

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH**CRA-AD-277-2022****Date of decision : 07.07.2023**

SURESH

-APPELLANT

VERSUS

SUNIL KUMAR AND ANR.

-RESPONDENTS

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE KULDEEP TIWARI**Present : Mr. Rahul Jaswal, Advocate
for the appellant.Mr. P.P. Chahar, Sr. DAG, Haryana
for the respondent No.2- State.

KULDEEP TIWARI, J.

1. Through the instant appeal, the appellant has assailed the order of acquittal dated 06.06.2022, rendered by the learned Additional Sessions Judge, (Fast Track Court), Panipat, whereby, the respondent No.1 has been acquitted from the charges framed against him, under Sections 376-D and 376(2)(e) of the Indian Penal Code (hereinafter referred to as "IPC"), in case FIR No.92 dated 27.01.2021, registered at Police Station Old Industrial Panipat.

SUBMISSIONS BY LEARNED COUNSEL FOR THE APPELLANT

2. The learned counsel for the appellant has challenged the order of acquittal (supra), inter alia, on the ground that the learned trial Court has not appreciated the prosecution evidence in its right perspective, whereas, testimony of the prosecutrix (identity of the prosecutrix is withheld in view of provisions of Section 228(A) of IPC) itself has ample vigour to prove the

allegations against the accused/respondent No.1, as her testimony gains corroboration from the medical evidence as well as from the statements of her family members, i.e. PW13 Suresh (father), PW14 Neetu (cousin) and PW15 Krishan (brother). By drawing attention of this Court towards the statements of the above referred material prosecution witnesses, the learned counsel for the appellant has challenged the findings, which were recorded by the learned trial Court in its order (supra), for the reason of their being founded upon undue weightage being lent to immaterial discrepancies in the statements of the above referred witnesses, which were recorded in two different trials, which course rather was impermissible under the law. Therefore, he has argued that the order of acquittal (supra) is required to be interfered with, it being tainted with gross perversity in appreciation of the evidence.

3. Before we proceed to deal with the submissions advanced by the learned counsel for the appellant and the validity of the impugned order of acquittal, it is apposite to first dive deep into the factual aspects of the present case.

FACTUAL MATRIX

4. The prosecution case derives its origin from the complaint dated 27.01.2021 (Ex.P16), which was moved by the present appellant (father of the prosecutrix), wherein, he narrated that on 25.01.2021, while the prosecutrix was admitted at Galaxy Hospital, Panipat, one Manjeet and one Sunil, employees of the said hospital, committed rape upon her. The relevant extract of complaint (Ex.P16) is reproduced hereunder:-

“It is requested that I, Suresh son of Ram Kumar, am the resident of Village Karsindhu, District Jind. My daughter namely Pooja was got admitted for treatment in the Galaxy Hospital in the night at about 11:00 p.m. on 25.01.2021.

Manjit son of Ramesh, resident of Jatal Road, Sondhapur and Sunil, who work in the Galaxy Hospital, were present with her from 26.01.2021 at about 11:30 p.m. to at about 6:00 a.m. morning and both committed wrong act and rape with my daughter in the whole night. Legal action be taken against them.”

The above extracted complaint initially led to registration of an FIR under Section 376-D of IPC, against aforesaid Manjeet and Sunil.

INVESTIGATION PROCEEDINGS

5. After registration of the FIR, on 27.01.2021, L/ASI Sudershan (PW2) conducted the initial investigation and prepared rough site plan (Ex.P5) of the place of occurrence and also recorded the statements of witnesses. On the very day, she got the prosecutrix medico-legally examined at General Hospital, Panipat, vide application (Ex.P6). After medico-legal examination, the doctor concerned handed over the sealed parcels containing swabs and slides, along with the sample seal and a copy of MLR, vide memo (Ex.P7). One of the accused Manjeet was arrested on 27.01.2021, who suffered a disclosure statement and in pursuance thereof, he got demarcated the place of occurrence. On 28.01.2021, the statement of the prosecutrix, under Section 164 Cr.P.C., was recorded. Thereafter, on 15.03.2021, in response to an application (Ex.P1) moved by L/ASI Sudershan to the Medical Officer concerned, the entire medical record of prosecutrix and the employment record of the accused persons were supplied to her. On 15.09.2021, accused Sunil, respondent No.1 herein, joined the investigation, as he was availing the concession of anticipatory bail and thereafter, he was formally arrested and during interrogation, he also suffered a disclosure statement (Ex.P11) and in pursuance thereof, he got demarcated the place of occurrence. Thereafter, his

potency test was conducted at General Hospital, Panipat. Statements of witnesses under Section 161 Cr.P.C. were recorded.

