

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH.

CRA-AD-115-2023 (O&M).
Date of Decision: 03.05.2024.

Pxxx

....Appellant.

VERSUS

State of Punjab and another

....Respondents.

CORAM : HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE LALIT BATRA

Argued by: Mr. Ankit Chaudhary, Advocate for
Mr. Vishal Thakur, Advocate
for the appellant.

Mr. R.S. Thind, Deputy Advocate General, Punjab.

LALIT BATRA, J.

This criminal appeal has been preferred by appellant/victim/
prosecutrix-Pxxx (name not disclosed in view of law laid down in case
"State of Punjab v. Gurmit Singh" 1996(1) R.C.R. (Criminal) 533),
impugning the legality of judgment of acquittal dated 10.08.2022 rendered
by learned Additional Sessions Judge, Hoshiarpur, in CIS No.SC 352 dated
15.11.2019, in terms of which, respondent No.2/accused-Gurbachan Singh
@ Bablu was acquitted of charge under Section 376 IPC, in case FIR
No.196 dated 06.07.2019 under Section 376 IPC, registered at Police
Station Model Town, Hoshiarpur.

made a statement before Sub Inspector Sukhdeep Kaur, wherein she alleged that she is housemaid working in different houses. On 30.06.2019, she went to the house of respondent No.2/accused for doing household work and asked him that she is in need of money and, in turn, she was told that Rs.1000/- will be given to her in the evening at 5:00 PM. On 04.07.2019, at about 7:30 PM, respondent No.2/accused called her to his house at Basant Nagar and finding none other than respondent No.2/accused at home, when she stated that she is leaving, respondent No.2/accused gagged her mouth and after dragging her inside, he threw her on the bed. When victim/prosecutrix pleaded respondent No.2/accused not to indulge in such act, latter slapped her and at that time he was under the influence of some intoxicant and further threatened her to remove her clothes, failing which she have to face dire consequences. Despite repeated requests made by victim/prosecutrix, respondent No.2/accused gave beatings to her and being scared while weeping, she removed her clothes and then he committed rape upon her person. Meanwhile, Pradhun, son of victim/prosecutrix rang her on her mobile phone but despite knowing about the phone call, respondent No.2/accused did not leave her. On the basis of said statement, FIR (Ex.PW8/B) was registered. Rough site-plan of the place of occurrence (Ex.PW8/C) was prepared. Respondent No.2/accused was arrested on 07.07.2019. On 26.07.2019, victim/prosecutrix was medico-legally examined, vide Medico-Legal Report (Ex.PB) and further clothes worn by victim/prosecutrix as well as swabs/slides were sent to Chemical Examiner for analysis and after having received the Chemical Examination Report, doctor concerned had opined that possibility of vaginal intercourse

cannot be ruled out. On 04.10.2019, respondent No.2/accused was medico-legally examined, vide Medico-Legal Report (Ex.PW3/B) and it was opined that there is nothing to suggest that the said person is not capable to perform sexual intercourse. Scaled site-plan (Ex.PW5/A) of place of occurrence was got prepared. Statements of witnesses were recorded and statement of prosecutrix under Section 164 Cr.P.C. was got recorded. After completion of investigation, final report as envisaged under Section 173 Cr.P.C. (*Challan*) was presented against respondent No.2/accused in the Court.

3. Finding a *prima facie* case, respondent No.2/accused was charge-sheeted to face trial for the commission of offence punishable under Section 376 IPC, to which he pleaded not guilty and claimed trial.

4. To substantiate its case, prosecution has examined PW-1 victim/prosecutrix, PW-2 Pradhun (son of victim), PW-3 Dr. Harjinder Pal (Medical Officer), PW-4 Assistant Sub Inspector Mohan Chand, PW-5 Arjun Khanna (Draftsman), PW-6 Ms. Shaveta Thakur (Judicial Magistrate), PW-7 Constable Rajinder Kumar, PW-8 Sub Inspector Sukhdeep Kaur (Investigating Officer), PW-9 Sub Inspector Rajinder Singh, PW-10 Dr. Mahima (Medical Officer) and PW-11 Assistant Sub Inspector Rashpal Singh. After giving up remaining prosecution witnesses being unnecessary, prosecution evidence was closed by learned Additional Public Prosecutor for the State.

