



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

CRA-AS-384-2023

Date of decision: 31.07.2024

Sxxx

....Appellant

Versus

Ashwin @ Asho and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Surender Pal, Advocate and Mr. Akshay Kumar, Advocate
for the appellant

HARPREET SINGH BRAR, J.

1. The present appeal has been preferred against impugned judgment of acquittal dated 10.03.2023 passed by the learned Additional Sessions Judge, Fast Track, Special Court, PCOSO, Jind in the case stemming from FIR No. 70 dated 08.06.2021 registered under Sections 323, 342, 354-B, 363, 366A, 376, 506, 511 IPC and Sections 4/18 and 8 of the Protection of Children from Sexual Offences Act, 2012 (hereinafter 'POCSO Act') at Women Police Station, Jind.

2. Briefly, the facts are that on the intervening night of 07/08.06.2021, the appellant received a call from respondent No.1 who threatened to kill her and compelled her to meet in the night. After her family went to sleep, the appellant went to meet respondent No.1-accused. Thereafter, all the three accused-respondents No.1 to 3 gagged her mouth and took her away. The appellant was beaten and raped, following which she fell unconscious. When her family woke up and could not find the appellant, they arrived at the house of the accused. On seeing them, the father of the accused fled away. The father of the appellant found her restrained in the outer room of the premises of the house of the accused.



3. Subsequently, charges were framed against respondent No.1 on 04.10.2021. Respondents No.2 and 3 were summoned as additional accused under Section 319 Cr.P.C. and amended charge sheet was framed against all the three accused on 07.03.2022. The respondents-accused pleaded not guilty and claimed trial. On assessing all the material available on the record, the learned trial Court acquitted all the respondents-accused vide impugned judgment dated 10.03.2023.

4. Learned counsel for the appellant *inter alia* contends that the learned trial Court has gravely erred in acquitting the respondents-accused as the appellant-victim and her father have been sterling witnesses. He submits that undue weightage has been given to minor discrepancies between the complaint and the statements of the victim recorded under Section 161 and 164 Cr.P.C. Moreover, the dated of birth of the appellant is 14.09.2006 while the alleged incident occurred on the intervening night of 07/08.06.2021. As such, the appellant was a minor, 14 years and 9 months of age, at the time of the said incident. In fact, the appellant and her family approached the police on the same night but were asked to come in the morning of 08.06.2021.

5. He further submits that blood stained trousers and t-shirt of the appellant were recovered vide recovery memo Ex. P-6. The appellant was medico-legally examined by PW14-Dr. Mansi on 08.06.2021 and the MLR reflects abrasions and swollen upper lip. It was opined that the injuries were caused within the last 24 hours, by a blunt weapon. Further, in spite of having sufficient power, the learned trial Court erred in not summoning the uncle (*tau*) of the appellant as a witness, who was stated to be an eye witness. Interestingly, the uncle (*maama*) of respondent No.2 was intentionally cited as a witness (PW5), who subsequently turned hostile. PW5-Rajnish was previously known



to the police and all efforts were made to safeguard him from prosecution. Further still, the respondents-accused were present outside the house of the appellant which makes it clear that it was a premeditated plan, as such the mobile location of the respondents-accused cannot be relied on, since the same can be easily manipulated to cover up their involvement. Finally, the learned trial Court has failed to perform its statutory duty and act as a guardian of the appellant as the allegations of rape were dismissed stating the only corroboration for the same is the statement of the appellant herself.

6. Learned counsel for the respondents-accused contends that the respondents-accused have been falsely implicated in the present case owing to familial rivalry. The appellant had refused to get herself internally examined by a medical professional and stated that she had not been raped. Moreover, mobile location of the respondents-accused was received and it was found that at the time of the alleged incident, respondent No.2 was in Shastri Colony, Sonipat, while respondent No.3 was 2 km away in village Siwanmall. As such, the learned trial Court has rendered a judgment of acquittal by correctly appreciating the evidence on record and the same does not merit any interference by this Court.

7. Having heard the learned counsel for the appellant and after perusing the record of the case with his able assistance, it transpires that it was duly concluded that the appellant was a child in terms of Section 2(1)(d) of the POCSO Act as her birth certificate (Ex. P-12), reflecting her date of birth as 14.09.2006, was proved on record as Ex. P-12.

8. The appellant, in her statement dated 08.06.2021 (Ex. P-15) recorded under Section 164 Cr.P.C., has deposed that the respondents-accused attempted to rape her but could not succeed. She further stated that the



respondents-accused put her in an almirah and put clothes upon her, which does not find any mention in the complaint(Ex. P-3) moved by her. However, when the appellant appeared as PW1, she testified that she was sexually assaulted and that she was taken out of the almirah by her uncle (*tau*). The deposition of the appellant as PW1 and her father as PW2 makes it evident that it was the uncle of the appellant who found the appellant, which makes him an eyewitness of the occurrence. However, despite being so, he was not joined in the investigation or cited as a witness for the reasons best known to the prosecution.

9. Furthermore, it is the case of the prosecution that respondent No.1 called the appellant from different mobile numbers. She has stated that she received a call at 5:30 PM from respondent No.1 wherein he threatened her and asked her to meet him. PW13-Sandeep Sharma, Nodal Officer has testified that there are no call records of the mobile number belonging to respondent No.1 as alleged by the appellant. Moreover, the mobile tower location of respondent No. 2 for 07.06.2021 and 08.06.2021 shows that he was in Shastri Colony, Sonipat, where as respondent No.3 was in village Siwanamall. PW5-Rajnesh, uncle of respondent No.2, had deposed that respondent No.2 came to visit him in Sonipat on 23.05.2021 and has been staying there ever since. The same is also corroborated by the footage of the CCTV camera installed in his neighbour Jaipal's house.

