



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

CRA-AD-360-2023 (O&M)
Date of decision: 17.09.2024

M XXXXXXAppellant
Versus

STATE OF PUNJAB & ANRRespondents

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

Present: Mr. Surinder Thakur, Advocate for the appellant.
Mr. Eklavya Darshi, DAG, Punjab.

SUDHIR SINGH, J.

Challenge in the present appeal is to the judgment dated 03.08.2023 passed by the learned Additional Sessions Judge, Gurdaspur, whereby the accused-respondent has been acquitted of the charges under Sections 451/354-A/376 IPC and under Section 3/4 of POCSO Act.

2. The case of the prosecution is that on 30.07.2019, complainant-Meena Kaur got her statement recorded to the police that on 29.07.2019, she along with her daughter (prosecutrix) aged 17 years was sleeping in the Veranda of their house and lights were on. It was further stated that at about 10.30 PM, accused-respondent Jobanjit Singh, entered her house by jumping the wall and tried to outrage her modesty and that her daughter desisted and shouted for help, whereupon she woke up. Her daughter told her about the entire incident. The accused escaped from the

spot by opening the gate. However, during the incident his mobile phone fell on the floor of their house. On the basis of the said statement, the FIR was registered under Section 451/354-A IPC. The mobile phone of the accused was taken into possession by the police. On 05.08.2019, statement of the prosecutrix under Section 164 Cr.P.C. was recorded before the Court and offences under Section 376 IPC and Section 3/4 of POCSO Act were added vide rapat No.25 dated 05.08.2019. On 06.08.2019, the medical examination of the prosecutrix was got conducted from Civil Hospital, Batala.

3. After investigation, the challan was presented before the Court. Charges were framed against the accused under Sections 451/354-A/376 IPC and under Section 4 of the POCSO Act.

4 In evidence, the prosecution examined PW-1 Meena Kaur; PW-2 Prosecutrix; PW-3 Rajbir Singh; PW-4 ASI Sharam Singh; PW-5 Amandeep Kaur, Punjabi Mistress, Government Senior Secondary School Dakoha; PW-6 ASI Iqbal Singh; PW-7 Dr. Sapna Raj; PW-8 Inspector Navjeet Kaur; PW-9 Ct. Narinder Kaur and PW-10 ASI Paramjit Singh.

5. Thereafter, the statement of the accused was recorded under Section 313 Cr.P.C.. The entire incriminating material was put to him, which he denied and pleaded innocence. However, no evidence was led by the defence.

6. The learned Trial Court vide the impugned judgment has acquitted the respondent, inter alia, holding as under:-

(1) The prosecutrix in her testimony before the Court deposed that the accused had neither committed rape upon her nor had molested her.

(2) The prosecutrix admitted that she made her statement under Section 164 Cr.P.C. before the Magistrate under the police pressure.

(3) The testimony of PW-1 Meena Kaur (complainant) is also doubtful. In her statement, on the basis of which the FIR was registered, there was no allegation of rape. Such allegations were only levelled in the examination-in-chief.

(4) It was not possible that accused could have committed rape upon the prosecutrix, when she was sleeping with her mother.

(5) PW-3 Rajbir Singh testified that he was not the eye witness of the case and had made the statement on the lines as told by his mother.

(6) PW-5 Amandeep Kaur, Punjabi Mistress, Government Senior Secondary School Dakoha, did not produce the birth record of the prosecutrix.

(7) PW-7 Dr. Sapna Raj, had deposed that the medical examination record of the prosecutrix was done on 07.08.2019 and that the prosecutrix had disclosed to her that three persons came to her house and the accused had committed rape upon her. This version is in total contradiction to the prosecution story.

(8) The incident took place on 29.07.2019, and detection of semen in the vaginal swabs of the

prosecutrix in the medical examination conducted on 07.08.2019, makes the story doubtful. The investigation also left many loose threads and links are missing, creating the dents in the story of the prosecution.

