

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

CRM-A-499-2021 (O&M)
Date of decision: 15.03.2024

State of Haryana

....Applicant

Versus

Ramlakhan

....Respondent

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

Present: Mr. Manish Dadwal, AAG, Haryana, for the applicant
Mr. Harsh Jain, Advocate for the Respondent.

SUDHIR SINGH, J.

The instant application seeking leave to appeal is preferred against the judgment dated 18.03.2021 passed by the learned Additional Sessions Judge, (Fast Track Special Court), Hisar, whereby the respondent-accused has been acquitted of the charges under Section 376(3), 506 of Indian Penal Code and Section 6 of the Protection of the Children from Sexual Offence Act, 2012.

2. Vide order dated 15.07.2022, the lower Court record was called for. The same was received on 31.08.2022.

3. The prosecution case, as per the complaint of the complainant-brother of the prosecutrix, was that the complainant, along with his sister (the victim) and mother, lived together. Their father had already expired. At the time of the alleged occurrence, the victim was around 15 years of age and a student of class 9. It was stated that on 24.07.2019, at about

8:00 pm, the complainant's sister (the prosecutrix) went outside to answer the nature's call. In the meantime, accused-Ramlakhan, who was her uncle, caught her from behind and had forcibly committed rape upon her. He also threatened to kill the victim and her brother if she had disclosed this matter to anyone. Upon returning home, the victim narrated the incident to her mother, who in turn told the complainant about the same upon his return from Haridwar. Thereafter, the complainant had moved a complaint before the police for registration of an FIR.

4. Based on the aforesaid complaint, FIR No. 143 dated 31.07.2019 under Section 376(3), 506 of IPC and Section 6 of the POCSO Act, 2012, at P.S. Bass, was registered. After investigation, the charge-sheet was submitted, whereupon cognizance was taken. After that, charges under Section 376(2)f, 376(3), 506 of IPC, and Section 6 of the POCSO Act, 2012 were framed against the Respondent, to which he pleaded not guilty and claimed trial.

5. During trial, the prosecution examined sixteen witnesses, namely, Victim (PW-1), Complainant (PW-2), ASI Raj Bala (PW-3), ASI Ramesh Kumar (PW-4), Aunt of victim (PW-5), ASI Bahadur Singh (PW-6), SPO Birbal (PW-7), Dr. Priyanka Verma (PW-8), Radhe Shyam, Draftsman (PW-9), Krishan Kumar, Criminal Ahlmad (PW-10), Rajender Kumar S.A. (PW-11), Ranvir Singh, Lecturer (PW-12), Ms. Sheela Devi, Teacher (PW-13), Chiterlekha (PW-14), Dr. Anshuman Rai (PW-15) and Dr. Vijay Sarup as PW-16. In support of its case, the prosecution had also produced documentary evidence in the form of Ex.P1,

P2 Statements of prosecutrix, Ex. P3 MLR of Prosecutrix, Ex. P4 Application to the police, Ex. P5 Statement of the prosecutrix, Ex. P6 School Leaving Certificate of the prosecutrix, Ex. P7 Recovery Memo of SLC, P8 Handing-over Memo, Ex. P9 FIR, Ex. P10 Application for Medical Examination, Ex. P11 Recovery Memo, Ex. P12 Rough Site Plan, Ex. P13 Application for Counselling, Ex. P14 Application for Recording Statement, Ex. P15 Statement u/s 161 Cr.P.C., Ex. P16 Arrest Memo, Ex. P17 Disclosure Statement, Ex. P18 Demarcation Memo, Ex. P19 Application for Medical Examination, Ex. P20 Recovery Memo, Ex. P21 Application for birth records, Ex. P22 Birth Certificate of Prosecutrix, Ex. P23 Recovery Memo, Ex. P24 Application to CMO, Ex. P25 Non-Availability of DOB Certificate, Ex. P26 Recovery Memo, Ex. P27 Application for the birth certificate to Head Teacher, G.G.P.S., Ex. P28 Birth Certificate of Prosecutrix, Ex. P29 Recovery Memo, Ex. P30-33 M.O., Ex. P34 Site Plan, Ex. P35 /37 Copy of Register, Ex. P36/38 Admission Form, Ex. P39 FSL Report, Ex. P40 DNA Report, Ex. P41 MLR of Accused and Ex. P42-44 M.O.. The defense led no oral or documentary evidence in support of its case. After the conclusion of the trial, the learned Trial Court acquitted the accused person.

