

2024:PHHC:139314-DB



**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

CRA-AD-265-2023(O&M)

Date of Decision:-23.10.2024

(S)xxx

.....Appellant.

Vs.

State of Haryana & Anr

.....Respondents.

**CORAM:- HON'BLE MR. JUSTICE SUDHIR SINGH
HON'BLE MR. JUSTICE JASJIT SINGH BEDI**

Present:- Ms. Monika Jalota, Advocate
Amicus Curiae for the Appellant.

Mr. Ravish Kaushik, Additional Advocate General Haryana.

JASJIT SINGH BEDI, J.

The present appeal has been filed against the judgment of acquittal dated 01.02.2023 passed by the Additional Sessions Judge-cum-Ex (Fast Track Court), Faridabad.

2. As per record, the FIR came to be registered on 06.12.2019. The judgement of acquittal was recorded on 01.02.2023. The appeal was filed in 2023 and has come up for hearing today after more than 05 years of the registration of the FIR.

3. The prosecution case is that on 6.12.2019, ASI Parvesh was present in Police Station Women, Karnal when an application dated 25.10.2019 was received in which complainant 'S' alleged that she was 21 years old and was an orphan. Earlier, she was residing at Mahila Ashram for

the last ten years. Rajesh, resident of Village Guhida Rasin sexually exploited her for the last three years on the false promise of marriage. She had come to know that he was already married. He had got her to undergo abortions on many occasions. He used to give beatings to her and threatened to kill her saying that the police could not do anything against him. She pleaded that penal action be taken against him.

On this complaint, a case u/s 376 IPC was registered. Investigation was conducted. The prosecutrix was subjected to counselling and medico legal examination. Her statement u/s 164 Cr.PC was got recorded. On the basis of her statement recorded u/s 164 Cr.P.C, sections 376 (2)(n) and 506 of IPC were added to the case and section 376 of IPC was given up. Supplementary statement of the prosecutrix was recorded. After completion of investigation, the final report u/s 173 Cr.P.C. was prepared against the accused and submitted before the Court.

4. A Copy of the challan was supplied to the accused at the time of committal proceedings by the Area Magistrate.

5. On commitment and on finding a prima facie case, charge was framed against the accused on 23.7.2021 under Sections 376(2)(n) and 506 of IPC by the then Addl. Sessions Judge, Karnal, to which the accused pleaded not guilty and claimed trial.

6. In support of its case, the prosecution examined EASI Vir Shakti Singh as PW1, EHC Geeta as PW2, victim 'S' as PW3, Harleen Pal Singh learned JMIC as PW4, SI Jaswinder Kaur as PW5, Dr. Shamma M.O as PW6, Dr. Kulbir as PW7, Dr. Namrata Katoch M.O as PW8, I.O L/ASI Parvesh Kumari as PW9, Bhanmati as PW10 and C.Rohit as PW11.

7. The statement of the accused was recorded under section 313 Cr.P.C wherein he denied all the charges and claimed false implication. However, no defence evidence was led.

8. Based on the evidence led as described above the accused was acquitted by the court of Additional Sessions Judge-cum-Ex (Fast Track Court), Faridabad vide judgment dated 01.02.2023.

9. It is the aforementioned judgment which is under challenge in the present appeal.

10. The Amicus Curiae for the appellant (prosecutrix) contends that the acquittal has been recorded on the basis of conjectures and surmises without proper appreciation of evidence on the record. The prosecution duly supported her version while deposing in court. The medical evidence was totally in consonance with the ocular account. She, therefore, contends that the impugned judgment was liable to be set aside and the respondent no.2-accused was liable to be convicted for the offences in question.

11. The learned counsel for the State while supporting the case of the appellant/prosecutrix contends that the impugned judgment was not based on proper appreciation of the evidence on record and, therefore, the judgment of acquittal was liable to be set aside.

