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(223)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRA-AD-159-2024

Date of Decision: 18.09.2024

KXXXX

... Appellant

Versus

PRINCE @ THATHU & ANOTHER

...Respondents

CORAM: HON'BLE MR. JUSTICE SUDHIR SINGH

HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Naveen Kashyap, Advocate
for the appellant.

JASJIT SINGH BEDI, J.

The present appeal has been filed against the judgment of acquittal dated 17.03.2023 passed by the Additional Sessions Judge, Fast Track, Special Court, POCSO, Jind.

2. The FIR was registered on 08.11.2018, the judgment of conviction and order of sentence passed by the Addl. Sessions Judge, Fast Track, Special Court, POCSO, Jind is dated 17.03.2023, the appeal was filed on 10.08.2023 and the matter is being taken up for hearing now after 06 years of the registration of the FIR.

3. The present case was registered on the complaint moved by the complainant/victim Kxxx to the effect that on 03.11.2018 at about 1:30 p.m., when she was taking her meal, then accused Sonu son of Rishi entered her house and took her into the bathroom and sexually assaulted her. He also

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threatened to kill her if she disclosed the incident to anyone. She narrated the entire incident to her father. The complainant prayed that necessary action be taken against the accused.

4. On the basis of the aforesaid complaint Ex.P3, formal FIR Ex.P1 was registered. The investigation of this case was conducted by PW-13 L/SI Prem Kumari, Investigating Officer. During the investigation, the victim was medico legally examined. The statement of the victim was recorded under Section 164 Cr.P.C. Accused Prince @ Thathu and Sohan @ Sonu were arrested. On interrogation, they got recorded their disclosure statements Ex.P23 and Ex.P31 respectively, vide which they got demarcated the place of occurrence vide memos of demarcation Ex.P24 and Ex.P32 respectively. Both accused were medico-legally examined. Rough site plan of the place of occurrence was prepared and statements of prosecution witnesses were recorded under section 161 Cr.P.C. After completion of all other formalities of investigation the challan under section 173 Cr.P.C. was prepared.

5. On commitment and on finding a prima facie case, accused Prince @ Thathu was charged under Sections 452, 342, 506 of IPC and Section 8 of POCSO Act, he pleaded not guilty and claimed trial.

Amended charges were framed against accused Prince @ Thathu and Sohan Lal @ Sonu under Sections 452, 342, 506 read with Section 34 of IPC and Section 6 of POCSO Act, to which they pleaded not guilty and claimed trial.



Alternatives charges were framed against accused Prince @ Thathu and Sohan Lal @ Sonu under Sections 452, 342, 506 read with Section 34 of IPC, Section 376 (3) of IPC and Section 6 of POCSO Act, to which they pleaded not guilty and claimed trial.

6. The prosecution, in support of its case, examined SI Jagbir Singh as PW-1, Kxxx victim as PW-2, Rxxx father of victim as PW-3, Dr. Aruna, Medical Officer as PW-4, Kapil, JMIC, Panipat as PW-5, ASI Dilbag Singh, Draftsman as PW-6, Dr. Anshul, Medical Officer as PW-7, Sxxx mother of victim as PW-8, Vinod Kumar, Statistical Assistance as PW-9, SI Ram Karan as PW-10, HC Sombir as PW-11, L/ASI Sunita as PW-12, L/SI Prem Kumari as PW-13, Inspector Dharamveer as PW-14, ASI Mahabir as PW-15, Constable Ravi Kumar as PW-16, SI Ghayatri Devi as PW-17, Dr. Manoj, Medical Officer as PW-17.

7. The prosecution placed reliance upon the following documents :

Ex.P1	Formal FIR No.673 dated 08.11.2018.
Ex.P2	Endorsement made on complaint Ex.P3.
Ex.P3	Complaint moved by victim.
Ex.P4	Carbon copy of statement dated 09.11.2018 of victim under Section 164 Cr.P.C.
Ex.P5	MLR dated 09.11.2018 of victim.
Ex.P6	Complaint dated 09.11.2018 moved by father of victim.
Ex.P7	Recovery memo dated 09.11.2018 of birth certificate of victim.
Ex.P8	No document mentioned
Ex.P9	No document mentioned.
Ex.P10	Application dated 09.11.2018 for recording statement of victim under Section 164 Cr.P.C.
Ex.P11	Statement dated 09.11.2018 of victim under Section 164 Cr.P.C



