



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

107

CRA-AS-63-2020

Date of decision: 01.10.2024

Reena Kaur

....Appellant

V/s

Rakesh Kumar and another

....Respondents

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Mr. Binderjit Singh, Advocate for the appellant.

SUMEET GOEL, J. (Oral)

1. Present appeal is directed against the judgment dated 17.01.2020 passed by Additional Sessions Judge, Bathinda, whereby respondent No.1 (herein) was acquitted from the charges under Sections 354-B, 342, 506, 323 of IPC and Sections 8 and 12 of POCSO Act, by granting him the benefit of doubt.
2. For clarity and simplicity, the complainant-appellant, who has lodged the impugned FIR, will be referred to as the 'victim' while respondent No.1, the accused in the impugned FIR, will be referred to as the 'accused' throughout this judgment.
3. In the present appeal, the pertinent facts for adjudication are that the FIR No.233 dated 20.11.2017 was lodged against the accused-respondent No. 1, S/o Chaman Lal S/o Kasturi Lal, Driver, resident of Ganesha Basti, Bathinda, Punjab, under Sections 354-/B, 342, 506, 323 of the Indian Penal Code (for brevity the 'IPC') and Sections 8 and 11 of



at Police Station Civil Lines, Bathinda. The matter proceeded to trial before the Court of Additional Sessions Judge, Bathinda, which concluded its proceedings and, vide judgment dated 17.01.2020, acquitted the accused (respondent No. 1 herein) of all the charges. The Court below held that there are many discrepancies and lacunae in the prosecution case, which goes to the root of the matter, remained unexplained & hence the accused ought to be acquitted by giving him the benefit of doubt.

4. The appellant, aggrieved by the findings of the Court below, has now invoked the appellate jurisdiction of this Court, seeking re-examination of the findings as the same are based on alleged misappreciation of evidence and procedural irregularities. However, it is well-settled law that the scope in appeal is limited and does not entail a re-appreciation of evidence unless there is a manifest illegality or a serious miscarriage of justice.

5. In brief, the case of the prosecution, as detailed in the FIR, is that on 20.11.2017, while ASI Manjit Singh and other police officials were on duty at ICICI Chowk, Bibi Wala Chowk, Bathinda, the victim and her mother, Sarabjit Kaur, approached him and got recorded her statement. The victim narrated that she, a 10+1 student of Government School, had been living with her uncle, Basant Singh, for about 1½ years. She reported that for the past 3-4 months, the accused had been stalking and harassing her while she was going to or returning from school. She reported the matter to her mother and uncle, who visited the house of the accused twice but he was unavailable but his father and cousin apologized and assured that the



a.m., the accused, who was hiding in the victim's room, bolted the door and tried to commit rape upon her. On raising the alarm, the accused covered the mouth of the victim with a pillow and threw her onto the bed. He then pressed his hand against her neck and threatened to kill her. During the struggle, he pulled a knife from his pocket. As a result of the scuffle, the victim sustained abrasions and bruises on her throat. Based on these set of allegations, the FIR in question, was registered under Sections 354-B, 342, 506, 323 of IPC and Sections 8 and 11 of POCSO Act.

6. Learned counsel for the appellant has argued that the Court below has erred in acquitting the accused-respondent No.1 and the impugned order is contrary to the law, facts and evidence on record. According to learned counsel, the Court below erred in placing reliance on the 08 days delay in reporting the incident to the Police, particularly when the victim was a minor, and the delay in reporting such matter is common due to feeling of shame and social stigma. It has been argued that the statements of the victim and her mother were consistent and credible, yet the Court below has failed to properly appreciate them and acquitted the accused on flimsy grounds. The learned counsel further argued that the offence under Section 323 of IPC was substantiated by the victim's abrasions, yet the Court below erroneously held that she did not mention the same in her statement recorded under Section 164 of Cr.P.C., 1973. Furthermore, the offence under Section 342 of IPC is also made out, as the accused unlawfully confined the victim by entering her room and bolted the door from inside. According to the learned counsel, the Court below unnecessarily delved into irrelevant



Basant Singh, which is immaterial to the facts of the case. Learned counsel asserts that the Court below has dealt the matter in superficial manner without proper consideration of the evidence. Learned counsel has further canvassed that the Court below has wrongly acquitted the accused, despite there being sufficient evidence on record to establish his guilt and hence his acquittal is not justified in light of the evidence presented.

7. The principles governing the scope of interference by the High Court in an appeal against the judgment of acquittal, have been laid down by the Hon'ble Supreme Court in the judgment passed in the case titled as ***Babu Sahebagouda Rudragoudar and others versus State of Karnataka, 2024 INSC 320 = 2024(2) Law Herald (SC) 928*** held as under:

“39. Thus, it is beyond the pale of doubt that the scope of interference by an Appellate Court for reversing the judgment of acquittal recorded by the trial Court in favour of the accused has to be exercised within the four corners of the following principles:-

(a) That the judgment of acquittal suffers from patent perversity;

(b) That the same is based on a misreading/omission to consider material evidence on record;

(c) That no two reasonable views are possible and only the view consistent with the guilt of the accused is possible from the evidence available on record.”

8. In the light of the above principles laid down by the Hon'ble Supreme Court, I have thoughtfully considered the arguments advanced on behalf of the appellant, perused the entire case record and the judgment passed by the learned Court below.

9. While going through the impugned judgment passed by the Court below, it appears that the victim has failed to satisfactorily discharge

her burden of proof by presenting credible and reliable evidence or



witnesses. It is a well-settled principle of law that the burden rests upon the prosecution to establish the guilt of the accused through cogent and convincing evidence, and any failure to do so entitles the accused to the benefit of doubt.

