

2024:PHHC:099884-DB



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

CRM-A-359-2021
Reserved on: 22.07.2024
Date of decision: 30.07.2024

State of Haryana

.....Appellant

Versus

Satpal Singh

.....Respondent

**CORAM: HON'BLE MR. JUSTICE SUDHIR SINGH
HON'BLE MR. JUSTICE KARAMJIT SINGH**

Present: Mr. Manish Dadwal, AAG, Haryana,
for the applicant.

Mr. Aman Kumar, Advocate,
for Mr. Piyush Sharma, Advocate,
for the respondent.

SUDHIR SINGH, J.

The instant application seeking Leave to Appeal is preferred against the judgment dated 05.03.2021 passed by the learned Additional Sessions Judge-cum-Special Judge, Fast Track Court, Fatehabad, whereby respondent-Satpal Singh has been acquitted of the charges under Section 363, 366-A, 376 (n) IPC and Section 6 of the Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as 'POCSO Act').

2. Vide order dated 08.07.2022, the Lower Court record was called for. The same was received on 09.12.2022.

3. The prosecution case was that initially, on the basis of an application made by the complainant on 18.05.2019, the present case was registered against accused-respondent (Satpal Singh) under Sections 363 and 366-A IPC. It was alleged that the accused-respondent had kidnapped his daughter (prosecutrix) after enticing her away. Later on, the prosecutrix was recovered on 08.06.2019 and her statement was got recorded under Section 164 Cr.P.C. Subsequently, Section 6 of the POCSO Act and Section 506 IPC were added. Counseling of the prosecutrix was done by the Children Welfare Society, Fatehabad. Her medical examination was got conducted. On her identification, place of occurrence was demarcated. Accused-respondent was arrested on 10.06.2019 and his medical examination was also got conducted. During interrogation, accused-respondent suffered a disclosure statement and confessed to his guilt. He also got demarcated the place of occurrence.

4. After investigation, the charge-sheet was submitted, where-after cognizance was taken. Thereafter, charges were framed against the respondent, to which he pleaded not guilty and claimed to be tried.

5. During trial, the prosecution examined eighteen witnesses, namely, PW1 E/ASI Jagir Singh, PW2 SI Satyawan, PW3 ASI Hardayal Singh, PW4 HC Kuldeep, PW5 victim/prosecutrix, PW6 Balwant Singh, Draftsman, PW7 Lady Constable Kusum Lata, PW8 grandfather of the prosecutrix, PW9 mother of the prosecutrix, PW10 complainant, PW11 ASI Mahabir Singh, PW12 Dr. Loveleen, Medical Officer, PW13 Surjeet Singh, PW14 ASI Suresh Kumar, PW15 Dr. Girish Kumar, PW-16 SI Sheela Devi, PW17 Dr. Amardeep Singh, Medical Officer and PW18 Dr. Rajiv Kawatra, Senior Scientific Officer (DNA) FSL, Madhuban. In support of its case, the prosecution had also produced documentary evidence i.e. FSL report Ex.P42. On conclusion of the prosecution evidence, statement of the accused-respondent was recorded under Section 313 Cr.P.C., wherein entire incriminating evidence was put to him. However, he denied the same and pleaded false implication in the case. In defence, no evidence was led by him. After conclusion of the trial, the learned Trial Court acquitted the accused-respondent of the charges framed against him.

6. The grounds considered by the learned Trial Court for acquitting the respondent are as under:-

“1. All the material witnesses i.e. the victim girl-herself (PW5); her grandfather (PW8); mother (PW9) and the complainant (victim's father) (PW10), were declared

hostile. The victim girl, while appearing as PW5, specifically stated that the accused-respondent did not commit any act of sexual intercourse nor developed any kind of physical relations with her.

2. The complainant (father of the victim), who was examined as PW-10, had even denied moving of the application Ex.P2, to the police. Though, he admitted his signatures on the application, yet he stated that the same were obtained by the police on blank paper(s). Similarly, PW8 (grand-father of the victim) and PW9 (mother of the victim) stated that none had abducted the victim girl. They specifically stated that the accused facing trial had not abducted the prosecutrix.

3. The victim herself did not support the prosecution case and that other evidence adduced by the prosecution was not sufficient to connect the accused with the charges leveled against him. Moreover, the prosecutrix was not recovered from the possession of the accused-respondent.”

7. Learned State counsel, while assailing the judgment of acquittal passed by the trial Court, has argued that though the prosecutrix and her parents did not support the prosecution case during trial, but in her statement recorded under Section 164 Cr.P.C. (Ex.P10), the prosecutrix had specifically stated that on the night of 13.05.2019, the accused-respondent had enticed her and took her to Mansa, where they remained in a rented room. Accused-respondent also promised to marry her after giving

divorce to his wife. He further argued that FSL report Ex.P42 and DNA report Ex.P41, clearly established on record that the accused-respondent had committed rape upon the victim. As per the aforesaid reports, DNA profile of the underwear of the prosecutrix had matched with that of the accused. It is thus, submitted that once the said evidence had come on record, the factum of the witnesses having turned hostile, is immaterial and the approach of the trial Court, in acquitting the accused is not tenable in the eyes of law.

8. On the other hand, learned counsel appearing for the respondent, while defending the judgment of the trial Court, submits that the trial Court has given its findings on the basis of evidence on record and the same do not suffer from any illegality or infirmity.

9. After hearing the submissions made by the learned counsel for the applicant, the following issue arises for consideration in the present application:-

“Whether in the light of all material witnesses having turned hostile with regard to the commission of penetrative sexual assault upon the prosecutrix, can the accused be held guilty of committing the alleged offence?”

