

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR-2167-2008 (O&M)
Date of decision: 15.03.2024

Ganga RamPetitioner

Versus

Narender @ Sanju Pal & anr.Respondents

CORAM: HON’BLE MR. JUSTICE PANKAJ JAIN

Present:- Mr. Rahul Vats, Advocate
for the petitioner.

Mr. Prashant Bhardwaj, Advocate
for respondent No.1.

Mr. Ashok Kumar Sehrawat, DAG, Haryana.

PANKAJ JAIN, J.(ORAL)

1 Present revision petition is directed against judgment dated 07.05.2008 passed by Sessions Judge, Faridabad acquitting respondent No.1 of offence punishable under Section 376 IPC and Sections 3/4 of SC/ST Act at Police Station City Palwal.

2 FIR was registered on the written complaint made by father of the victim alleging that his daughter aged 15 ½ years was studying in 8th class. She stopped going to school and appeared to be disturbed. On inquiry made from her it came to the knowledge that respondent No.1 on the pretext

of marrying violated her. Prosecutrix was examined as PW1 and reiterated that she was violated by respondent No.1 as well as another person Harish who was present in the shop of respondent No.1. She further claimed that respondent No.1 promised to marry her. Dr. Usha Mathur, PW2 examined prosecutrix medically. As per her it was not possible to comment whether the prosecutrix has been raped or not? Complainant appeared as PW5 and deposed on the lines of the FIR. In defense accused summoned school record. As per the summoned record, date of birth of this prosecutrix was mentioned as 15.08.1989 *vis-à-vis* the claim of the prosecution that she was born on 05.05.1991. After going through the evidence trial Court found that in the absence of the form filled by the parents at the time of admission to the school, it was not safe to rely upon, school certificate Ex. P-L to hold that the date of birth of the victim was 05.05.1991. In order to ascertain the age of the prosecutrix the medical officer referred her for radiological opinion but it has not been brought on record by the prosecution as to whether the girl was sent for the same or not. Trial Court thus found that in the absence of any evidence, the prosecution was failed to prove that the prosecutrix was under 16 years of age. Furthermore, it is not a case of the prosecution that the prosecutrix was ever kidnapped or confined. She admitted of having contacted the accused on telephone. Her silence for six months indicates that she was consenting party and no semen having been found the medical record does not support the case of the prosecution. Trial Court thus held that it is a case of consensual relationship and acquitted respondent No.1 of charges framed against him.

3 Learned counsel for the petitioner has not been able to point out any evidence which was not considered by the trial Court. He admits that the consent of the prosecutrix is there on record. However submits that the same was on the pretext of promise by the accused to marry the victim.

4 Learned counsel for respondent No.1 submits that the same gets demolished from the fact that prosecutrix herself has admitted that in the same shop there was another person who also violated the prosecutrix. Thus the theory of there being a promise of marriage gets demolished by her own conduct.

5 Having heard learned counsel for the parties and after going through records of the case, this Court finds that consent of the prosecutrix is an admitted fact. The question is whether there was any promise on part of the accused to marry her or not?

6 Learned counsel for respondent No.1 is right in contending that as per own admission of prosecutrix she was continuously in relationship with the accused and not only accused but also with another person who was present on the same very shop which itself puts whole of the story of there being promise made by the accused to the prosecutrix to marry her under cloud. As per settled law, benefit of doubt must go to the accused.

7 Moreover law with respect to exercise of revisional jurisdiction stands well laid in ***Bindeshwari Prasad Singh @ B.P. Singh and others vs. State of Bihar (Now Jharkhand) and another, 2002 AIR (SC) 2907*** to the following effect : -

“12. We have carefully considered the material on record and we are satisfied that the High Court was not justified in re-appreciating the evidence on record and coming to a different conclusion in a revision preferred by the informant under Section 401 of the Code of Criminal Procedure. Sub-section (3) of Section 401 in terms provides that nothing in Section 401 shall be deemed to authorize a High Court to convert a finding of acquittal into one of conviction. The aforesaid sub-section, which places a limitation on the powers of the revisional court, prohibiting it from converting a finding of acquittal into one of conviction, is itself indicative of the nature and extent of the revisional power conferred by Section 401 of the Code of Criminal Procedure. If the High Court could not convert a finding of acquittal into one of conviction directly, it could not do so indirectly by the method of ordering a re-trial. It is well settled by a catena of decisions of this Court that the High Court will ordinarily not interfere in revision with an order of acquittal except in exceptional cases where the interest of public justice requires interference for the correction of a manifest illegality or the prevention of gross miscarriage of justice. The High Court will not be justified in interfering with an order of acquittal merely because the trial court has taken a wrong view of the law or has erred in appreciation of evidence. It is neither possible nor advisable to make an exhaustive list of circumstances in which exercise of revisional jurisdiction may be justified, but decisions of this Court have laid down the parameters of exercise of revisional jurisdiction by the High Court under Section 401 of the Code of Criminal Procedure in an appeal against acquittal by a private party. (See **AIR 1951 Supreme Court 196 : D. Stephens v. Nosibolla**; **AIR 1962 Supreme Court 1788 : K.C. Reddy v. State of Andhra Pradesh**; **(1973) 2 SCC 583 : Akalu Ahir and others v. Ramdeo Ram**; **AIR 1975 Supreme Court 1854 : Patakalapati Narayana Gajapathi Raju and others v. Bonapalli Peda Appadu and another** and **AIR 1968 Supreme Court 707 : Mahendra Pratap Singh v. Sarju Singh**).”

8 Apex Court in **Thankappan Nadar vs. Gopala Krishnan (2002) 9 SCC 393**, held as under : -

“6. In a revision application filed by the de facto complainant against the acquittal order, the court's jurisdiction under Section 397 read with Section 401 of the Cr.P.C. is limited. The law on the subject is well settled.

Instead of referring to various judgments, we would only refer to few decisions rendered by this Court. In Akalu Ahir and Others v. Ramdeo Ram, (1973) 2 SCC 583 this Court has (in SCC pp.587-88, para 8) observed thus:

"This Court however, by way of illustration, indicated the following categories of cases which would justify the High Court in interfering with a finding of acquittal in revision:

- (i) Where the trial court has no jurisdiction to try the case, but has still acquitted the accused;*
- (ii) Where the trial court has wrongly, shut out evidence which the prosecution wished to produce;*
- (iii) Where the appellate court has wrongly held the evidence which was admitted by the trial court to be inadmissible;*
- (iv) Where the material evidence has been overlooked only (either) by the trial court or by the appellate court; and*
- (v) Where the acquittal is based on the compounding of the offence which is invalid under the law.*

These categories were, however, merely illustrative and it was clarified that other cases of similar nature can also be properly held to be of exceptional nature where the High Court can justifiably interfere with the order of the acquittal."

The Court further observed: (SCC p.588, para 10)

"No doubt, the appraisal of evidence by the trial judge in the case in hand is not perfect or free from flaw and a court of appeal may well have felt justified in disagreeing with its conclusion, but from this it does not follow that on revision by a private complainant, the High Court is entitled to reappraise the evidence for itself as if it is acting as a court of appeal and then order a retrial. It is unfortunate that a serious offence inspired by rivalry and jealousy in the matter of election to the office of village Mukhia, should go unpunished. But that can scarcely be a valid ground for ignoring or for not strictly following the law as enunciated by this Court.

(Emphasis added)"

9 As a result of the aforesaid, this Court does not find that the
view taken by the trial Court can be said to be erroneous.

10 Resultantly, present petition is dismissed.

(PANKAJ JAIN)
JUDGE

15.03.2024
Pooja Sharma-I

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