12. We have heard the counsels and gone through the record.

13. A perusal of the record would show that the complainant 'S' appeared before the court as PW3 and during her examination-in-chief stated that she had started talking with accused Rajesh in the year 2013, meaning thereby that she was only 14 years of age and at that time, if her year of birth as disclosed by her is taken to be 1999. She further stated that she had left the Mahila Ashram in the month of December, 2017 and then Rajesh took her to house no.483, sector-13, Housing Board Colony, Karnal and

established physical relationship with her on the pretext of marriage due to which she became pregnant in the year 2018 but the accused got the child aborted from Bedi hospital in June, 2018. The complainant further deposed that when she went in search of the accused to his village, she came to know that he was already married. The allegation of the complainant/victim that she came to know about the earlier marriage of accused when she visited his village is totally contrary to her statement recorded before the counselor on 10.12.2019 which is Ex.P4, wherein, she had stated that when she left the Mahila Ashram, she already knew that the accused was married. Her contention that she was taken to house no.483, sector-13, Karnal by Rajesh is also contrary to her statement Ex.P4 where it is mentioned that after leaving Mahila Ashram she herself started living in the said house on rent and was running a Beauty Parlour but the rent etc.was paid by Rajesh as she gave all her earnings to him. This shows that it was not Rajesh who had taken this house on rent but the complainant herself had rented the house for her own stay and for the purpose of running her business. In this context, even PW9 ASI Parvesh Kumari who had also conducted investigation in this case, during her cross-examination deposed that it had come in her investigation that the complainant had left the Mahila ashram on her own.

14. Further, as per the complainant, she left the Mahila Ashram in December, 2017 but the report of Superintendent, Mahila Ashram which is Ex.P14 reveals that the month and year of leaving of the Mahila Ashram by the complainant was July, 2018.

15. Sexual assault upon the person of the complainant allegedly by the accused has not been proved by any scientific investigation as she was medically examined after about 6 to 7 months of the last incident of any

such physical contact with the accused as reflected in the affidavit Ex.PW8/A of PW8 Dr. Namrata who had medically examined the victim.

16. At the time of presentation of the complaint before the police, the prosecutrix was about 20 years of age and as such, she was mature enough to understand the consequences of her acts. The medical record placed on file which was collected by the police during the investigation of the case shows that no abortion was conducted upon the prosecutrix. She is shown to have become pregnant in the month of June 2018. In the ultrasound report which is a part of the medical record Ex.P15, it was found to be a case of ectopic pregnancy which was unnatural and therefore, she was given due treatment for the same. The complainant has been taking contradictory stands in her statements recorded before the police as well as the Magistrate. In her statement recorded u/s 164 Cr.P.C, the prosecutrix claimed that the accused had taken her to Manali forcibly and at that time they were accompanied by one more person who was driving the car and the accused had given her beatings inside the car. She also stated that the accused administered liquor to her forcibly in Manali and then raped her. However, in her supplementary statement recorded before the police on 10.12.2019, the prosecutrix stated that at the time of recording her statement before the Magistrate, she was perplexed and that in fact, she had never been to Manali. There is no evidence to show that the accused had induced the prosecutrix to develop sexual relations with him solely on the false promise of marriage or that the prosecutrix did not know before establishing such relationship that the accused was already married. In case, there was any such physical relationship between the prosecutrix and the accused, it was in all probability consensual in nature.

17. Thus, in the light of these facts, the prosecution cannot be said

to have proved the commission of offences punishable under sections 376(2)(n) and 506 IPC.

18. As to how an appeal against a judgment of acquittal is to be dealt with, the Hon’ble Supreme Court in *Kallu @ Masih & Ors. Vs. State of Madhya Pradesh 2006(1) RCR (Criminal) 427* has held as under:-

“ 8. While deciding an appeal against acquittal, the power of the Appellate Court is no less than the power exercised while hearing appeals against conviction. In both types of appeals, the power exists to review the entire evidence. However, one significant difference is that an order of acquittal will not be interfered with, by an appellate court, where the judgment of the trial court is based on evidence and the view taken is reasonable and plausible. It will not reverse the decision of the trial court merely because a different view is possible. The appellate court will also bear in mind that there is a presumption of innocence in favour of the accused and the accused is entitled to get the benefit of any doubt. Further if it decides to interfere, it should assign reasons for differing with the decision of the trial court.”

19. In view of the aforementioned discussion and keeping in view the law laid down in *Kallu @ Masih & Ors. Case (supra)*, we find no reason to interfere with the well reasoned judgment of acquittal passed by the Additional Sessions Judge (Fast Track Court), Faridabad. Therefore, the criminal appeal filed by the complainant challenging the acquittal stands dismissed.

(JASJIT SINGH BEDI)
JUDGE

(SUDHIR SINGH)
JUDGE

October 23, 2024
Vinay

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