

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-A-1796-2019
Date of decision: 15.03.2024

Rehman KhanAppellant
Versus
State of Haryana and othersRespondents

**CORAM: HON'BLE MR. JUSTICE SUDHIR SINGH
HON'BLE MR. JUSTICE HARSH BUNGER**

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

SUDHIR SINGH, J.

The instant application seeking Special Leave to Appeal is preferred against the judgment dated 04.04.2019 passed by the learned Additional Sessions Judge, Bhiwani, whereby respondents No.2 and 3 (Sunil Kumar and Rambir @ Kaliya) have been acquitted of the charges under Section 323, 450, 34, 376D, 506 IPC and Section 6 of the Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as 'POCSO Act').

2. Vide order dated 11.07.2022, the Lower Court record was called for. The same was received on 20.07.2023.

3. The prosecution case was that on 01.09.2018, complainant-Rehman Khan (PW-13) made a

complaint/application alleging therein that his daughter i.e. victim was around 16 years old. On the previous night, they were sleeping together on the ground floor of the house. At about 12.00 midnight/1.00 A.M., Sunil Kumar (respondent No.2) came to his house and took his daughter to the roof after gagging her mouth and thereafter, he committed rape upon and had also given beatings to her. After the occurrence, he threatened the victim of dire consequences, if she narrated the incident to anyone. However, she raised an alarm, whereupon her uncle (*Tau*), who was sleeping nearby, woke up. In the light of battery, he saw Sunil Kumar and one another boy jumping from the roof.

4. Based on the aforesaid complaint, FIR No. 408 dated 01.09.2018, under Sections 323, 376D, 450, 506 IPC and Section 6 of the POCSO Act, was registered. After investigation, the charge-sheet was submitted, where-after cognizance was taken. Thereafter, charges were framed against respondents No.2 and 3, to which they pleaded not guilty and claimed to be tried.

5. During trial, the prosecution examined sixteen witnesses, namely, PW1 E/ASI Dharambir Singh, PW2 Dharmender (Draftsman), PW3 Sh. Satish Kumar, learned CJM, Bhiwani, PW4 Prosecutrix (victim), PW5 Constable Surender, PW6 HC Anil, PW7 Ms. Suman Bajar, Member, Child Welfare Committee, Bhiwani, PW8 HC Kuldeep, PW9

E/ASI Mahender Singh, PW10 Dr. Manjit Kumar, Medical Officer, General Hospital, Charkhi Dadri (medical evidence), PW11 SI Vinod Kumar (Investigating Officer), PW12 SI Jai Singh (Investigating Officer), PW13 Rehman Khan, complainant (father of victim girl), PW14 SI Sushila Devi (Investigating Officer), PW15 Dr. Rashmi Mehta, Medical Officer, General Hospital, Bhiwani and PW-16 Balwan Singh (grand-father of victim girl). In support of its case, the prosecution had also produced documentary evidence i.e. FSL and DNA reports in the form of Ex PA and Ex.PB respectively. On conclusion of the prosecution evidence, statements of the accused (respondents No.2 and 3) were recorded under Section 313 Cr.P.C., wherein entire incriminating evidence was put to them. However, they denied the same and pleaded false implication in the case. In defence, no evidence was led by them. After conclusion of the trial, the learned Trial Court acquitted the accused (respondents Nos.2 and 3).

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

“1. During cross-examination, when the victim girl (PW-4) was confronted with her statement (Ex.DA) recorded under Section 161 Cr.P.C., it was found that she had made vast improvements in her testimony in the Court with regard to the allegations of sexual assault under the life threat at the hands of accused Sunil Kumar

as well as by Rambir. When the victim girl was forcibly taken to the roof by the accused persons, none of her family members, who were sleeping in the courtyard, woke up or even heard a little sound. It was not believable that the victim, who was above 16 years of age, would be taken meekly by the accused without any stiffest resistance or noise on her part.

2. The complainant (father of the victim), who was examined as PW-13, had admitted that when he reached the roof of his house, both the accused were not present there, meaning thereby, he had implicated the accused on the basis of what was told to him by the victim girl. As such, his statement was hearsay and based only on the self serving information given to him by the victim herself. Similarly, PW16, who is the grand-father of the victim, admitted that he could not even tell from where those two boys i.e. the accused had come, whom he had allegedly seen in the torch light on the day of occurrence. During his cross-examination, he admitted that he did not know anything about the occurrence.

3. No struggle marks were found on the body of the victim at the time of her medical examination by the lady Doctor. No mark of injury, on her private parts was also found. Therefore, the medical evidence did not support the prosecution version.”