5. After closure of prosecution evidence, statement of respondent No.2/accused as envisaged under Section 313 Cr.P.C. was recorded, wherein all the incriminating material/evidence were put to him, but he has denied all the allegations levelled against him and pleaded innocence and

false implication.

6. No evidence in defence was led by respondent No.2/ accused.
7. On appreciation of evidence, learned Trial Court acquitted respondent No.2/accused of charge under Section 376 IPC, vide judgment of acquittal dated 10.08.2022.
8. We have heard learned counsel for the appellant as well as learned counsel for respondent No.1-State and critically examined the evidence available on the record.
9. Learned counsel for appellant/victim/prosecutrix *inter alia* contended that impugned judgment passed by learned Trial Court is not sustainable being perverse and being result of misreading of facts. The prosecution evidence is trustworthy and inspires confidence on material aspects of the case. The Pen Drive and Compact Disc, produced by respondent No.2/accused, have no relevance in the eyes of law as authenticity of Pen Drive and CD has not been proved. Learned Trial Court while giving weightage to the Pen Drive, CD, video and photographs, produced by respondent No.2/accused, overlooked the testimonies of material prosecution witnesses. PW-1 victim/prosecutrix as well as PW-2 Pardhun (son of victim) have supported the prosecution version and specific allegations were levelled against respondent No.2/accused. Prosecution has successfully brought home the guilt of respondent No.2/accused. The evidence on record is sufficient to convict respondent No.2/accused for the commission of offence punishable under Section 376 IPC. Thus, respondent No.2/ accused has been wrongly acquitted of the charge levelled against him and he is liable to be punished for the same and as such instant appeal may

be allowed.

10. Learned State counsel while supporting the cause of prosecutrix has reiterated the above said contentions raised by appellant/prosecutrix.

11. While having due regard to the contentions of learned counsel for the parties, it is observed that vide impugned judgment dated 10.08.2022, respondent No.2/accused has been acquitted of charge levelled against him as prosecution has miserably failed to substantiate its allegations against the accused. It is obvious that appeal against acquittal is considered on slightly different parameters compared to an ordinary appeal. That apart, the scope of the Appellate Court, while dealing with the appeals against acquittal, is settled. Though there is no embargo on the Appellate Court to reverse the decision based on the evidence upon which the acquittal is based, generally the order of acquittal based on presumption of innocence of the accused, is further strengthened by acquittal. The Appellate Court, while considering an appeal against acquittal, has to consider whether there are compelling and substantial reasons for reversing the order of acquittal. The Appellate Court can reverse the order of acquittal if the view taken by the learned Trial Court is palpably erroneous and it could not have been taken by the Court of competent jurisdiction and is taken against well settled canons of criminal jurisprudence. Merely because the Appellate Court, on re-appreciation and re-evaluation of the evidence, is inclined to take a different view, interference with the judgment of acquittal is not justified. If the view taken by the learned Trial Court is a possible view, even if two views are equally balanced, it need not result in

interference by the Appellate Court in the judgment of the learned Trial Court of acquittal. The Appellate Court will have to see whether there is perversity in the decision, if the conclusions are contrary to the evidence on record, or the Court's entire approach is patently illegal or it is based on erroneous understanding. If the order of acquittal is to be reversed, the Appellate Court must examine and discuss the grounds given by the learned Trial Court to acquit the accused and must give cogent reasons to overturn the findings. Thus, while considering the order against acquittal, generally the Appellate Court should not interfere where view taken by the learned Trial Court is not unreasonable or perverse. To this effect, reliance can be placed on rulings Lalit Kumar Sharma and others vs. Superintendent and Remembrancer, AIR 1989 SC 2134 and Munishamappa and others vs. State of Karnataka, 2019 (3) KantLJ 466 (Supreme Court).

