disclosed by the victim at the first instance deposed anything incriminating against the accused. Nothing useful to the prosecution could be extracted even during their cross-examination. Regarding her statement (Ex.P2) recorded before the Judicial Magistrate, the complainant/ victim has stated that the same was the result of pressure exerted by the police and the co-villagers. Though the deposition of a witness, who turned hostile, cannot be effaced completely and it has to be evaluated along with other admissible evidence, but nothing incriminating has come on record in favour of the prosecution even in the cross-examination of the victim. So she remained adamant on her stand and did not support the prosecution version. The previous statement recorded by the police during the investigation is not a substantive piece of evidence and

it could at the best, be used for the purpose of contradiction or corroboration.

So, the trial Court has rightly held that there was nothing on record which could suggest that accused has committed rape upon the victim against her wishes or had ever threatened her in any manner.

Now much emphasis has been laid down by learned counsel for the appellant that the trial Court has overlooked the medical evidence and the FSL report along with DNA report which fully supported the case of the prosecution. But this contention of learned counsel for the appellant is devoid of any force. The perusal of the statement of victim PW1 reveals that she has categorically stated in her examination-in-chief that when she raised objection then those 2-3 boys, who were quarreling and using filthy language, misbehaved with her and pushed her and her clothes got muddy. Then on seeing her in such a situation, drenched in dirty water, the wife of the accused took the victim inside her house and gave the victim her own petticoat to change. She is again categorical in stating that when she was medico-legally examined at that time, she was wearing that petticoat of wife of the accused and she had handed over the same petticoat to the doctor. Thus, the trial Court was right in observing that if the semen, which was found on the clothes of the prosecutrix, matched with DNA of the accused, then it is of no significance when the victim has categorically stated that the clothes in question were not of the victim, but these were of wife of the accused, which were given to the victim by her to change her muddy clothes.

The trial Court has thus rightly reached at the conclusion that there is not even iota of incriminating evidence on record, to link the

accused with the commission of the crime in the present case and the accused has been rightly acquitted by the trial Court.

In view of the above, no case is made out for grant of leave to appeal against acquittal of respondent-Pardeep. The application without having any merits stands dismissed and the leave to appeal is declined.

(M.S. RAMACHANDRA RAO)
JUDGE

(SUKHVINDER KAUR)
JUDGE

10.02.2023

Komal

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