

2024:PHHC:063554-DB



**In the High Court for the States of Punjab and Haryana
At Chandigarh**

CRA-D-972-DBA-2002 (O&M)
Date of Decision:-7.5.2024

State of Haryana	... Appellant
Versus	
Rajender Paswan	... Respondent

**CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL
HON'BLE MR. JUSTICE N.S. SHEKHAWAT**

Present:- Ms. Sheenu Sura, DAG, Haryana.
None for the respondent.

GURVINDER SINGH GILL, J.

1. The appellant - State of Haryana assails judgment dated 25.5.2002 passed by learned Additional Sessions Judge, Jhajjar vide which the respondent-accused has been acquitted of charges framed against him for offence under Section 376 of Indian Penal Code.
2. The FIR (Ex.PD/1) was lodged at the instance of prosecutrix, wherein she stated that she was aged about 20-21 years and was married to Shalender about 4 years back. She stated that her father Ram Sarup was residing with his family in a rented room inside factory premises at MIE, Bahadurgarh and



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(2)

she was currently visiting her father since the last about 4 months. It is alleged that on 10.11.1998 at about 9/10:00 P.M. while she was cleaning utensils, her parents i.e. father Ram Sarup and mother Pano Devi were watching TV in the adjoining room. She alleged that in the meantime Kamlesh Kumar, Rajender Paswan and Ravinder Paswan, who were residing in adjacent quarters in the factory premises, came there. Rajender Pawan placed his hand on her mouth, while Ravinder Paswan caught hold of her hands. All three of them took her to an open space inside the adjoining boundary wall. Kamlesh Kumar while brandishing a knife forced her to lie on the ground and thereafter Rajender Paswan committed rape upon her. When the prosecutrix raised alarm, Rajender Paswan inflicted a cut on her face. It is alleged that her parents, who had just arrived from Delhi, came there. Prosecutrix's father pulled Rajender Paswan, who was lying on the prosecutrix. However, all the three accused pushed prosecutrix's father and ran away from spot.

3. The matter was reported to the police on the next day. The prosecutrix was got medically examined. The police conducted investigation, during the course of which a rough site plan of the place of occurrence was prepared and statements of witnesses were recorded. The vaginal swabs as well as clothes of the prosecutrix were sent for chemical examination. Upon conclusion of investigation, a challan was presented against accused Rajender Paswan only while the remaining two persons were kept in column No.2. Upon presentation of challan, the Illaqa Magistrate upon finding that the facts *prima facie* disclosed commission of offence punishable under

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(3)

Sections 376/506 of Indian Penal Code, exclusively triable by the Court of Sessions, committed the case to the Court of Sessions. Upon committal of the case, charges were framed against the accused for offence under Section 376 IPC on 9.7.1999 by the Court of learned Additional Sessions Judge, to which the accused pleaded not guilty and claimed trial.

4. The prosecution examined as many as 14 witnesses. PW-1 Dr. Manjulata, who had medicolegally examined the prosecutrix on 11.11.1998, stated in detail in respect of her medical examination and proved a copy of MLR as Ex.PB. PW-2 Dr. D.S. Rana, who had medicolegally examined Rajender Paswan on 19.11.1998 stated that upon medical examination, the accused was found to be capable of committing sexual intercourse. He proved a copy of MLR as Ex.PC.
5. PW-3 Head Constable Dharampal, PW-4 SI Badan Singh, PW-5 ASI Ram Phal, PW-6 Constable Jassa Ram, PW-7 Constable Mahabir, PW-8 Constable Jai Chand and PW-9 Constable Azad Singh are all official witnesses, who have stated briefly with respect to their formal role in the investigation. It may here be mentioned that the said witnesses were not cross-examined through opportunity to cross-examine the said witnesses was duly afforded to the accused.
6. PW-10 Ram Sarup is father of prosecutrix, who stated that at about 9-10:00 P.M. on 10.11.1998, while he was watching TV, his wife was away to Delhi and his daughter (prosecutrix) was busy cleaning utensils outside the room. He further stated that when he came out of the room, he saw that his daughter

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was not there, whereas 3-4 persons including the accused Rajender Paswan were sitting outside the room on a cot. He further stated that when he entered into the room, he noticed that accused was raping his daughter. Prosecutrix's father further stated that he apprehended the said accused, but he managed to escape. He further stated that at that time his wife was also there with him.