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

- i) All three witnesses i.e. the victim-herself (PW1), the complainant (victim's brother) (PW2) and their aunt (PW-5), were declared hostile. The victim even denied moving any criminal complaint or suffering any statement before the police as regards the involvement of the

accused. The victim also retracted from her Section 164 Cr.P.C. statement.

- ii) Furthermore, as per the rough and the scaled site plan (Ex. P12 and Ex. P34) and the cross-examination of PW-9, the alleged place of occurrence was covered with dense Kikar (bushes having thorns). Admittedly, there were no external injury marks on the person of the victim. The absence of any injury upon the prosecutrix in such a case, undermines the prosecution's case.
- iii) Human semen even though detected on the *payjama* of the victim (item no.1), vide FSL Report Ex. P39, but the same was not detected on the victim-prosecutrix's pubic hair and vaginal swabs. Thus, the same being planted by overzealous police agency cannot be ruled out.
- iv) Disclosure statement of the accused regarding the demarcation of the place of occurrence, cannot be used against him, as no new fact was discovered pursuant to the information received from him as stipulated under Section 27 of the Evidence Act.

7. While assailing the impugned judgment passed by the trial Court, the learned State counsel submitted that even if the prosecutrix had turned hostile during the trial, the Court could still look into her statement qua the extent of admission of a sexual assault. At this point, the counsel has relied upon Malti Sahu Vs. Rahul & Anr., (2022)10 SCC 226; Nawabuddin Vs. State Of Uttarakhand, (2022) 5 SCC 419 and Hemudan Nanbha Gadhvi Vs. State Of Gujarat, (2019) 17 SCC 523. The counsel has further submitted that the statement of the prosecutrix under Section 164 Cr.P.C. (Ex. P2) was duly recorded before the Magistrate. Even the Criminal Ahlmad (PW-10) had confirmed that the prosecutrix got her statement recorded under Section 164 Cr.P.C. The learned counsel has further submitted that the medical evidence in the shape of FSL and DNA reports clearly

indicates that the DNA profile (semen sample) obtained from item no. 1- *pyjama* of the victim matched with the blood sample 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 arguments advanced by the learned counsel appearing for both the parties and upon examining the material available on the record, the following issue arise for consideration before this Court:-

“Whether in the light of all material witnesses turning 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-1). In the case at hand, none of the three material witnesses, i.e., the prosecutrix (PW-1), the complainant (PW-2), and the victim's aunt (PW-5), had supported the prosecution's story that the accused had committed the rape upon the victim and they were declared hostile on the ground of suppression of truth. The prosecutrix

stated that she was 'under the pressure of the police' while giving her statement under Section 164 Cr.P.C. before the Child Welfare Committee and the learned Magistrate and she had even denied giving any supplementary statement (Ex.P2/A) before the police. The complainant denied moving the said complaint (Ex. P4) *in toto* and further stated that his thumb impressions were obtained by the police on the blank papers. Furthermore, in reference to the medical/scientific evidence, upon evaluating the report of the medical examination (Ex. P3) conducted by Dr. Priyanka Verma (PW-8), 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. The forensic examination placed on record mentions that no human semen was detected on the pubic hair or the vaginal swabs obtained from the prosecutrix during her medico-legal examination. 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, the statement of the prosecutrix, despite her turning hostile during cross-examination, cannot safely be relied upon. Hence, 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

(Harsh Bunger)
Judge

15.03.2024
Ajay/ds

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| - | <i>Whether speaking/reasoned:</i> | <i>Yes/No</i> |
| - | <i>Whether reportable:</i> | <i>Yes/No</i> |