10. As per the case put forth by the victim, it is alleged that the accused used criminal force with an intention to disrobe the victim, wrongfully confined her with intent to outrage her modesty, threatened her with dire consequences and also tried to commit rape on her. However, the incident was reported to the Police after a delay of 08 days and no plausible explanation was forthcoming for such delay. As narrated by the victim, during her examination as PW-1, that she, alongwith her mother, approached the Police authorities and reported the matter on the same day at 10/10:30 p.m. However, when her mother testified as PW-2, she contradicted this statement by asserting that the matter was reported to the Police after the 2/3 days of the incident, despite having been informed of the occurrence on the very same day. This glaring inconsistency between the testimonies of key prosecution witnesses introduces a material contradiction, which directly impacts the credibility of the witnesses and the case of the prosecution. Such discrepancies cannot be lightly overlooked as they strike at the very root of the prosecution's narrative and reliability of the evidence presented. In criminal jurisprudence, where the burden of proof lies squarely on the prosecution to establish the guilt beyond the reasonable doubt, the conflicting statements of star prosecution witnesses significantly undermine the ability of the prosecution to prove the charges conclusively and potentially warranting an acquittal by giving him the benefit of doubt.



Moreover, there is no reasonable explanation forthcoming either from the evidence produced by the complainant or records of the case or from the averments made in the present petition, on this aspect.

10.1 Furthermore, the Court below has found the allegations under Sections 354-B, 323 of IPC as well as Section 8 of POCSO Act, to be without merit, as they lack any substantive evidence or corroborative material. The prosecution has failed to establish a prima facie case to substantiate the charges. Moreover, the victim has failed to provide any medical evidence to substantiate her claim that she had suffered abrasions and contusions and also faced a rape attempt by the accused. In the considered opinion of this Court, in the absence of credible material/medical evidence on record, the Court below has rightly concluded that the essential ingredients required to prove these offences were not satisfied, resulting in the dismissal of the charges.

10.2 Another shortcoming in the case is the significant discrepancies/contradictions in the statements of the victim with regard to offence under Sections 342/506 of IPC and Section 12 of POCSO Act which casts serious doubt on her alleged claims. In her testimony as PW-1, the victim mentioned that the accused stalked her, obstructed her path, and made lewd comments. However, in her statement recorded under Section 164 of Cr.P.C. (Ex.PW1/B), she made no mention of stalking. She also gave inconsistent versions of the events in various statements, including giving different accounts of the incident which took place on 12.11.2017 involving a knife. Her mother, PW-2 Sarabjit Kaur, also provided contradictory statements regarding their attempts to confront the family of the accused.



Additionally, there were discrepancies concerning the stay of the victim at Basant Singh house, her relationship with him, and the presence of other paying guests. The conduct of the victim, her admission that she was influenced by Basant Singh to testify and inconsistencies regarding key details i.e. presence of a servant, lack of police action to recover the knife or obtain CCTV footage, raise doubts about the case of the prosecution. The defence witnesses, who were not cross-examined, testified that the police ignored requests to secure CCTV footage. These discrepancies undermine the case of the prosecution and it fails to meet the stand of proving the guilt beyond a reasonable doubt and casts a significant element of doubt regarding the alleged incident in question and potentially weakened the case of the victim.

11. It is a well established principle in criminal jurisprudence that the burden of proof rests squarely upon the prosecution, which must establish the guilt of the accused beyond reasonable doubt. Any failure to meet this standard, particularly when key evidence is either missing or questionable, entitled the accused to the benefit of doubt. It has been consistently held that suspicion, however grave, cannot substitute for proof, and where there exists any reasonable doubt, the benefit of such doubt must be given to the accused and he must be acquitted in accordance with law. In light of the above discussed discrepancies and inconsistencies, it can safely be inferred that the case put forth by the prosecution is false and there is no evidence of the alleged incident as projected by the victim. Where the victim herself has failed to substantiate her case beyond reasonable doubt, as has



accused recedes into the background and rather becomes immaterial. However, as has been noted by the learned Additional Sessions Judge, while passing the judgment of acquittal, in concluding para of the judgment that many discrepancies and other lacunae have been left in the case of the prosecution which go to the root of the matter, which the prosecution could not explain. In the instant case, the prosecution has miserably failed to discharge its liability. The eagerness of the victim to implicate the accused through vague and general accusations further indicates a possible attempt to implicate him, regardless of his actual participation/involvement, in an effort to harass him.

12. In the facts and circumstances of the entire case coupled with the presence of multiple lacunae as also inconsistencies in the case, the learned Additional Sessions Judge, rightly arrived at the conclusion that the story put forth by the victim was false and the allegations raised lack substance.

13. The facts of the case clearly narrate that the victim has tried to conceal the real genesis of the case. However, the Court below has meticulously and judiciously examined the matter, appreciating the facts and evidence in their proper context. The Court below has rightly discerned the attempt of the victim to distort the narrative and has delivered the findings based on thorough evaluation of the material on record.

14. Perusal of the impugned judgment of acquittal passed by both the Court below shows that the entire evidence led by the prosecution has been gone through in detail and in a painstaking manner and has dealt with



acquittal is based on sound reasoning; does not suffer from any illegality or perversity. As such, the judgment of acquittal dated 17.01.2020 passed by Additional Sessions Judge, Bathinda, is upheld. Resultantly, the present appeal, being bereft of merits, fails and is dismissed.

15. Pending application(s), if any, shall also stand disposed off.

(SUMEET GOEL)
JUDGE

October 01, 2024
Ajay

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