7. Learned counsel for the appellant has vehemently contended that the findings recorded by the learned trial Court are patently illegal. It is further argued that once the prosecution had led sufficient evidence to prove that the accused had committed rape upon the prosecutrix and such fact was also established on the basis of the medical report, there was no occasion for the trial Court to acquit the accused-respondent of the charges framed against him. It is further argued that merely because there were minor improvements in the testimony of the witnesses, would not be a ground to give any benefit of doubt to the accused.

8. We have heard learned counsel for the appellant and have also gone through the record of the case.

9. The only issue that requires consideration by this Court is whether the impugned judgment of acquittal requires any interference by this Court.

10. It may be noticed that, in the initial statement, on the basis of which the FIR was lodged, the complainant did not mention that the accused had committed rape upon her daughter. It was only stated that the accused had tried to outrage the modesty of her daughter (prosecutrix). The offences under Section 376 and POCSO Act were added later on. Be that as it may, the fact remains that even if such offences were added later on, the prosecution was required to prove them by leading cogent and convincing evidence. The testimony of the

complainant (Meena Kaur) PW-1 and that of the prosecutrix (PW2) is vital and the same is to be closely scrutinized so as to examine the findings recorded by the learned Trial Court. In her testimony, the victim had stated that the accused did not commit any rape upon her. However, PW-7 Dr. Sapna Raj, who had produced the medical record of the victim had stated that the victim had disclosed to her that on the date of occurrence, three boys had come to her house and the accused had committed rape upon her. The said version is entirely different from the version put forth by the prosecution and even from the version of the victim herself. Even the mother of the prosecutrix, while appearing as PW-1 had made improvements in her statement before the Court when she had levelled the allegations of rape against the accused. It was on the basis of the said contradictory testimony, the learned trial Court found that it was not possible for the accused to commit rape upon the victim in the presence of her mother.

11. In order to attract the offence under the POCSO Act, the most vital aspect is the determination of the age of the victim. However, the age of the victim was not proved by the prosecution in terms of Section 34(2) of the POCSO Act. PW-5 Amandeep Kaur, Punjabi Mistress, Government Senior Secondary School Dakoha, stated in her testimony that she had not brought the birth record of the prosecutrix. Except that there was no material on record to establish that the age of the victim was determined. Thus, the prosecution had failed to prove the age of the victim so as to sustain the charges against the accused under the POCSO Act.

12. Section 34(2) of the POCSO Act stipulates that if any

question arises in any proceeding before the Special Court whether a person is a child or not, such question shall be determined by the Special Court after satisfying itself about the age of such person and it shall record in writing its reasons for such determination.

In Jarnail Singh v. State of Haryana, (2013) 7 SCC 263,
the Hon'ble Supreme Court, has held as under:-

“22. On the issue of determination of age of a minor, one only needs to make a reference to Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007 (hereinafter referred to as “the 2007 Rules”). The aforesaid 2007 Rules have been framed under Section 68(1) of the Juvenile Justice (Care and Protection of Children) Act, 2000. Rule 12 referred to hereinabove reads as under:

“12. *Procedure to be followed in determination of age.*—(1) In every case concerning a child or a juvenile in conflict with law, the court or the Board or as the case may be, the Committee referred to in Rule 19 of these Rules shall determine the age of such juvenile or child or a juvenile in conflict with law within a period of thirty days from the date of making of the application for that purpose.

(2) The court or the Board or as the case may be the Committee shall decide the juvenility or otherwise of the juvenile or the child or as the case may be the juvenile in conflict with law, prima facie on the basis of physical appearance or documents, if available, and send him to the observation home or in jail.

(3) In every case concerning a child or juvenile in conflict with law, the age determination inquiry shall be conducted by the court or the Board or, as the case may be, the Committee by seeking evidence by obtaining—

(a)(i) the matriculation or equivalent certificates, if available; and in the absence whereof;

(ii) the date of birth certificate from the school (other than a play school) first attended; and in the absence whereof;

(iii) the birth certificate given by a corporation or a municipal authority or a panchayat;

(b) and only in the absence of either (i), (ii) or (iii) of clause (a) above, the medical opinion will be sought from a duly

constituted Medical Board, which will declare the age of the juvenile or child. In case exact assessment of the age cannot be done, the court or the Board or, as the case may be, the Committee, for the reasons to be recorded by them, may, if considered necessary, give benefit to the child or juvenile by considering his/her age on lower side within the margin of one year,

and, while passing orders in such case shall, after taking into consideration such evidence as may be available, or the medical opinion, as the case may be, record a finding in respect of his age and either of the evidence specified in any of the clauses (a)(i), (ii), (iii) or in the absence whereof, clause (b) shall be the conclusive proof of the age as regards such child or the juvenile in conflict with law.