7. PW-11 – Pano Devi, who is mother of the prosecutrix, stated that on 10.11.1998 she had returned back from Delhi at about 9:00 P.M. She stated that while her husband was watching T.V., her daughter Neelam Devi was cleaning utensils outside the house. However, when her husband went out, he could find their daughter and they tried to search for her and noticed that the accused Rajender Paswan alongwith 2 other persons namely Kamlesh and Ravish were present in the room alongwith their daughter, who was crying as accused was committing rape upon her. She further stated that although her husband tried to apprehend the accused and grappled with them, but they managed to escape.

8. PW-12 – Prosecutrix stated that on the day of occurrence, she had gone out of the house to clean utensils while her parents were watching T.V. She stated that Rajender Paswan came there and placed his hand on her mouth and issued threats to kill her in case she raised alarm. Two other persons namely Kamlesh and Ravish were also accompanying him and they all took her to the adjoining factory, where she was raped by Rajender Paswan. She stated that the other two persons kept watch while she was raped. When she raised alarm, her father Ram Sarup was attracted to the spot, but he was given a push by the accused, who ran away from the spot.



9. PW-13 Sub Inspector Rajender Singh, who is the Investigating Officer in the present case, stated in detail about the investigation conducted by him in the matter and proved various documents/memos prepared during the course of investigation. PW-14 – Constable Balwant Singh is another formal witness, who had delivered copies of special reports to Judicial Magistrate and to senior police officers.
10. Upon conclusion of prosecution evidence, statement of the accused was recorded in terms of Section 313 Cr.P.C., wherein he pleaded false implication. However, no evidence was led by the accused to establish his false implication.
11. Learned State counsel, while assailing the impugned judgment, submitted that it is a case where not only the prosecutrix has stated in tune with the allegations levelled in the FIR, but the version also stands corroborated from the testimonies of two witnesses i.e. her father Ram Sarup and mother – Pano Devi. Learned State counsel further submitted that even the medical evidence would corroborate the prosecution version inasmuch some injuries in the nature of abrasions etc. were found on the cheek, right elbow and right middle finger of the prosecutrix. Learned State counsel submitted that no woman would venture out to level such like allegations falsely, which could cast a reflection on her character. It has thus been prayed that the impugned judgment be set aside and the accused be held guilty, keeping in view the consistent evidence led by the prosecution.



12. This Court has considered the aforesaid submissions and has also gone through the impugned judgment as well as the record of the case.
13. It is well settled that in order to hold a person guilty of having committed an offence, the prosecution is required to establish charges beyond reasonable doubt. In case ocular corroboration is not there, the version may even be corroborated by circumstantial evidence. In the present case, it is not in dispute that the prosecutrix is a matured married lady. Her testimony is sought to be corroborated by two witnesses namely Ram Sarup and Pano Devi, who are none else but her parents. However, the Trial Court has noticed various inconsistencies in their statements, which according to the Trial Court, caused a dent in the case of prosecution rendering the prosecution case doubtful. The relevant extract from the impugned judgment is reproduced hereinunder:

“11. Leelam prosecutrix was examined on 16.8.2000. She stated her aged between 20 to 30 years. Ram Sarup PW-10 father and Pano Devi PW-11 mother of Leelam Devi prosecutrix were not cross-examined because the counsel engaged by the accused was not available. Leelam Devi was cross-examined by Sudhir Mohan, Advocate. He was requested to cross-examine her as Amicus Curiae because the counsel engaged by the accused was not appearing and accused Rajender, who was in custody throughout was unable to engage any other counsel because of poverty. Because Ram Sarup and Pano Devi could not be cross-examined, their testimony and testimony of their daughter Leelam Devi have to be closely scrutinized to avoid mis carriage of justice because accused was unable to engage any counsel to cross-examine the witnesses. Evidence of these