A perusal of the impugned order of acquittal makes revelations that though both the accused Manjeet and Sunil were nominated in the instant FIR, however, due to prior completion of investigation qua accused Manjeet, initially the challan was presented only against him, on 09.03.2021, before the learned Magistrate concerned. During checking of challan, Section 376(2)(c) of IPC was incorporated in the case. Thereupon, charges were framed against accused Manjeet on 14.07.2021, which resulted in commencement of a separate trial against him. Thereafter, upon completion of investigation qua accused Sunil, a supplementary challan was filed against him on 08.11.2021. The learned trial Court chose not to club the proceedings qua both the accused Manjeet and Sunil and accordingly, two separate trials were entered into and simultaneously proceeded qua both the accused.

COMMITTAL PROCEEDINGS

6. Finding the case exclusively triable by the Court of Sessions, the learned Illaqa Magistrate committed the case to the Court of Sessions vide committal order dated 08.11.2021.

PROCEEDINGS OF TRIAL COURT

7. Finding a prima facie case, the respondent No.1 herein was charge-sheeted for commission of offences punishable under Sections 376(2)(e) and 376-D of IPC, to which he pleaded not guilty and claimed trial. The prosecution, in order to prove its case against the respondent No.1, examined as many as 16 witnesses. The respondent No.1, although did not lead any oral evidence in his defence, however, tendered into evidence

documents exhibited as Ex.D1 to Ex.D4. Also, in his statement recorded under Section 313 Cr.P.C., the respondent No.1 pleaded innocence and false implication in the present case while denying all the allegations, as leveled against him. After culmination 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.

It would be apt to record here that the trial qua co-accused Manjeet also concluded in an order of acquittal being recorded by the learned trial Court concerned.

ANALYSIS

8. There is no dispute that this Court can re-appreciate the entire evidence while dealing with an 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.***

Also, Hon'ble Supreme Court in ***Chandrappa vs. State of Karnataka, 2007(2) RCR (Crl.) 92*** laid down broad principles to be followed while dealing with an appeal against an order of acquittal, which are as under:

“(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, based 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 emphasize 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."

9. 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.***

10. The testimony of the prosecutrix is the core of the present case, though PW13 Suresh, PW14 Neetu and PW15 Krishan have been examined to corroborate the factum of sexual assault upon the prosecutrix, however the prosecution version hinges on the sole testimony of the prosecutrix. Therefore, to unearth the hidden truth, let us first thoroughly scrutinize the prime

evidence of the present case, i.e. the statement(s) of the prosecutrix, which would pave the path for us to draw a conclusion whether her testimony holds the requisite potential to reverse an order of acquittal into that of conviction.

Scrutiny of statement(s) of prosecutrix, under Section 164 Cr.P.C. before learned Magistrate, as PW-5 before the learned trial Court in case “State V/s Manjeet”, and, as PW-16 before the learned trial Court in the trial of instant case

11. The prosecutrix, when produced before the learned Illaqa Magistrate concerned on 28.01.2021, got recorded her statement (Ex.P8) under Section 164 Cr.P.C., qua commission of wrong act (rape) upon her, with finger, by one Manjeet, in the night of 25.01.2021, at Galaxy Hospital, Panipat. The statement (supra) is extracted hereunder:-

“Stated that on 25.01.2021, in the night, I was admitted in the Galaxy Hospital at Panipat, by my father. In the night, a man namely Manjeet had committed wrong act (rape) upon me with finger. He had bolted inside.”

To establish the validity of the above made statement under Section 164 Cr.P.C., the prosecution examined one Karambir, Ahlmad in the court of the learned Magistrate concerned, as PW3, who avowed the factum regarding recording of the above statement and also identified the signatures of the learned Magistrate concerned on the certificate regarding fitness of the prosecutrix.