10. The Investigating Officer, while appearing as PW15, admitted that the respective houses of the appellant as well as the accused were located in a thickly populated area, however, she did not join any independent witnesses in the investigation. She also admits that during the investigation, respondents No.2 and 3 were exonerated. Finally, PW14- Dr. Mansi, Medical Officer has



deposed that the appellant refused to get herself internally examined and categorically stated that she was not raped. She also stated that the appellant had not named respondents No.2 and 3 during the medico-legal examination. The appellant was referred to PGIMS, Rohtak and a perusal of the record dated 08.06.2021 (Ex. D1) indicates that no physical force was used upon her person. The parents of the appellant also refused to get an X-ray examination conducted of the appellant, on their own responsibility.

11. A two Judge bench of the Hon'ble Supreme Court in **Krishan Kumar Malik vs. State of Haryana 2011(3) R.C.R(Criminal) 539**, speaking through Justice Deepak Verma, made the following observations:

“31. No doubt, it is true that to hold an accused guilty for commission of an offence of rape, the solitary evidence of prosecutrix is sufficient provided the same inspires confidence and appears to be absolutely trustworthy, unblemished and should be of sterling quality. But, in the case in hand, the evidence of the prosecutrix, showing several lacunae, have already been projected hereinabove, would go to show that her evidence does not fall in that category and cannot be relied upon to hold the Appellant guilty of the said offences. Indeed there are several significant variations in material facts in her Section 164 statement, Section 161 statement (Criminal Procedure Code), FIR and deposition in Court.”

12. Further, a two Judge bench of the Hon'ble Supreme Court in **Rai Sandeep @ Deepu vs. State of NCT of Delhi (2012) 8 SCC 21**, speaking through Justice Fakkir Mohammed Ibrahim Kalifulla, opined as follows:

“15. In our considered opinion, the 'sterling witness' should be of a very high quality and caliber whose version should, therefore, be unassailable. The Court considering the version of such witness should be in a position to accept it for its face value without any hesitation. To test the quality of such a witness, the status of the witness would be immaterial and what would be relevant is the truthfulness of the statement made by such a witness. What would be more relevant would be the consistency of the statement right from the starting point till the end, namely, at the time when the witness makes the initial statement and ultimately before the Court. It should be natural and consistent with the case of the prosecution qua the accused. There should not be any prevarication in the version of such a witness. The witness should be in a position to withstand the cross-examination of any length and howsoever strenuous it may be and under no circumstance should give room for any

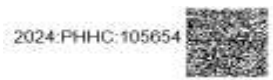


doubt as to the factum of the occurrence, the persons involved, as well as, the sequence of it. Such a version should have co-relation with each and everyone of other supporting material such as the recoveries made, the weapons used, the manner of offence committed, the scientific evidence and the expert opinion. The said version should consistently match with the version of every other witness. It can even be stated that it should be akin to the test applied in the case of circumstantial evidence where there should not be any missing link in the chain of circumstances to hold the accused guilty of the offence alleged against him. Only if the version of such a witness qualifies the above test as well as all other similar such tests to be applied, it can be held that such a witness can be called as a 'sterling witness' whose version can be accepted by the Court without any corroboration and based on which the guilty can be punished. To be more precise, the version of the said witness on the core spectrum of the crime should remain intact while all other attendant materials, namely, oral, documentary and material objects should match the said version in material particulars in order to enable the Court trying the offence to rely on the core version to sieve the other supporting materials for holding the offender guilty of the charge alleged.”

A two Judge bench of the Hon’ble Supreme Court in ***Tameezuddin @ Tammu vs. State of (NCT) of Delhi (2012) 15 SCC 566*** has held as follows:

“7. It is true that in a case of rape the evidence of the prosecutrix must be given predominant consideration, but to hold that this evidence has to be accepted even if the story is improbable and belies logic, would be doing violence to the very principles which govern the appreciation of evidence in a criminal matter.

13. The power of the Appellate Court to unsettle the order of acquittal on the basis of re-appreciation of the evidence is subject to the settled law that where two views are possible and out of the two, one points towards the innocence of the accused, the view which favours the accused should prevail over the other pointing towards his guilt. (***See H.D. Sundara and others vs. State of Karnataka, Criminal Appeal No.247 of 2011 decided on 26.09.2023; Kali Ram vs. State of H.P., 1973 (2) SCC 808 and Chandrappa and others vs. State of Karnataka, (2007) 4 SCC 415.*** A Division bench of this Court in the judgment passed in ***State of Haryana vs. Ankit and others in CRM-A No.3 of 2022 decided on 06.07.2023*** has held that presumption of innocence further gets entrenched on the acquittal of accused by the trial Court.



14. In view of the discussion above, this Court finds that learned counsel for the appellant has failed to point out any perversity or illegality in findings recorded by the learned trial Court, which warrants any interference. Accordingly, the present appeal is dismissed, being bereft of any merit.

15. Pending miscellaneous application(s), if any, also stand disposed of.

(HARPREET SINGH BRAR)
JUDGE

31.07.2024
Neha

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