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Ex.P12	Certificate dated 09.11.2018 issued by learned JMIC, Safidon.
Ex.P13	Zimni order dated 09.11.2018.
Ex.P14	Application dated 09.11.2018 for obtaining certified copy of statement of victim under Section 164 Cr.P.C.
Ex.P15	Scaled site plan dated 27.11.2018
Ex.P16	Affidavit of Dr. Anshul Singla.
Ex.P17	Application dated 13.11.2018 for medical examination of accused Prince @ Thathu.
Ex.P18	MLR dated 13.11.2018 of accused Prince @ Thathu.
Ex.P19	Birth Certificate of victim.
Ex.P20	Affidavit of SI Ram Karan.
Ex.P21	Copy of malkhana register.
Ex.P22	RFSL report dated 30.11.2018.
Ex.P23	Disclosure statement dated 13.11.2018 of accused Prince @ Thathu.
Ex.P24	Demarcation memo dated 13.11.2018.
Ex.P25	Recovery memo dated 13.11.2018 of parcel of accused Prince @ Thathu.
Ex.P26	Recovery memo dated 09.11.2018 of parcel of victim.
Ex.P27	Rough site plan dated 09.11.2018.
Ex.P28	Application dated 09.11.2018 for medical examination of victim.
Ex.P29	Application dated 09.11.2018 for medical examination of victim.
Ex.P30	Application dated 04.01.2019 for obtaining birth certificate of victim.
Ex.P31	Disclosure statement dated 05.01.2019 of accused Sohan Lal @ Sonu.
Ex.P32	Demarcation memo dated 05.01.2019.
Ex.P33	Recovery memo dated 05.01.2019 of parcel of accused Sohan @ Sonu.
Ex.P34	Affidavit of HC Mahabir.



Ex.P35	Affidavit of Constable Ravi Kumar
Ex.P36	Affidavit of Dr. Manoj Kumar.
Ex.P37	MLR dated 05.01.2019 of accused Sohan Lal @ Sonu.
Ex.P38	Affidavit of Dr. Aruna.
Mark-A	Copy of birth certificate of victim

8. When confronted with the incriminating evidence against them, the accused in their respective statements under section 313 Cr.P.C pleaded false implication and claimed innocence.

Accused Prince @ Thathu stated that he did not commit any wrong act with the victim. Actually, the victim twisted the real story on the asking of her father as well as after getting legal advice or that his family had made a complaint against the victim about the one side love of the victim and due to this grievances, the father of the victim had falsely involved him in this case later on because the father of the victim was working as a water Langri in the police department.

Accused Sohan Lal @ Sonu stated that co-accused Prince @ Thathu was present in the house of victim and he saw him in her house. He was falsely implicated by the parents of the victim on the asking of the mother of co-accused Prince @ Thathu. Co-accused Prince @ Thathu was present at the spot and he has seen to him there. Thereafter, his mother came there and took away accused Prince @ Thathu from the spot and falsely disclosed his name. One other case bearing FIR No.388 of 2021, P.S. Sadar Safidon was also registered against co-accused Prince @ Thathu by the victim and her parents, which is pending in the Court. One letter Ex.DA was



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exhibited and same was written by the victim to the co-accused Prince @ Thathu. He had no concern with the victim and it is a case of a love affair between the victim and co-accused Prince @ Thathu.

9. In defence evidence, the accused examined Dharmender, Ahlmad as DW-1 and thereafter, the defence evidence was closed.

10. Besides this, the accused placed reliance upon the following documents:-

Ex.D1	FIR No.388 dated 26.10.2021.
Ex.D2	FIR No.388 dated 26.10.2021.
Ex.D3	Application dated 26.10.2021 against accused Prince @ Thathu.
Ex.D4	Statement of victim under Section 164 Cr.P.C.
Ex.DA	Letter written by victim.
Ex.DB	Report dated 09.11.2018 of victim before doctor.

11. The evidence adduced by the prosecution is as under:-

SI Jagbir Singh, while appearing as PW-1 stated in his examination-in-chief that on 8.11.2018, he was posted at police station, Safidon as Duty Officer. On that day, the victim produced an application before him for registration of the case, upon which he registered the formal FIR Ex.P1 and made his endorsement Ex.P2 on the application. He sent the special reports to be delivered to the higher police officers through E-mail.

