

2024:PHHC:028923-DB

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

CRA-AD-74-2022(O&M)
Date of decision: 22.02.2024

Poonam

....Appellant

Versus

State of Haryana &Ors.

....Respondents

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

Present: Mr. Sunil K. Chaudhary, Advocate for the appellant

Mr. Naveen S. Bhardwaj, Additional AG, Haryana

SUDHIR SINGH, J.

The instant appeal has been preferred against the judgment dated 23.04.2019 passed by the learned Additional Sessions Judge, Fast Track Court, Sonapat, whereby respondent no. 2 to 4 were acquitted of the charges under Section 376, 452 and 506 IPC.

2. Vide order dated 18.01.2024, the Lower Court record was called for. The same was received on 13.02.2024.

3. The prosecution case was that on 01.09.2017, the prosecutrix aged 30 years made a complaint alleging that she was having four children. One lady, named, Darshna (Respondent no. 3) along with her children was residing in the nearby home and her son Ajit alias Bhola (Respondent no. 2), aged about 25/26 years used to visit her house to meet her husband. The prosecutrix alleged that Ajit alias Bhola

(Respondent no. 2) used to keep an evil eye upon her. He was asked to mend himself several times, but in vain. On 26.08.2017 at about 9:30 PM, when she came down to ease herself, Ajit alias Bhola (Respondent no. 2) came there and took her in a room adjacent to the toilet and had committed rape upon her against her wishes. Thereafter, he threatened her with dire consequences if she had disclosed said incident to anyone. Further, on 31.08.2017 at around noon, Ajit alias Bhola (Respondent no.2) again threatened her and then she disclosed the entire incident to her husband. When they went to the house of Ajit alias Bhola (Respondent no. 2) to remonstrate, his mother Darshna (Respondent no. 3) and Sushila (Respondent no. 4) abused her and had criminally intimidated them as well.

4. Based on the aforesaid complaint, FIR No. 223 dated 01.09.2017 under Sections 376, 452 and 506 IPC, at P.S. Baroda, Sonapat, was registered. After investigation, the charge-sheet was submitted, whereafter the cognizance was taken. Thereafter, charges under Sections 452, 376 and 506 IPC were framed against the respondent Nos. 2 to 4 to which they pleaded not guilty and claimed to be tried.

5. During trial, the prosecution examined fifteen witnesses, namely, HC Sumit as PW1; EASI Rajesh Kumar as PW2; L/HC Parveen Kumari as PW3; prosecutrix as PW4; Inspector Veer Bhan SHO as PW5; ASI Dhan Raj as PW6; Dr. Randeep Kumar SSO/SOC, Incharge MFSU, Sonapat as PW7; EHC Sultan Singh as PW8; Dr. Shalki Sharma, MO, Civil Hospital, Gurugram as PW9; Dr. Ashwani Singla, MO, CH,

Gurugram as PW10; Surajpal (husband of prosecutrix) as PW11; Inspector Kamlesh, Investigating Officer as PW 12; Shri Manglesh Kumar Chaubey, the then learned SDJM, Gohan as PW13; Dr. Nidhi, MO, CHC, Samalkha as PW14 and Dr. Anita, Deputy Director, FSL, Madhuban, Karnal as PW15. In support of its case, the prosecution had also produced documentary evidence in the form of Ex Px FSL Report; Ex PW9/B MLR (Poonam); Ex PW10/B MLR (Ajit); Ex PW4/A Complaint; Ex PW6/A FIR; PW 1/A memo of disclosure statement of Ajit @ Bhola; Ex PW1/B Memo of demarcation of place of occurrence; Ex PW2/A Scale Site Plan; Ex PW3/A Possession memo of parcel; Ex. PW 4/B possession memo of piece of sofa cover; PW 7/A Crime Scene Report; PW12/A Rough Site Plan; PW12/B Application for medical examination of Accused Ajit; PW12/C Handing over memo of prosecutrix Poonam; PW13/A Application for recording statement under section 164 Cr.P.C; PW13/B Statement under section 164 Cr.P.C; Ex PW13/C Order Sheet; Ex PW14/A Follow up and discharge card.