13. Thereafter, surprisingly on 13.09.2021, while making a deposition before the learned trial Court as PW-5, in case titled “State V/s Manjeet”, the prosecutrix exonerated the accused therein, i.e. Manjeet, by merely exemplifying herself unconscious about the facts of the case and she even denied to identify the accused Manjeet. The examination-in-chief of the

prosecutrix, as PW-5, is reproduced as under:-

“Stated that I do not know about the facts of the case. I do not know the accused Manjeet. Even I do not identify the accused present in the Court today.”

14. Subsequently, on 25.04.2022, when the prosecutrix stepped into the witness box as PW-16, in the trial of the present case, she voiced a completely conflicting narration than the one made by her, in her statement under Section 164 Cr.P.C., where she had named one Manjeet as the wrongdoer, whereas, now she leveled categoric allegations against one Sunil, respondent No.1 herein, for committing rape upon her on 26.01.2021, at Galaxy Hospital, Panipat. The relevant extract of her examination-in-chief is reproduced hereunder:-

“Stated that on 25.01.2021, I was ill. So, my parents admitted me in Galaxy Hospital. On 26.01.2021, accused Sunil committed wrong act upon me. I asked Sunil to call my parents. Sunil told me that my parents had slept. In the morning of next day, my cousin Nitu visited me and I told everything to her. Nitu told my father. My father got lodged the FIR. Ex.P8 is my statement recorded u/s 164 of Cr.P.C., which bears my signature at point-A, which was got recorded before learned Magistrate. I also gave my consent Ex.P15 for conducting medical examination for rape, which bears my thumb impression. Thereafter, my medical examination was conducted by the doctor. Accused Sunil is present in the Court. He had committed wrong act upon me.”

15. Nonetheless, when the prosecutrix was put to cross-examination, she could not sail through the ordeal of cross-examination and she accordingly made categoric admissions qua disclosure of names of the accused persons to the police by her father and not by her, as she alleged to gain knowledge about

the names of accused persons at a later stage. Perusal of her further cross-examination reveals that she claimed to have disclosed the names of both the accused persons to the learned Magistrate concerned while recording her statement (Ex.P8) under Section 164 Cr.P.C., however, when she was confronted with the said statement (Ex.P8) wherein name of only one Manjeet was recorded, she then claimed herself to be not fully conscious while making this statement. Moreover, such a vague plea gets belied from the certificate issued by the learned Magistrate concerned, who had attested the statement (Ex.P8) to be voluntarily suffered by the prosecutrix, without any coercion. Furthermore, the prosecutrix also admitted making statement Ex.D4, in case “State V/s Manjeet”, wherein she deposed being unaware about the present case. However, she tried to overcome such a contrary admission, by merely asserting that she was unstable while making that statement. The relevant extract of the cross-examination (supra) is reproduced hereunder:-

“.....My father gave the names of accused to police. I came to know about their names later on. I myself did not reveal the names of accused to the police. Nobody tutored me before making my statement u/s 164 of Cr.P.C. to the learned Magistrate. It is correct that I revealed both the names to the learned Magistrate while making my statement u/s 164 of Cr.P.C. (Confronted with statement Ex.P8 wherein the name of only Manjeet is mentioned). Statement Ex.P8 was given by me. It is correct that in Ex.P8, only 25.1.2021 is mentioned. I was not fully conscious at the time of making my statement Ex. P8. It is correct that name of only one person is mentioned in Ex.P8. It is correct that in statement Ex.P8, involvement of two accused is not mentioned. I did not tell the doctor at the time of my medical examination that two persons committed wrong act upon me. It is correct that I came earlier also in the Court to make deposition. I identify

my signature on statement Ex. D4 which was made by me in the case titled 'State Vs. Manjeet' on 13.9.2021. It is correct that at the time of making my statement Ex.D4 I depose that I had no information about this case. Volunteered, I was not stable on that day.....”