12. Keeping in view above said settled proposition of law and while applying the said ratio to the instant matter, it can be conveniently held that prosecution has not been able to bring home guilt to respondent No.2/accused at least beyond reasonable doubt and while giving him the benefit of doubt, he was rightly acquitted by learned Trial Court of the charge framed against him. With this legal position in mind, we have considered the view taken by the learned Trial Court is a possible view and it does not require any interference by this Court and, thus, learned Trial Court has rightly acquitted respondent No.2/accused of the charge levelled against him and to arrive at said conclusion, reasons are enumerated as under:-

- (i) Alleged offence of rape took place on 04.07.2019.

It is categorical stand of prosecutrix (PW-1) that during the course of commission of alleged offence, she had received call on her mobile phone from her son Pradhun (PW-2) and conveyed to him that she was in trouble. Above said fact has been corroborated by PW-2 Pradhun and he categorically stated that when he alongwith his brother was searching for his mother, she met them on the way to Basant Nagar and on reaching home, she narrated her woes to them and thereafter matter was reported to the police. It is pertinent to mention here that though alleged offence took place in the evening hours on 04.07.2019 and the family members of prosecutrix had come to know about alleged offence on the same day but the matter was reported to the police on 06.07.2019. Delay in lodging the FIR in sexual offences cannot be used as a ritualistic formula for doubting the prosecution case and discarding the same solely on the ground of delay in lodging the first information report. Delay has the effect of putting the Court on its guard to search if any explanation has been offered for the delay, and if offered, whether it is satisfactory or not. However, if the delay is explained to the satisfaction of the Court, the delay cannot itself be a ground for disbelieving and discarding the entire prosecution case. However, in the present case, family members of prosecutrix including her major son (PW-2 Pradhun), had come to know about commission of alleged offence on 04.07.2019 itself but no effort was made to report the matter to

the police on the same day or on the next day and, in fact, FIR was lodged on 06.07.2019. A bare perusal of testimony of PW-1 (Prosecutrix), it nowhere reveals that as to what prevented her not to lodge the FIR at the earliest. No explanation has come forth from PW-1 (Prosecutrix) as to why the reporting of alleged offence to the Police was delayed for two days. It is pertinent to mention here that even medico-legal examination of prosecutrix was delayed for more than twenty one (21) days and ultimately she was medico-legally examined on 26.07.2019. Though as per prosecution version, PW-2 Pradhun, major son of prosecutrix, became aware of alleged offence on 04.07.2019, no explanation has been put forth by him as to why the reporting of alleged offence was delayed for two days. In a given scenario, the learned Trial Court observed that since prosecutrix is a grown up matured lady, aged about 35 years, having blessed with six children and she narrated different version in the Court *vis-a-vis* her statement recorded, in terms of which, FIR was registered and her statement recorded under Section 164 Cr.P.C., delay of two days in reporting the matter to the Police assumes significance especially where the prosecution version appears to be doubtful or suspicious. In this view of the matter, in the absence of any explanation offered for the delay in lodging of the FIR, prosecution version appears to be doubtful.

(ii) Testimony of PW-1 (Prosecutrix), when

scrutinized in context with the other evidence on record, it can be easily concluded that same was neither reliable nor trustworthy. The victim/ prosecutrix, a matured lady aged 35 years, could certainly put up the stiffest resistance to prevent respondent No.2/ accused from committing rape. The medical evidence does not support the cause of prosecution as PW-10 Dr. Mahima (Medical Officer), who medico-legally examined the prosecutrix, has categorically stated that there was no external injury on the private part of the victim/ prosecutrix and, thus, the possibility of sexual intercourse may or may not be ruled out.

