

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

**CRA-AD No.235 of 2023 (O&M)
Date of Decision:14.09.2023**

PD

... Appellant

Versus

State of Haryana and another

... Respondents

**CORAM : HON'BLE MR. JUSTICE RAJ MOHAN SINGH
HON'BLE MR. JUSTICE HARPREET SINGH BRAR**

Present: Mr. Rahul Vats, Advocate
for the appellant.

HARPREET SINGH BRAR, J. (ORAL)

1. The present appeal has been preferred against the judgment dated 08.05.2023 passed by the learned Additional Sessions Judge, Narnaul acquitting respondent No.2-accused in case bearing FIR No.7 dated 05.01.2020 registered under Sections 376, 506 IPC at Police Station City, Narnaul.

FACTUAL BACKGROUND

2. Brief facts of the prosecution case are that an application dated 18.11.2019, bearing endorsement No.3442-PG dated 20.11.2019 at the behest of the complainant/prosecutrix was received via post from the office of the Superintendent of Police, Narnaul in the police station. The allegations levelled in the said application were that the complainant/prosecutrix was a resident of District Mohindergarh and used to visit a *hakim* in the village Jakhrana for treatment as she was unable to conceive a child, where she met with one Kuldeep resident of Bikaner (presently residing in Village Kojinda, Tehsil Narnaul, District Mohindergarh) on numerous occasions. He enticed the complainant/prosecutrix and committed wrong act with her. Thereafter, he made

repeated phone calls on her mobile No.8059737250 from his mobile No.9983834055 and blackmailed/pressurized her to make sexual relations with him on the ground that he had objectionable videos of her. The respondent No.2-accused also morphed her photographs uploaded on Facebook in an indecent way in order to compel her to marry him. The complainant/prosecutrix came to know that several cases of theft were registered against respondent No.2-accused and therefore, she was scared of him. He also threatened to ruin her life if she did not make sexual relations with him. He started residing in the same village as the prosecutrix and threatened her and her family members with dire consequences. Earlier she could not gather courage to complain against respondent No.2-accused out of fear of defamation but now she wanted to initiate legal proceedings against him and therefore, prayed that a strict legal action be taken against him.

3. On finding that there was an FIR bearing No.567 dated 25.09.2019 under Sections 419, 420, 384, 406 IPC registered against the complainant/prosecutrix and her family members at Police Station City, Narnaul on the complaint of respondent No.2-accused and the instant FIR was registered as a counter-blast to that FIR, she was telephonically called many times to the police station for recording her statement in order to proceed further but she did not come forward. She was not found residing at the given address, rather it was found that she had left the said address 6-7 months ago. On 04.01.2020, when again the complainant-prosecutrix was not found at the given address, an attempt was made to contact the sister of the complainant-prosecutrix, who said that she could be contacted on mobile No.8529564089. Thereafter, the complainant-prosecutrix was contacted on the aforesaid mobile number and she informed that owing to death of her mother-in-law, she was residing at her matrimonial home. ASI

Rashmi along with HC Rakesh visited the address given by the complainant-

prosecutrix at Village Gudha Thikariya, Rajasthan but they were told by one Shiv Lal Bawariya, one of the villagers, that his aunt (*tai*) was mother-in-law of the prosecutrix and his cousin namely Roshan Lal son of Rohtash had divorced the complainant-prosecutrix. They were also informed that his aunt (*tai*) was still alive and was residing in village Thoi along with her son Roshan Lal. Thus, repeated efforts were made to record statement of the complainant-prosecutrix but she deliberately did not come forward to give her statement.

4. Ultimately, on 05.01.2020 on the basis of the application of the complainant/prosecutrix, a formal FIR was registered by ASI Rashmi and she made an endorsement in this regard. Consequently, investigating machinery was set into motion by SI Meenakshi. On 02.03.2020, the statement of the complainant/prosecutrix under Section 164 Cr.P.C. was recorded before the learned Judicial Magistrate 1st Class, Narnaul. Thereafter, she was taken to Government Hospital, Narnaul for conducting her medico-legal examination. On 03.03.2020, the accused had joined the investigation and was arrested vide arrest memo. On the same day, he was medico-legally examined in Government Hospital at Narnaul. On 24.04.2020, scaled site plan was prepared by Draftsman, SI Mahesh Kumar. Statements of concerned witnesses were recorded under Section 161 Cr.P.C. After completion of investigation, final report under Section 173 Cr.P.C. was filed in the trial Court on 08.05.2020.