(4) If the age of a juvenile or child or the juvenile in conflict with law is found to be below 18 years on the date of offence, on the basis of any of the conclusive proof specified in sub-rule (3), the court or the Board or as the case may be the Committee shall in writing pass an order stating the age and declaring the status of juvenility or otherwise, for the purpose of the Act and these Rules and a copy of the order shall be given to such juvenile or the person concerned.

(5) Save and except where, further inquiry or otherwise is required, inter alia, in terms of Section 7-A, Section 64 of the Act and these Rules, no further inquiry shall be conducted by the court or the Board after examining and obtaining the certificate or any other documentary proof referred to in sub-rule (3) of this Rule.

(6) The provisions contained in this Rule shall also apply to those disposed of cases, where the status of juvenility has not been determined in accordance with the provisions contained in sub-rule (3) and the Act, requiring dispensation of the sentence under the Act for passing appropriate order in the interest of the juvenile in conflict with law.”

23. Even though Rule 12 is strictly applicable only to determine the age of a child in conflict with law, we are of the view that the aforesaid statutory provision should be the basis for determining age, even of a child who is a victim of crime. For, in our view, there is hardly any difference insofar as the issue of minority is concerned, between a child in conflict with law, and a child who is a victim of crime. Therefore, in our considered opinion, it would be just and appropriate to apply Rule 12 of the 2007 Rules, to determine the age of the prosecutrix VW, PW 6. The manner of determining age conclusively

has been expressed in sub-rule (3) of Rule 12 extracted above. Under the aforesaid provision, the age of a child is ascertained by adopting the first available basis out of a number of options postulated in Rule 12(3). If, in the scheme of options under Rule 12(3), an option is expressed in a preceding clause, it has overriding effect over an option expressed in a subsequent clause. The highest rated option available would conclusively determine the age of a minor. In the scheme of Rule 12(3), matriculation (or equivalent) certificate of the child concerned is the highest rated option. In case, the said certificate is available, no other evidence can be relied upon. Only in the absence of the said certificate, Rule 12(3) envisages consideration of the date of birth entered in the school first attended by the child. In case such an entry of date of birth is available, the date of birth depicted therein is liable to be treated as final and conclusive, and no other material is to be relied upon. Only in the absence of such entry, Rule 12(3) postulates reliance on a birth certificate issued by a corporation or a municipal authority or a panchayat. Yet again, if such a certificate is available, then no other material whatsoever is to be taken into consideration for determining the age of the child concerned, as the said certificate would conclusively determine the age of the child. It is only in the absence of any of the aforesaid, that Rule 12(3) postulates the determination of age of the child concerned, on the basis of medical opinion.”

13. It was rightly found by the learned trial Court that there was no explanation as to how in an occurrence which took place on 29.07.2019, the semen were detected in vaginal swabs of the prosecutrix, when she was medically examined on 07.08.2019.

14. 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 are not perverse, the scope of appeal against acquittal is limited considering the fact that the legal presumption about the innocence of the accused 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 in **Mrinal Das versus State of Tripura**, (2011) 9 SCC 479, wherein it has been observed as under:-

“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 exercise of such power and the appellate Court is free to arrive at its own conclusion keeping in mind that acquittal provides for presumption in favour 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."

15. 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.

16. We find that the findings recorded by the learned trial Court are based on evidence on record and no fault can be found with the same.

17. In view of the above, finding no merit in the present appeal, the same is hereby dismissed.

18. Pending application(s), if any, shall also stand disposed of.

[SUDHIR SINGH]
JUDGE

[JASJIT SINGH BEDI]
JUDGE

17.09.2024
Himanshu

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No