16. A cumulative reading of the above extracted versions given by the prosecutrix makes it unequivocally evident that her testimony is replete with inconsistencies and inherent improbabilities, which resultantly shatters the whole prosecution case. The prosecutrix, who was aged around 25 years at the time of making the above depositions and was also a graduate, had chosen to make material improvements, inasmuch as the name of the wrongdoer is concerned. Primarily, the prosecutrix, in her statement under Section 164 Cr.P.C., held one Manjeet to be accused of committing rape upon her, whereas, at a subsequent juncture, she drastically improved her version and held one Sunil, respondent No.1 herein, to be the culprit behind commission of rape upon her. As a matter of fact, throughout the investigation of the instant case, the prosecutrix has never made any statement against Sunil and even during the trial of case “State v/s Manjeet”, she has evidently denied any acquaintance with the facts of the present case. Therefore, the above referred to vacillating statement(s) of the prosecutrix cannot be placed reliance upon for any fruitful purpose.

Scrutiny of the primary complaint (Ex.P16) which laid foundation of the present case, and, the testimonies of family members of the prosecutrix

17. Though the other prosecution witnesses, i.e. PW13 Suresh, PW14 Neetu and PW15 Krishan, have supported the case of prosecution, however, they have been able to do so merely after gathering information from the prosecutrix. The source of their information, regarding the alleged incident, is

admittedly the prosecutrix, who had reported the alleged incident of rape to her cousin Neetu (PW14), whereupon, the complaint (Ex.P16) was made. In cases of rape, availability of other or independent witnesses is most unlikely. Since, the alleged act of rape had taken place behind closed doors, there is no other eye witness other than the prosecutrix herself. Though the testimonies of all the above witnesses fall within the domain of “hearsay evidence”, nonetheless, let us examine the veracity of their testimonies.

18. In the primary complaint (Ex.P16), the complainant nominated two accused, namely, Manjeet and Sunil, i.e. staff of Galaxy Hospital, Panipat behind commission of rape upon his daughter, in the intervening night of 26/27.01.2021, while she was admitted at Galaxy Hospital, Panipat. Undoubtedly, the factum qua admission of prosecutrix at Galaxy Hospital, as also the factum qua employment of accused Manjeet and Sunil, captures validation from PW-1 Dr. Jasbir Malik, who brought on record the admission register of the prosecutrix as well as a certificate regarding presence of the accused, on the date of alleged incident, in the hospital concerned.

19. Thereafter, when the complainant stepped into the witness box as PW13, though he deposed against accused Manjeet and Sunil, but he was able to so depose, as the prosecutrix had disclosed the factum of rape to his niece Neetu (PW14), whereupon, they checked the CCTV footage of the Galaxy Hospital, Panipat, in which Manjeet and Sunil were visible. This disclosure led the complainant to file a complaint (Ex.P16), to which extent there is even an admission in the subsequent part of his examination-in-chief. The relevant extract of his examination-in-chief is reproduced as under:-

“Stated that on 25.01.2021, I got admitted my daughter at Galaxy Hospital, Panipat. She remained admitted in the

hospital for 3 days. On 27.01.2021 in the morning when we reached the hospital then my daughter (victim) started crying and she told to my niece Neetu that wrong act has been committed upon her in the night. Thereafter, we checked the CCTV footage of the Galaxy Hospital, Panipat in which Sunil and Manjeet were seen and thereafter, I moved application Ex.P16 to police and I handed over the CCTV footage to the police and IO prepared one memo regarding the same. I identify the accused present in the Court today.”

However, during cross-examination, when the complainant (PW13) was confronted with Ex.D1, i.e. his statement made in the case “State V/s Manjeet”, he categorically admitted that he had deposed therein that he does not have any knowledge about the present case and he even made admission qua a compromise being arrived at in the case “State V/s Manjeet”, but without receiving any money. His cross-examination further transpires that nobody approached him for a compromise in the instant case. The relevant extract of Ex.D1 recorded in the case “State v/s Manjeet” is reproduced hereinafter for ready reference:-

“.....I identify my signature on my statement Ex.D1. It is correct that in my statement Ex.D1, I deposed that I do not know anything about the present case. I do not know whether my daughter and my niece Neetu, both have also denied about the incident or not. It is correct that we have reached to a compromise in the case title ‘State Vs. Manjeet’. Volunteered we have not received any money. It is incorrect that we had talks regarding compromise in this case also. Volunteered nobody approached us to compromise in this case.”

20. A collective reading of the above extracted versions unfolds that

the complainant chose to make two distinct narratives, in the separate trials launched against both the accused. While deposing as PW-13 in the trial of the instant case, he proved the complaint (Ex.P16), whereas, while deposing in the trial of case “State V/s Manjeet”, he made a categorical denial regarding making any application, rather alleged that his signatures were obtained on blank papers by the police, which consequently renders his testimony distrustful and unreliable.