10. It is apparent from a perusal of the entire material available on the record that there is no eyewitness to the alleged occurrence, and thus, the entire case of the prosecution rests on the oral testimony of the prosecutrix

(PW-5). In the case at hand, none of the four material witnesses, i.e., the prosecutrix (PW5); complainant, who is father of the victim (PW10); the victim's grandfather (PW8) and her mother (PW9), did not support the prosecution story that the accused had committed a rape upon the victim and they were declared hostile on the ground of suppression of truth. The prosecutrix/victim (PW-5) herself stated that on 13.05.2019, she and Satpal had gone to Hazoor Sahib, Nander (Maharashtra). Firstly, they went to Mansa at a Gurudwara and stayed there for about 13 days. Thereafter, they left for Hazoor Sahib and stayed there for three days. After that, they returned to their house. She resiled from her statement Ex.P8, which was allegedly made before the police. During cross-examination, when the victim girl (PW-5) was confronted with her statement (Ex.P10) recorded under Section 164 Cr.P.C., she admitted her signatures at Points 'A' and 'B', but denied that Satpal had promised to marry her after giving divorce to his wife. She also admitted her signatures on statement Ex.P11 made before the Child Welfare Committee, but denied having stated that accused had developed physical relations with her. The complainant (PW10) even denied moving of any application (Ex.P2) to the police. Though, he admitted his signatures on the said application, yet he categorically stated that the same were obtained by the police on blank

paper. Furthermore, with reference to the medical/scientific evidence, upon evaluating the report of the medical examination (Ex.P26) conducted by Dr. Loveleen, Medical Officer (PW-12), it is clear that no external injury marks were found on any part of the person of the victim which could prove an act of an assault. As regard the forensic examination placed on record, which shows that the DNA Profile of the underwear of the prosecutrix had matched with that of the accused-respondent, learned trial Court has observed that merely semen stains were found on the underwear of the victim, which could not establish that the accused-respondent had, actually, committed rape upon her, more so, when the victim herself had specifically denied that the rape was committed upon her. This indicates that even the medical report does not provide conclusive evidence of the commission of rape. Therefore, sufficient evidence is not available to corroborate the prosecution's version. Under the said circumstances, we are not inclined to agree with the arguments put forth by the learned counsel for the State.

11. Thus, there is no conclusive proof in the instant case, more so supported by any witness and medical evidence that the accused had committed rape upon the prosecutrix. Accordingly, the issue is decided in negative.

12. While deciding an appeal against acquittal in a criminal case, the primary task with which the appellate Court is entrusted is to determine whether the findings in the impugned judgment are perverse, illegal, irrational, and against the principles of natural justice. Once the appellate Court comes to the conclusion that the grounds on which the judgment is based are not perverse, the scope of appeal against acquittal is limited, considering the fact that the presumption of innocence, which is available with an accused, gets further strengthened by the finding of a Court. In the case of Mrinal Das Vs. State of Tripura, (2011) 9 SCC 479, it has been observed by Hon'ble Supreme Court that:

"13. It is clear that in an appeal against acquittal in the absence of perversity in the judgment and order, interference by this Court exercising its extraordinary jurisdiction, is not warranted. However, if the appeal is heard by an appellate court, it being the final Court of fact, is fully competent to reappraise, reconsider and review the evidence and take its own decision. In other words, the law does not prescribe any limitation, restriction, or condition on the exercise of such power, and the appellate Court is free to arrive at its own conclusion keeping in mind that acquittal provides for a presumption in favor of the accused. The presumption of innocence is available to the person, and in criminal jurisprudence, every person is presumed to be innocent unless he is proved guilty by the competent Court. If two reasonable views are possible on the basis of the evidence on

record, the appellate Court should not disturb the findings of acquittal.

14. There is no limitation on the part of the appellate Court to review the evidence upon which the order of acquittal is found and to come to its own conclusion. The appellate Court can also review the conclusion arrived at by the trial court with respect to both facts and law. While dealing with the appeal against acquittal preferred by the State, it is the duty of the appellate Court to marshal the entire evidence on record and only by giving cogent and adequate reasons set aside the judgment of acquittal. An order of acquittal is to be interfered with only when there are "compelling and substantial reasons" for doing so. If the order is "clearly unreasonable", it is a compelling reason for interference. ... "

In the case of Ghurey Lal Vs. State of Uttar Pradesh, (2008) 10 SCC 450 in para no. 75, the Hon'ble Supreme Court re-iterated the said view and observed as follows:

"75. The trial court has the advantage of watching the demeanour of the witnesses who have given evidence, therefore, the appellate Court should be slow to interfere with the decisions of the trial court. An acquittal by the trial court should not be interfered with unless it is totally perverse or wholly unsustainable."

13. Thus, an order of acquittal is to be interfered with only for compelling and substantial reasons. In case the order is clearly unreasonable, it is a compelling reason for interference. But where there is no perversity in the finding of the impugned judgment of acquittal, the appellate Court

must not take a different view only because another view is possible. It is because the trial Court has the privilege of seeing the demeanour of witnesses and, therefore, its decision must not be upset in the absence of strong and compelling grounds.

14. In the opinion of this Court, the trial Court has taken a plausible view based on the evidence available on the record. The view taken by the trial Court cannot be held to be bad or perverse. Under such circumstances, no case for interference with the impugned judgment is made out. Accordingly, the present application is dismissed and leave to appeal is declined.

(Sudhir Singh)
Judge

(Karamjit Singh)
Judge

30.07.2024
Ajay Prasher

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