Kxxx victim, while appearing as PW-2 stated on oath in her examination-in-chief that her date of birth was 14.02.2003. On 03.11.2018 when she was alone at her house then at about 01:30 PM, accused Sonu came there. He was saying chachi-chachi and at that time she was present in the kitchen. She came out and told him that her mother had gone to the fields for

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labour work of paddy crop. He did not give any reply. He telephonically called his friend Prince @ Thathu to the house. Within 2-3 minutes accused Prince came to her house. Then Sonu gagged her mouth and took her in the bathroom and then both the accused committed rape upon her one by one. Then Sohan Lal @ Sonu dialled to Prince @ Thathu and switched on the recording. Sonu threatened her to give him a letter as proof that she was having an affair with Thathu. Then they left. At the time of leaving Sonu threatened her not to disclose anything about the incident to anyone or they would kill her and her family members. She did not disclose anything to anyone for three days. She disclosed about the incident to her mother on 4th day. Then her mother told about the incident to her father and her cousin brother. On 09.11.2018 they went to Police Station, Safidon. He (father) moved complaint Ex.P3. On the next day her statement under Section 164 Cr.P.C. was recorded. Before she made the statement under Section 164 Cr.P.C. SI Prem Kumari threatened her to give a statement of only sexual assault. Then she gave statement of sexual assault before the Magistrate. On the same day, she was medico legally examined at Government Hospital, Safidon vide MLR Ex.P5. Thereafter, she came back home with her parents.

She had seen both the accused, present in the Court and they were the same persons, who had committed rape upon her on 03.11.2018."

Rxxx father of victim, while appearing as PW-3 stated on oath in his examination-in-chief that On 03.11.2018, he was working at Police Station Safidon. On 08.11.2018 he was present in the fields in the evening

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when his nephew Rxx told him that his daughter was raped and that he should complain to the police station. Then he went home and took his daughter along to the police station. He made a complaint to the police station regarding rape but the Computer Operator of the Police Station typed the complaint of only sexual assault. The Computer Operator typed the complaint of only sexual assault on the asking of the SHO of the Police Station. The complaint Ex.P6 bore his signature.

His daughter had told him that accused Sohan Lal and Prince @ Thathu had committed rape with her. They went for the medical examination of his daughter. After a few days, both the accused were arrested.

Dr. Aruna, Medical Officer, while appearing as PW-4 stated that on 09.11.2018 she was posted as Medical Officer, Civil Hospital, Jind. On that day, the police moved an application Ex.P8 before her alongwith the victim for medico legal examination. The victim refused for getting herself medico legally examined. Her mother accompanied the victim and she also made a statement that she did not want to get her daughter medico legally examined.

On 09.11.2018, at 06:00 PM, on police application, she conducted the medico legal examination of the victim vide MLR Ex.P5. In her opinion, the possibility of sexual intercourse with the victim could not be ruled out.

Kapil, JMIC, Panipat, while appearing as PW-5 stated that on 09.11.2018, he was posted as JMIC, Safidon. On that day, the police moved

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an application Ex.P10 and produced the victim for recording of her statement under section 164 Cr.P.C.

He recorded her statement Ex.P11 under section 164 Cr.P.C. and issued certificate Ex.P12 and passed zimni order Ex.P13.

ASI Dilbag Singh, Draftsman, while appearing as PW-6 stated that on 27.11.2018, he alongwith Investigating Officer SI Prem Kumari reached at the place of occurrence situated in village Singhana, where victim Kxx was present. He prepared the scaled site plan Ex.P15 on the demarcation of the victim, which bore signature of the victim and the Investigating Officer SI Prem Kumari. The marginal notes were in his hands which bore her signature and same was handed over to Investigating Officer on the same day, who recorded his statement under Section 161 Cr.P.C.

Dr. Anshul, Medical Officer, while appearing as PW-7 tendered his duly sworn affidavit Ex.P16 in evidence stating that on 13.11.2018, on police application Ex.P17, he conducted the medical examination of the accused Prince @ Thathu vide MLR Ex.P18.

Sxxx mother of the victim, while appearing as PW-8 stated that on 03.11.2018, she had gone to the paddy fields for labour work and came back in the evening. Till 08.11.2018 her daughter seemed to be under some mental pressure. On 08.11.2018, she asked her daughter what had happened to her. Her daughter stated that accused Prince @ Thathu and Sonu had committed rape upon her, when she (victim) was alone in the house on 03.11.2018. She (PW8) disclosed this incident to her husband after which a

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complaint was given to the police against accused Sonu on 08.11.2018. Her daughter (victim) revealed that the accused Prince had also committed rape upon her with co-accused Sonu. On 09.11.2018, another complaint was filed against both the accused. The complaint was moved by her husband.