6. The grounds considered by the learned Trial Court for acquitting the Respondent no. 2 to 4 are as under:-

- i) From the evidence it was found that the prosecution failed to connect the accused with the alleged offence.
- ii) As per the prosecution version, the accused had forcibly committed rape upon the prosecutrix. The prosecutrix was got medico-legally examined on 01.09.2017 by PW9-Dr. Shalki Sharma, who while appearing into the witness box, categorically deposed that on examination, no marks of injury, were found over any part of her body neither was

there any mark of injury over external genitals. There was no abnormal discharge of bleeding. PW14- Dr. Nidhi, Medical Officer, CHC, Samalkha deposed that prosecutrix was six weeks and six days pregnant at that time. There were no visible injury marks on the abdomen of prosecutrix at the time of her gynae and Obs examination. PW9 proved the copy of MLR of prosecutrix as Ex. PW9/A and she categorically deposed that no marks of injury over genitals were present. As per the FSL report Ex. PX, human semen was detected on Ex. 1A (Salwar). However, semen could not be detected on rest of the exhibits. PW10 Dr. Ashwani, Medico – legally examined accused Ajit alias Bhola (Respondent No. 2) on 01.09.2017 and deposed that in his opinion, there was nothing to suggest that accused cannot perform sexual intercourse. However, merely on the testimony of PW9 Dr. Shalki Sharma and PW10 Dr. Ashwani, it cannot be concluded that the prosecutrix was forcibly raped by the accused.

- iii) Also, the present case was registered on the statement of prosecutrix (PW4). However, there are material contradictions in her statement recorded under Section 164 Cr.P.C and that of under Section 164 Cr.P.C, recorded before the Court. In the earlier statement, she deposed that the accused came to her house at the first floor, whereas in her statement before the Court, she deposed that when she was going to reply the call of nature at the ground floor, the accused had come there. Further, in her statement under Section 164 Cr.P.C she deposed that after the incident, she went on the first floor of her house where her husband and children were sleeping and she told the whole incident to her husband whereas during cross – examination before the court, she deposed that she had told about the incident to her husband on 31.08.2017. Also, she in her statement under

Section 164 Cr.P.C deposed that she was not able to speak at the time of incident, whereas in her statement before the Court, she deposed that she had raised noise to call her husband and brother-in-law (*devar*) when accused had committed rape upon her.

- iv) The prosecutrix while appearing as PW4 deposed that there were good relations between her family and the family of accused Ajit alias Bhola (Respondent no. 2). She stated that accused Ajit alias Bhola (Respondent no. 2) had put handkerchief on her mouth and administered some sedative to her and has committed rape upon her forcibly in the room of her house, but no alleged handkerchief was recovered by the police. All this indicated that the prosecutrix was a consenting party. Thus, the testimony of prosecutrix does not inspire confidence to hold the accused guilty that he had forcibly committed rape upon her.
- v) Further, the prosecutrix has admitted in her deposition that accused Sushila (Respondent no. 4) had called the police in the village, then no question arises regarding extending threat to the prosecutrix by accused Sushila (Respondent no. 4). The prosecutrix has stated in her cross-examination that accused had committed rape upon her but it is highly indigestible that she had not told about the incident to her family after about four days. If the prosecutrix was forcibly raped by the accused, then she had ample time and opportunity to apprise her family about the incident, but nothing was done by her which casts cloud in prosecution version that she was forcibly raped by the accused.

7. The learned counsel for the appellant, while assailing the judgment of acquittal passed by the trial Court, would argue that the human semen was detected on Ex.1A (Salwar) which would be sufficient to prove that the rape was committed upon

the prosecutrix. It is further contended that there has been no inconsistency or contradiction between the statements of the prosecutrix as recorded in the complaint and the one under Section 164 Cr.P.C. It is further contended that the cases pertaining to the offence of 376 IPC, statement of the prosecutrix is good enough to bring home the guilt of the accused and more so, in the present case, there was no motive on the part of the prosecutrix to falsely implicate the accused.