(iii) Prosecutrix (PW-1) was cross-examined on material particulars. During her cross-examination, when photographs (Ex.D-1 to Ex.D-5) were put to her, she categorically admitted that those photographs pertain to her, where she is seen to be in compromising position with respondent No.2/accused. Further, Pen Drive (Ex.D-6) and Compact Disc (Ex.D-7) were played in the Court in the presence of victim/prosecutrix and after having seen the above, she emphatically stated that in the above said Pen Drive/ Compact Disc, she alongwith respondent No.2/accused are seen having sexual intercourse and talking with each other without any dispute. It is pertinent to mention here that even transcript version (Ex.D-8) of Compact Disc (Ex.D-7), was also admitted to be correct by the prosecutrix. It will not be out of place to

mention here that PW-1 (Prosecutrix) has stated that after the alleged occurrence, she again visited the house of respondent No.2/accused on next Sunday, where accused served her lemonade. There is one more material ambiguity in the cause of prosecution as PW-1 (Prosecutrix) stated that she got recorded her statement to the Police on 30.06.2019 at Police Post Pur Heeran. Above said narration by prosecutrix creates ambiguity as to in what manner report was made to the Police on 30.06.2019, when the alleged offence had taken place on 04.07.2019.

(iv) Alleged occurrence took place on 04.07.2019, whereas victim/prosecutrix was medico-legally examined on 26.07.2019 i.e. after twenty one (21) days of the occurrence, as is evident from testimony of PW-10 Dr. Mahima, who conducted medico-legal examination of prosecutrix. It is quite strange that once the alleged offence of commission of rape was reported to the Police on 06.07.2019 then as to what prevented the Investigating Agency not to get the victim/prosecutrix medico-legally examined at the earliest. No explanation has come forth for inordinate delay in medico-legal examination of victim/prosecutrix. At this juncture, a careful scrutiny of testimony of PW-10 Dr. Mahima is quite relevant. At the time of medico-legal examination of victim, no external injury on her private part was detected. Above said witness has specifically stated that as per physical examination, prosecutrix

was of adult age and married. Wearing apparels (*Paijama* and *Bra*) of victim alongwith vaginal swabs were sent to Chemical Examiner for analysis and a bare perusal of Chemical Examination Report (Ex.PW-10/C) reveals that spermatozoa were detected in Exhibit-I & II i.e. slides and swabs, but no spermatozoa was detected in Exhibits-III (a) & (b) i.e. clothes (*Paijama* and *Bra*). PW-10 Dr. Mahima stated that by way of DNA Profiling, the origin of spermatozoa can be ascertained and in normal cases the non-motile spermatozoa can survive upto five days. At this juncture, it is relevant to point out here that though alleged offence took place on 04.07.2019, whereas victim/prosecutrix was medico-legally examined on 26.07.2019 and at that point of time, above said articles (swabs etc.) were collected and later on those were sent to Chemical Examiner for analysis. There is one more deficiency that though respondent No.2/ accused was arrested on 07.07.2019, but he was medico-legally examined on 04.10.2019, vide Medico-Legal Report (Ex.PW-3/B), by PW-3 Dr. Harjinderpal. It is pertinent to mention here that PW-9 Sub Inspector Rajinder Singh has categorically stated that no blood sample of respondent No.2/ accused was collected by the doctor for DNA profiling. Thus, in the absence of DNA profiling, origin of spermatozoa could not be ascertained.

(v) Learned Trial Court after having appreciated the entire evidence observed that version rendered by victim/

prosecutrix was highly doubtful and inconsistent. Rather prosecutrix appeared to be a consenting party and in this scenario, respondent No.2/accused cannot be said to be at fault.

13. As a sequel to above said findings, we are of the opinion that the learned Trial Court while appreciating the entire evidence in its right perspective, has rightly held that prosecution has not been able to bring home guilt to respondent No.2/accused at least beyond reasonable doubt and while giving him the benefit of doubt, he was rightly acquitted by learned Trial Court of the charge framed against him. Thus, no case for any interference in the impugned judgment is made out. The view of the learned Trial Court is hereby affirmed and is maintained.

14. In view of the above, the present appeal, being bereft of merit, is dismissed.

(Sureshwar Thakur)
Judge

(Lalit Batra)
Judge

03.05.2024
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Whether speaking/ reasoned : Yes/ No
Whether Reportable : Yes/ No