21. Insofar as, the testimonies of PW-14 Neetu and PW-15 Krishan are concerned, both of them have made alike statements qua the alleged incident, wherein, the name of one Sunil surfaces as the sole accused for commission of the alleged wrong act, as disclosed by the prosecutrix. However, what attracts the attention of this Court is the omission on their part to nominate both the accused in their respective testimonies, as the name of only one Sunil finds mention in their respective testimonies, which is completely contradictory to the testimony of the complainant as well as the complaint (Ex.P16), whereby both Manjeet and Sunil have been accused of the wrongdoing. The relevant extracts of the examinations-in-chief of PW-14 Neetu and PW-15 Krishan are extracted hereinafter:-

“PW-14: Neetu w/o Rohit

Stated that on 25.01.2021, victim was admitted in Galaxy Hospital as she had blood pressure problem. She stayed in the hospital on 26.01.2021 also. When we showed up in the morning on 27.01.2021, victim embraced me and started weeping and disclosed me that Sunil had committed wrong act upon her. Thereafter, hospital staff called the police. I told the father of victim about the incident. Police came to the hospital and recorded statement of the victim. Police also recorded my statement. I identify the accused present in the

Court today.”

“PW-15: Krishan s/o Suresh Kumar

Stated that on 25.01.2021, my sister/prosecutrix (name withheld) had BP problem. She was got admitted in Galaxy Hospital, Panipat for treatment. She was in ICU in night. I met her and came out. On the next morning, me and my brother went to see my sister who was in ICU last night. On seeing us, she started weeping. She asked us to take her home repeatedly. Around 11:00 O'Clock my cousin Neetu visited the hospital. My sister told Neetu that accused Sunil committed rape upon her (my sister) after removing her clothes. Thereafter, we took my sister home. Who lodged the FIR against the accused. We also handed over pen drive containing CCTV footage of the hospital. Accused is present in the Court.”

22. Furthermore, when PW-14 Neetu was put to cross-examination, she completely demolished the case set up by the prosecution. She admitted that the FIR was lodged against Manjeet due to animosity and also admitted the making of statement (Ex.D2) in the case titled “State v/s Manjeet”, wherein she narrated that she does not know anything about the present case. She further hastened to admit the factum of compromise between Manjeet and the complainant. The subsequent part of her cross-examination carries her further admission that on the date of alleged incident, the victim had failed to identify accused Sunil in front of the police and therefore, he was not arrested by the police from the Galaxy Hospital (**emphasize specifically**). The relevant extract of her cross-examination is extracted hereunder:-

“.....It is correct that Manjeet was relative of the persons, who contested the election against my father. It is correct that we lodged the FIR against Manjeet due to that enmity.....
.....I identify my signature on statement Ex.D2. It is correct

that in that statement Ex.D2, I deposed that I did not know anything about the present case. I did not know the accused Manjeet. It is correct that my uncle and aunt entered into compromise with Manjeet. It is correct that I made statement Ex.D2 voluntarily without any pressure. Police obtained my signature on my statement recorded by them....

.....It is correct that on that day, victim failed to identify the accused Sunil in front of police and therefore, police did not arrest accused Sunil in Galaxy Hospital on that day....”

23. However, when PW-15 Krishan was put to face cross-examination, though he admitted his making the statement Ex.D4 in the case “State V/s Manjeet”, however, he denied the suggestion qua compromise between the complainant and Manjeet, due to which they resiled from their statements. The relevant extract of his cross-examination is reproduced as under:-

“..... I identify my signature on statement Ex.D4 given by me in case titled “State V/s Manjeet”. It is correct that I made statement Ex.D4 in the Court. It is incorrect to suggest that we compromise the matter in the case titled State V/s Manjeet and therefore, we recanted from our statements.....”

24. Therefore, all the above discussed vital discrepancies and contradictions, as surge forth in the versions (supra) of the family members of the prosecutrix, qua a single incident, compel this Court not to assign any probative sanctity to their evidence, for the reason of their being highly improbable and as such, their evidence is of no consequence.