5. Copy of final report under section 173 Cr.PC and documents attached thereto were supplied to the accused free of costs, as per the mandate of Section 207 Cr.PC.

5. On finding a *prima facie* case to have been made out against the accused, charges under Sections 376 (2), 506 IPC were framed against him. The accused pleaded not guilty to the charges framed against him and claimed trial.

6. In order to prove its case, prosecution examined as many as 8 witnesses.

7. The statement of the accused was recorded under Section 313 Cr.P.C. and the entire incriminating evidence was put to him. He denied the prosecution version in its entirety and pleaded innocence, however, did not lead any evidence in his defence.

8. After hearing the rival submissions and perusing the prosecution evidence, the trial Court came to the conclusion that the prosecution has not been able to establish the prosecution case beyond a reasonable shadow of doubt, which resulted in acquittal of the respondents No.2-accused. Thus, the present appeal is filed.

CONTENTIONS

9. Learned counsel for the appellant contends that the learned trial Court has gravely erred in observing that there was a delay of more than 4 months in registering the FIR for which no plausible explanation came forth. It is contended that the matter was reported to the police on 18.11.2019 but the FIR was registered by the police on 05.01.2020 and therefore, there was no delay on the part of the complainant-prosecutrix in actuality. The victim was a teenage girl and for the sake of her reputation, she hesitated in reporting the matter immediately to the police. It is further argued that sole statement of the prosecutrix can be the basis of conviction as the best evidence is the statement of the victim, which cannot be discarded with a stroke of the pen. Once the statement of the prosecutrix inspires confidence, no corroboration would be required and the conviction can be based only on her solitary evidence. In order to strengthen his argument, he relies upon the judgment rendered by the Hon'ble Supreme Court in *State of Punjab Vs. Gurmit Singh and others (1996) 2 SCC 384*.

10. Learned counsel for the appellant further argues that the learned trial Court was swayed away by the fact that the prosecutrix was familiar with the accused while completely ignoring the fact that the accused blackmailed her on the ground that he had obscene videos and indecent photographs of her which he would make viral on the internet. She was sexually assaulted by being blackmailed and therefore, there was no question of resistance or injury marks on her body. Minor discrepancies in the statements made by the prosecutrix cannot be fatal to the prosecution case. He relies upon the judgment passed by the Hon'ble Supreme Court in ***Bharwada Bhoginbhai Hirjibhai Vs. State of Gujarat AIR 1983 SC 753*** to contend that much importance cannot be attached to minor discrepancies as ordinarily it happens that a witness is overtaken by events and thus, she cannot be expected to recall accurately the sequence of events which took place in a short span of time.

ANALYSIS AND OBSERVATION

11. We have heard learned counsel for the appellant and after having gone through the record of the case, we find that the finding of acquittal recorded by the trial Court is reasonable and logical. It is a settled proposition of law that the finding of acquittal recorded by the learned trial Court cannot be disturbed merely because another view is possible. If two views are possible, the one which favours the accused would invariably prevail over the other.

12. The Hon'ble Supreme Court has articulated the above principle in the following decisions:

- a) A three Judge Bench of Hon'ble Supreme Court in **Kali Ram v. State of H.P., 1973 (2) SCC 808**, speaking through Justice H.R. Khanna, has held as under:

“25. Another golden thread which runs through the web of the administration of justice in criminal cases is that if two views are

possible on the evidence adduced in the case one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted...”

b) A two Judge Bench of Hon’ble Supreme Court in **Chandrappa and others v. State of Karnataka, (2007) 4 SCC 415** has laid down the parameters with regard to the power of appellate Court while dealing with an appeal against an order of acquittal. Speaking through Justice C.K. Thakker, the following was held:

“35. From the above decisions, in our considered view, the following general principles regarding powers of appellate Court while dealing with an appeal against an order of acquittal emerge;

(1) An appellate Court has full power to review, reappraise 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 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.”