Vinod Kumar, Statistical Assistant, while appearing as PW-9 stated that he had brought the original summoned record pertaining to the date of birth i.e. the birth register of the District Registrar Birth and Death, Jind. The birth certificate Ex.P19 was issued by their office and was correct as per record. As per record, the date of birth of the victim was 14.02.2003.

SI Ram Karan, while appearing as PW-10 tendered his duly sworn affidavit Ex.P20 in evidence and the photocopy of the register no.19 as Ex.P21.

HC Sombir, while appearing as PW-11 stated that on 13.11.2018, he was posted as a Constable at Police Station, Safidon. On that day, he remained associated in the investigation of the present case with L/SI Prem Kumari. On that day, accused Prince @ Thathu was arrested and joined in the investigation. The accused in pursuance to his disclosure statement demarcated the place of occurrence. Thereafter, the accused was got medico legally examined. He identified the accused Prince @ Thathu.

L/ASI Sunita, while appearing as PW-12 stated that on 09.11.2018, she was posted as a HC at Women Help Desk, Safidon. On that day, she remained associated in the investigation of the present case with L/SI Prem Kumari. The medical examination of the victim was got conducted

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at Civil Hospital, Safidon and after her medical examination, the doctor handed over parcels to Investigating Officer which were taken into possession vide memo Ex.P26 which was attested by her and her statement was recorded by the the Investigating Officer.

L/SI Prem Kumari stated that on 09.11.2018, she was posted as SI at Women Help Desk, Safidon. She alongwith L/HC Sunita reached at village Singhana, where she prepared the rough site plan Ex.P27 on the demarcation of the victim. Thereafter, the statement of the victim was got recorded under Section 164 Cr.P.C. Thereafter, the victim was produced before the doctor at Civil Hospital, Safidon and application Ex.P28 was moved to get her medical examination conducted but she refused to get her internal medical examination conducted vide statement Ex.DB. On the same day, she was again produced before Medical Officer, Government Hospital, Safidon and an application Ex.P29 was moved for conducting her medical examination. On the same day, the father of the victim produced the photocopy of the birth certificate Mark A of the victim.

On 13.11.2018, accused Thathu @ Prince was arrested by her. He got demarcated the place of occurrence. The medical examination of accused Prince was got conducted.

On 03.01.2019, after completion of investigation, the challan was prepared by Inspector Balwan Singh.

On 04.01.2019 an application Ex.P30 was moved and birth certificate Ex.P19 was obtained from the Registrar Birth and Death. On

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05.01.2019, he arrested accused Sohan Lal. He demarcated the place of occurrence. Thereafter, the medical examination of the accused was got conducted at Civil Hospital, Safidon.

Inspector Dharamveer, while appearing as PW-14 stated that on 14.02.2020, he was posted as Inspector/SHO Police Station Safidon. On that day, after completion of the investigation of the present case, he prepared and submitted the supplementary report under Section 173 Cr.P.C. against accused Sohan Lal @ Sonu.

ASI Mahabir, while appearing as PW-15 tendered his duly sworn affidavit Ex.P34 in evidence.

Constable Ravi Kumar, while appearing as PW-16 tendered his duly sworn affidavit Ex.P35 in evidence.

Dr. Manoj, Medical Officer, while appearing as PW-17 stated that on 05.01.2019, on police application, he conducted the medico legal examination of accused Sohan vide MLR Ex.P37.

In his opinion there was nothing to suggest that the accused was incapable of performing sexual intercourse.

12. The evidence adduced by the defence is as under:-

Dharmender, Ahlmad, while appearing as DW-1 brought the original case file of case FIR No.388 dated 26.10.2021, under Sections 195A, 201, 328, 363, 366, 376 (2) (n), 450, 506 IPC, Police Station Sadar Safidon, State Vs Prince @ Thathu pending for 21.04.2023.

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He had seen copy of FIR Ex.D1, report under Section 173 Cr.P.C. Ex.D2, complaint dated 26.10.2021 Ex.D3 and the statement of the victim under Section 164 Cr.P.C. Ex.D4.

13. Based on the evidence led, the accused/respondents No.1 and 2 were acquitted by the Court of Additional Sessions Judge, Fast Track, Special Court, POCSO, Jind vide judgment dated 17.03.2023.

14. It is the aforementioned judgment of acquittal which is under challenge in the present appeal.

15. The learned counsel for the appellant/complainant contends that the impugned judgment of conviction was recorded on conjectures and surmises. The appellant/prosecutrix had supported the prosecution case in material particulars. Her father and mother had also supported her version. It was apparent that the accused had committed the offences in question. PW4- Dr. Aruna had stated that the possibility of sexual intercourse with the victim could not be ruled out. It had been conclusively found that the prosecutrix was less than 16 years of age. He, therefore prays that the impugned judgment was liable to be set aside.