7. The learned counsel for the applicant, while assailing the judgment of acquittal passed by the trial Court, has argued that there is sufficient evidence on record corroborating the entire testimony of the complainant that

on the intervening night of 31.08.2018/01.09.2018, at about 12.00 (midnight)/1.00 A.M., accused-respondents No.2 and 3 entered the house of complainant; forcibly took the victim/prosecutrix on the roof of the house and committed rape upon her. It is, further argued that there was no material contradiction in the testimony of the victim and she had specifically named the accused not only in her statement under Section 164 Cr.P.C., but also while appearing in Court as PW4. Still further, the grandfather of the victim, who had appeared as PW16 had identified both the accused in the Court. It is, thus, argued that when the victim's version was duly corroborated by the testimony of the other witnesses, the very approach of the trial Court in acquitting the accused is not tenable in the eyes of law.

8. 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 absence of any corroborative conclusive forensic evidence, the accused can be convicted of the offence of rape?”

9. The trial Court while evaluating the evidence on record, has specifically found that the FSL report does not corroborate the case of the prosecution. In para No. 54 of its judgment, it has been inter-alia, observed as under:-

“However, when the Capri of the victim girl revealed the presence of semen and an attempt was then made by the investigating agency to connect the semen found on

the aforesaid article with the blood sample of accused Sunil Kumar through DNA profiling, this was not connected with the semen found over the capri of the victim girl because, as per report of DNA Exh.PB tendered into evidence by, learned Public Prosecutor, the autosomal STR analysis indicated that DNA profile could not be obtained in item No.1b (Capri) which was necessary to compare with the DNA profile of the accused (source of blood sample, i.e., item No.7) hence, no opinion could be given in this case. Meaning thereby, the scientific report further weakened the case of prosecution.....”

10. The cases involving the offence under Section 376 IPC, require corroboration of the victim's version. It is settled law that if corroborated, the statement of the victim can bring home the guilt on the part of the accused, however, in the instant case, there are material improvements in the testimony of the victim and the trial Court, after having noticed the same, termed her to be not a reliable witness. The said fact if read with the FSL report, would completely shatter the prosecution case.

11. As per the prosecution case, the victim was around 16 years of age at the time of occurrence. If she had been forcibly taken to the roof of her house, she could have made an attempt to save herself and in that process, there might have been some injuries on her person, but nothing of the kind was found in the medical report. Still further, victim's family members were stated to have been sleeping in the Courtyard and had she made a little resistance, they would have woken up and

made an attempt to save her. There is no explanation as to why the victim remained silent and did not raise even slightest of the resistance against the alleged crime. Thus, the trial Court has rightly found the prosecution case doubtful and acquitted the accused.

12. The Hon'ble Apex Court in Krishan Kumar Malik Vs. State of Haryana, 2011(3)RCR(Cr1.) 589 (SC), ruled that failure to send male semen found on the undergarments of the prosecutrix to a forensic laboratory for DNA testing/analysis would be deemed fatal to the prosecution's case. Considering these facts, the ocular testimony of the victim is not substantiated by the available medical or forensic evidence. It is imperative, at this point, to consider the significant precedents set by the Hon'ble Supreme Court in the case of Ram Narain Singh Vs. State of Punjab, (1975) 4 SCC 497 and Amar Singh & Ors. Vs. State of Punjab, AIR 1987 SC 826, wherein the Hon'ble Supreme Court, held that inconsistency between the ocular and medical evidence is a fundamental defect in the prosecution case, and unless reasonably explained, it is sufficient to discredit the entire case.

13. In criminal appeal against acquittal what the Appellate Court has to examine is whether the finding of the learned court below is perverse and prima facie illegal. Once the Appellate Court comes to the conclusion that the grounds on which the judgment is based is not perverse, the scope of appeal against acquittal is limited, considering the fact that the legal presumption about the innocence of the accused is further

strengthened by the finding of the court. At this point, it is imperative to refer to the decision of the Hon'ble Supreme Court passed in the case of Surajpal Singh & Ors. Vs. The State, 1952 SCR 193, wherein it was held as under:-

"..the High Court has full power to review the evidence upon which the order of acquittal was founded. But it is equally well settled that the presumption of innocence of the accused is further reinforced by his acquittal by the trial Court and the findings of the trial Court which had the advantage of seeing the witnesses and hearing their evidence can be reversed only for very substantial and compelling reasons."

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."

14. 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.

15. In view of the above, we do not find any merit in the present application seeking special leave to appeal. Accordingly, the application is dismissed and special leave to appeal is declined.

(Sudhir Singh)
Judge

(Harsh Bunger)
Judge

15.03.2024
Ajay/ds

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