witnesses is, therefore, to be seen in the light of these circumstances. SI Ramphal PW-13 recorded statement Ex.PD made by Leelam Devi on 11.11.1998 at 1.30 p.m. According to statement Ex.PD, Rajender and Ravish caught hold of Leelam Devi, when she was cleaning utensils outside the room taken by her father on rent and they took her to adjacent open place enclosed by walls and there Rajender laid her on the ground and committed rape, while Ravish was holding her down by her hands. From the witness-box, Leelam Devi has however deposed that accused (Rajender) Kamlesh and Ravish took her to adjoining factory and accused committed rape on her and when she raised alarm, her father Ram Sarup reached there. It is significant to note that in the statement made by Leelam Devi from the witness box, she has not stated that she was raped at an open place enclosed by walls. She has rather stated that she was raped in the factory. Ram Sarup PW-10 father of Leelam prosecutrix has on the other hand deposed that when he came out of his room, his daughter was not found by him, where she was cleaning utensils outside the room. He called her and when he entered the room, he noticed accused committing rape on his daughter. From the version of Ram Sarup, it would appear that accused committed rape on Leelam in a room, while from the statement Ex.PD made by Leelam to the police, it would appear that she was raped in an open place enclosed by walls. From the statements made by Leelam Devi in the court, it would appear that she was raped I in a factory and from the statement of Ram Sarup, father, who allegedly rescued her, she was found being raped in a room. Smt. Pano Devi, mother of prosecutrix has stated that when they tried to search their daughter, they noticed that accused Rajinder and two persons were present in the room with their daughter, who was crying and the accused was committing rape on her daughter in that room. Prosecutrix has given different versions at



different stages regarding place where she was raped. There are contradictions in the statements made by her father Ram Sarup, who claimed to have rescued his daughter Leelam Devi. These discrepancies have arisen despite the fact that Ram Sarup PW-10 father and Pano Devi PW-11 mother of prosecutrix could not be cross-examined because counsel engaged by the accused was not available to cross-examine the witnesses and the accused was unable to engage any other counsel because of poverty. In such circumstances, it is unsafe to place reliance upon Leelam Devi and her father Ram Sarup and mother Pano Devi. Accused Rajender is therefore, entitled to be given at least benefit of doubt. Prosecution has, therefore, failed to prove charge under section 376 IPC framed against accused Rajender. He is accordingly acquitted of the charge framed against him. He be released from custody forthwith. File be consigned to record room.”

14. The inconsistencies as recorded by the Trial Court are duly borne out from record and which certainly would put the Court at caution particularly when the prosecutrix is not a child but a matured married lady. The discrepancies and inconsistencies in the statements of material witnesses who are none else but parents of prosecutrix, as noticed by the Trial Court would go to root of the case and it certainly would not be safe to record conviction. In any case, it is well settled that a finding of acquittal recorded by the Trial Court is not to be readily interfered with in an appeal against acquittal unless there are cogent and convincing reasons to take a different view. In this context, a reference can be made to a judgment passed by Hon’ble the Apex Court rendered in 2023(8) SCC 197, Central Bureau of Investigation Vs. Shyam Bihari & others, wherein Hon’ble the Apex Court while examining a case of



acquittal where some infirmities in impugned judgment were noticed but the appeal had remained pending for a decade, held as under:

“26. At the outset, we may observe that no doubt the judgment and order of the High Court appears a bit cryptic but that by itself need not be a ground for us to set aside the order and remit the matter to the High Court, particularly, when we have the relevant record to assess the merit of the prosecution case. More so, because the incident is of the year 1987 and the appeal has remained pending since more than a decade. In such circumstances, if we remit the matter to the High Court only to rewrite the judgment, it would be travesty of justice. Consequently, as the trial court has dealt with the matter at great length and has discussed each and every piece of evidence on which the prosecution seeks to rely, it would be apposite for us to assess whether, by not granting leave to appeal against the judgment of the trial court, there has been a miscarriage of justice.

27. It is trite law that in an appeal against acquittal, the power of the appellate court to re-appreciate evidence and come to its own conclusion is not circumscribed by any limitation. But it is equally settled that the appellate court must not interfere with an order of acquittal merely because a contrary view is permissible, particularly, where the view taken by the trial court is a plausible view based on proper appreciation of evidence and is not vitiated by ignorance/misreading of relevant evidence on record.”

15. In view of the discussion made above and in light of the ratio of the judgment cited above, this Court does not find any ground to interfere with the impugned judgment and the same is hereby upheld. Finding no merit in the present appeal and the same is hereby dismissed. The bail bonds/surety



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bonds furnished by the respondent at the time of granting bail still stand discharged.

(GURVINDER SINGH GILL)
JUDGE

7.5.2024
Pankaj

(N. S. SHEKHAWAT)
JUDGE

Whether speaking /reasoned	Yes / No
Whether Reportable	Yes / No