16. We have heard the learned counsel for the appellant and gone through the record.

17. As regards the age of the victim, from the evidence on record including the birth certificate of the victim, it had been conclusively found that the date of birth of the victim was 14.02.2023. As per the version of the

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prosecution the incident had taken place on 03.11.2018. Thus, the age of the victim was 15 years and 09 months at the time of the occurrence.

18. The question that now requires consideration is as to whether the version of the prosecution regarding the occurrence could be believed from the material on record.

19. A careful scrutiny of the evidence led by the prosecution witnesses would show that the victim has not taken the name of the accused Prince @ Thathu in her complaint Ex.P3. It is submitted in her complaint Ex.P3 that accused Sonu took her into the bathroom and started to tease her. In this complaint and in her statement under Section 164 Cr.P.C. Ex.P4, there is no mention about any videography. However, subsequently, the father of the victim levelled allegations of rape against both the accused and also levelled allegations in the complaint Ex.P6 in respect of making of videography. However, the victim PW-2 stated in her examination-in-chief that accused Sonu telephonically called his friend Prince @ Thathu to her house. Thereafter, they forcibly took her into the bathroom and committed rape upon her one by one. The victim stated in her evidence that at the time of submitting the complaint Ex.P3 her father was with her. The complaint was got typed by someone on the dictation of her father. However, significantly, the complaint Ex.P3 was got typed by the father of the victim but nothing was mentioned in respect of the commission of rape or the making of any video nor was the name of the accused Prince @ Thathu mentioned. However, in the complaint Ex.P6, which was submitted by the

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father of the victim the fact of the commission of the rape and the making off a video by the accused and the name of the accused Prince @ Thathu is mentioned. These discrepancies and improvement create a significant doubt in the case of the prosecution.

20. It may be reiterated here that the FIR was based on a complaint (Ex.P3) dated 09.11.2018 in which the allegations were only to the effect that Sohan @ Sonu had teased the prosecutrix in the bathroom. A similar version was given at the time when the statement under Section 164 Cr.P.C. was recorded. Prince @ Thathu was not named in either of the statements and nor was there any reference of rape having been committed upon her. Subsequently, the father of the prosecutrix gave a complaint to the police levelling allegations of rape against both the accused namely Prince @ Thathu and Sohan @ Sonu. Pertinently, at the time when the prosecutrix was taken for her medical examination after the registration of the FIR, she categorically stated that she had not been raped by anyone and did not want any medical examination to be conducted. Similar was the statement of her mother who was accompanying her at that time. It is also relevant to note that the occurrence purportedly took place on 03.11.2018 and the complaint was given only on 09.11.2018. This delay remained unexplained. Quite to the contrary, between 04.11.2018 and 07.11.2018, the prosecutrix admitted to have attended school regularly. It is also doubtful as to whether the letter (Ex.DA) written by the prosecutrix to Prince @ Thathu was written under



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pressure. In fact, during her cross-examination she stated that she had written letters whenever the accused had asked her to do so.

21. It is also important to note that the father of the prosecutrix was working as a Langri in the Police Station, Safidon, the same Police Station where the FIR came to be registered. His version that both the accused had committed rape upon his daughter must be taken with a pinch of salt in view of the attending facts and circumstances when his daughter herself did not level any such allegations of rape in either the FIR or in a statement under Section 164 Cr.P.C. even though at the time of the registration of the FIR she was accompanied by him.

22. Further, by no stretch of imagination can it be accepted that SI Prem Kumari would pressurize the prosecutrix to level allegations of only sexual assault/teasing and not rape at the time of recording the statement under Section 164 Cr.P.C. in the presence of the Magistrate itself, moreso, when the father of the prosecutrix PW3 himself was posted in the same police station.

23. As a sequel to the above discussion, apparently there is no convincing and sufficient evidence against the accused for holding them guilty under Sections 452, 342, 506 read with Section 34 of IPC, Section 376 (3) of IPC and Section 6 of POCSO Act.

24. 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:-



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“ 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.”

25. 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 Court of Additional Sessions Judge, Fast Track, Special Court, POCSO, Jind. Therefore, the appeal stands dismissed.

(SUDHIR SINGH)
JUDGE

(JASJIT SINGH BEDI)
JUDGE

18.09.2024

JITESH

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