MEDICAL AND FORENSIC EVIDENCE

25. The prosecutrix was medico-legally examined, on 27.01.2021, by Dr. Neha (PW12), M.O., G.H., Panipat. After her medico-legal examination,

the doctor concerned had prepared the MLR (Ex.P15). The MLR (Ex.P15) of the prosecutrix carries a disclosure that the prosecutrix had merely alleged sexual assault, however, she did not nominate any specific person behind commission of such sexual assault. The relevant extract of the MLR (supra), which makes the above revelations, is reproduced as under:-

“History/Brief description of the incident (as narrated by the victim/acquaintance):

ALLEGED H/O SEXUAL ASSAULT ON 27.01.2021 AT 158 AM IN GALAXY HOSPITAL ICU PANIPAT LMP 17/01/2021, 3 DAYS FLOW 26 TO 32 DAYS CYCLE.”

The MLR (supra) also carries the details regarding penetration, as narrated by the prosecutrix, at the time of her medico-legal examination:-

“Details regarding penetration (as narrated by the female victim/accused/guardian);

a) Was penetration attempted by penis, fingers or other object? Yes.

	Attemption Penetration			Completed Penetration			Emission of Semen
Orifice	By Penis	By Finger	By Object	By Penis	By Finger	By Object	Yes/No/Don't Know/ Don't Remember/ Don't Understand
Vagina	No	No	No	No	Yes	No	No
Anus	No	No	No	No	No	No	No

Therefore, from the MLR (supra), two things transpire that: (i) the prosecutrix did not narrate the name of any particular wrongdoer, and, (ii) the alleged offence relates to penetration by finger and not by penis.

26. Furthermore, upon examination of genitals of the prosecutrix, the doctor concerned recorded a finding in the MLR (supra) that “Hymen is old

torned with healed tags of epithelium”. Moreover, when Dr. Neha stepped into the witness box as PW-12, she did not give any firm opinion qua the veracity of allegations leveled by the prosecutrix, rather she merely opined that “Possibility of sexual intercourse cannot be ruled out”.

27. After the medico-legal examination of the prosecutrix, the doctor concerned had sent some sealed parcels, i.e. two microscopic glass slides, two cottonwool swabs, one dirty grey coloured underwear stated to be of accused and blood sample stated to be of accused, for examination at FSL, Madhuban. However, the result of examination, as conducted at the FSL concerned, also proved to be a futile exercise, as neither semen nor blood could be detected on any of the exhibits, as were sent by the doctor concerned.

28. Therefore, the prosecution case does not receive any corroboration from the medical and forensic evidence, as elaborately discussed hereinabove.

FINAL ORDER

29. In view of the foregoing intricately discussed evidence, there emerges material and considerable discrepancies in the statements of the prosecutrix as well as other prosecution witnesses. Moreover, the reasoning given in the trial Court’s judgment does not suffer from any gross perversity or absurdity of mis-appreciation and non-appreciation of the evidence on record. It is trite law that order of acquittal should not be disturbed unless there are substantial or compelling circumstances.

30. Therefore, this Court does not find any ground to interfere with the order of acquittal. In sequel, the instant appeal is hereby **declined**, it being bereft of merit, and, the impugned judgment of acquittal, rendered by the

learned trial Court concerned, is hereby affirmed and maintained.

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

32. Before parting with the present judgment, it would also be apt to deal with the directions, as issued by the learned trial Court, for initiation of action under Section 193 IPC, against the complainant Suresh (father of prosecutrix), the prosecutrix herself, Krishan (brother of prosecutrix) and Neetu (cousin of prosecutrix).

33. Although the order of acquittal (supra) reveals that an inquiry under Section 340 Cr.P.C. was directed to be conducted, however, there is neither any reference, in the order (supra), with regard to the outcome of such an inquiry, nor there is any reference whether the prosecution witnesses, against whom the inquiry (supra) was ordered, were joined in the inquiry or not. Therefore, in the absence of any specific and conclusive record (supra), we deem it appropriate to abstain from making any observations qua the validity of the directions (supra). However, if the said inquiry has yet remained uninitiated or is yet undergoing, thereupon liberty is reserved to the witnesses (supra), to challenge the validity of the directions (supra), by initiating an appropriate motion, before the appropriate forum, in accordance with law.

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

07.07.2023
devinder

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