13. There can be no iota of doubt that on the basis of the sole testimony of the prosecutrix, if found unimpeachable and beyond reproach, the accused can be convicted. However, in the present case, allegations levelled in the FIR are vague as no details of date, time and place of the alleged occurrence were mentioned. In the application/complaint, which made the basis of lodging of the instant FIR, the prosecutrix mentioned that as she was unable to conceive, she used to visit a *hakim* in village Jakhrana where she met respondent No.2-accused, who had enticed her and thereafter, committed rape on her by blackmailing on the pretext that he had some objectionable videos and photographs of her which he would make viral on the internet. However, in her statement recorded under Section 164 Cr.P.C. before the learned Judicial Magistrate 1st Class, Narnaul, she had stated that she was introduced to the accused by the *hakim* namely Ashok and when she went to the house of Ashok on 02.09.2018, the accused committed rape on her. It was further stated that one day the accused came to her rented accommodation and again raped her. However, while appearing in the witness box as PW-7, she stated that the accused had registered a false case against her on the allegation that she had cheated on him as she failed to honour her promise to marry him despite taking money from him. In the cross-examination, she stated that the accused got the FIR (Ex.D1) registered against her and her family members on the allegations that her family took money for fixing marriage of the prosecutrix with the accused and when he took *barat* to her house, it was found locked. She further stated that the accused did not ever commit rape on her in

Narnaul and the application/complaint (Ex.P11) was not written by her nor she remembered on which date she had given the said application/complaint. She also stated that even the statement (Ex.P4) was not given by her of her own volition and free will. Therefore, it is evident that there are material contradictions in the statements of the complainant/prosecutrix and she has also accepted in her cross-examination that the accused never committed rape on her.

14. It is worthwhile to note here that there is an unexplained delay of more than 4 months in lodging the FIR owing to the fact that the application was received by the police by post and the complainant/prosecutrix did not come forward to record her statement despite numerous efforts made by the police. No satisfactory and plausible explanation has come forth on behalf of the complainant/prosecutrix in this regard. The so-called *hakim* was also not examined by the prosecution for the reason best known to it. Further, during the course of investigation, the Investigating Officer came to know that ring ceremony was performed between the prosecutrix and the accused. It is an admitted fact that the accused lodged an FIR against the prosecutrix and her family member prior in time than the instant FIR lodged by the prosecutrix and therefore, it can be presumed that the instant FIR is nothing but a counter-blast to the FIR lodged by the accused. Moreover, no obscene video or indecent photo was recovered from the mobile phone of the accused.

15. PW-4 Dr. Poonam, Medical Officer, Government Hospital, Narnaul, who had medico-legally examined the prosecutrix opined that on local examination, no injury mark was found on the inner side of thigh, labia majora or labia minora of the prosecutrix. There was no redness or swelling. There was no mark of injury seen on the private parts. These circumstances viz; the delay in lodging FIR, non-examination of the material witness i.e. *hakim* Ashok, contradictions in the testimony of the prosecutrix, the associated circumstances and the medical

evidence, leave a mark of dubiousness, inhibiting this Court to treat the testimony of the prosecutrix as so natural and truthful to inspire confidence. Therefore, it can be stated with certitude that the evidence of the prosecutrix is not of such quality which can be placed reliance upon. Further, the prosecution has also failed to produce any evidence to corroborate that respondent No.2-accused had committed an offence under Section 506 IPC.

CONCLUSION

16. In view of the discussion made in the preceding paragraphs, we are of the considered opinion that the finding rendered by the trial Court is based upon the correct appreciation of evidence and there is no perversity in it. It is trite law that presumption of innocence gets further entrenched and fortified on acquittal of the accused by the trial Court. Learned counsel for the appellant has failed to point out any perversity or illegality in the findings recorded by the learned trial Court and therefore, we are unable to arrive at a different view than the one taken by the learned trial Court. We do not find any substantial and compelling reason or glaring mistake to unsettle the judgment of acquittal passed by the learned trial Court. As such, there is no merit in the present appeal and consequently, the same is dismissed.

(RAJ MOHAN SINGH)
JUDGE

(HARPREET SINGH BRAR)
JUDGE

September 14, 2023
Pankaj*

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