8. After hearing the argument advanced by the learned counsel for the appellant and upon marshaling the material available on the record, the following issues arise for consideration before this Court: -

- “i. Whether in view of the medical evidence on record and there being no corroboration to her statement/testimony, the trial Court was justified in holding that the prosecutrix was a consenting party?*
- ii. Whether the contradiction between the statements of the prosecutrix made in her complaint and the one recorded under Section 164 CR.P.C, is fatal to the prosecution case?*

9. In order to examine issue No.1 above, it may be noticed that that as per the medical record and statement of PW9 – Dr. Shalki Sharma, there was no abnormal discharge of bleeding and above all, no injury mark over any part of the body. Further, as per the statement of PW14 Dr. Nidhi, no visible injury mark on the abdomen of the prosecutrix or human semen could be detected on the exhibits except the Ex. 1a (salwar). Still further, the trial Court found that while appearing in the Court, the prosecutrix stated that she had raised noise to call her husband and *devar* (brother-in-law), when the accused had

committed rape upon her, whereas in her statement under Section 164 Cr.P.C., she stated that when the accused had committed rape upon her, she was not able to speak due to her being unconscious and she had regained consciousness only the next day. PW11-Surajbhan, husband of the prosecutrix admitted that the accused had been visiting their house since the very beginning and even he would visit their house in his absence.

10. Besides, as per the prosecution version, the prosecutrix had told her husband about the commission of the crime by the accused, after four days. No explanation has been put forth as to why this long time was taken by the prosecutrix, especially when the alleged act was a forcible one and against her consent and more so, when accused was none, but a person, who had been regularly visiting their house. This clearly casts a suspicion on the prosecution version that the prosecutrix was forcibly raped by the accused.

In “Rai Sandeep @ Deepu Vs. State of NCT of Delhi (CRA – 2487 – 2009) with Hari Singh Vs. State of NCT of Delhi (CRA – 2486 – 2009) *AIR 2012 Supreme Court 3157*”, the Hon’ble Supreme Court, has held as under:-

“12. Apart from the above version of the prosecution witnesses, when reference is made to the medical report relating to the prosecutrix as per Annexure P4, there was an injury of abrasion on right side neck below her jaw and that there was no other injury in the breast or her thighs. The hymen was old torn, that there was no injury on the vulva and that there was no bleeding in her vagina. In the FSL report Ex. Pw-14/N, it is stated that there was no semen detected on the red color socks. However, human semen was detected on the petticoat. But there was no matching of the blood group noted on the petticoat vis – a – vis the blood group of the accused”

11. With reference to the contradictory statements made by the prosecutrix, it is worth noticing that the ocular version must be corroborated by the cogent and convincing evidence on record. In the instant case, the testimony of the prosecutrix in the Court is altogether different from the one recorded under Section 164 Cr.P.C. It is settled law that while bringing home the guilt of the accused in the case pertaining to the offence under Section 376 IPC, the statement of the prosecutrix must not be considered as a gospel truth. She had stated in her statement that she had been administered a sedative by the accused before committing rape upon her. The testimony of the victim is vital and unless there are compelling reasons necessitating corroboration of her statement, the courts should find no difficulty to proceed on her testimony and convict the accused. However, in the instant case, the initial version put forth by the prosecution when read vis-a-vis the victim's deposition in the Court, would cast a serious doubt over the prosecution version. Thus, the testimony of the victim does not inspire any confidence and hence, cannot be relied upon to convict the accused. In the cases pertaining to the offence under Section 376 IPC, the prosecutrix version must be consistent and if there are material contradictions, then the same would be fatal to the prosecution case.

Hence, both the issues are answered in negative.

12. 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 finding 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 persons is further strengthened by the finding of the court. At this point, it is imperative to consider the decision of the Hon'ble Supreme Court passed in the case of Surajpal Singh & Ors. Vs. The State, 1952 SCR 193, has 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 demeanor 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 demeanor of witnesses and, therefore, its decision must not be upset in the absence of strong and compelling grounds.

14. In view of the above, we do not find any illegality and perversity in the findings recorded by the trial Court. Accordingly, the present appeal is hereby dismissed.

(Sudhir Singh)
Judge

(Harsh Bunger)
Judge

22.02.2024
ds/ mahavir

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