

2024:PHHC:137353-DB



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

CRA-AD-357-2023 (O&M)
Date of decision: 15.10.2024

“A”

.....Appellant

Versus

State of Haryana and another

.....Respondents

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

Present: Mr. Aditya Sanghi, Advocate,
for the appellant.

Mr. Ashok Chaudhary, Addl. A.G., Haryana.

Mr. Prabhjeet Singh Sullar, Advocate,
for respondent No.2.

SUDHIR SINGH, J.

The present appeal has been filed against the judgment dated 18.07.2023 passed by the learned Additional Sessions Judge, Gurugram, whereby accused-respondent No.2 (Amit Kaushik) has been acquitted of the charges under Sections 328, 376 and 506 IPC.

2. Vide order dated 12.09.2024, the Lower Court record was called for. The same was received on 05.10.2024.

3. The prosecution case was that on 15.03.2021, complainant-prosecutrix (PW-9) presented a complaint in the concerned police station with the allegations that she was permanent resident of village Sitapur, District Chamoli, Uttarakhand and presently residing on rent in village Aliyar in Gurugram. She met accused-Amit Kauhsik (respondent No.2 herein) on social media platform i.e. Facebook Messenger and thereafter, they started chatting with each other frequently. Accused-respondent No.2 told the prosecutrix that he was resident of Delhi, but was a frequent visitor to Gurugram and would help her in getting a good job there. On this pretext, Amit (respondent No.2) took her to some hotel and committed forcible rape upon her after administering some intoxicant.

4. Based on the aforesaid complaint, FIR No. 25 dated 15.03.2021, under Sections 328, 376 and 506 IPC, was registered at Police Station, Women Manesar, Gurugram. After investigation, the charge-sheet was submitted, where-after cognizance was taken. Thereafter, charges were framed against respondent No.2, to which he pleaded not guilty and claimed to be tried.

5. During trial, the prosecution examined ten witnesses, namely, PW1 SI Naresh Kumar, Draftsman, PW2 Dr. Darshan Badhana, PW3 Dr. Yudhvair, PW4 Constable Parveen, PW5 Constable Bhagat Singh, PW6 Perminderjit

Singh, Nodal Officer, PW7 Ajay Kumar, Nodal Officer, PW8 Constable Bhim Singh, PW9 the prosecutrix and PW10 L/SI Pinky, the Investigating Officer. Besides this, the prosecution tendered into evidence FSL report Ex.PX and Pendrive Ex.P33. On conclusion of the prosecution evidence, statement of the accused (respondent No.2) was recorded under Section 313 Cr.P.C., wherein entire incriminating evidence was put to him. However, he denied the same and pleaded false implication in the case. In defence, the accused-respondent No.2 examined DW1 L/ASI Ranjeet Kaur and Ms. Sunita, Assistant as DW-2. Thereafter, he tendered into evidence some documents Ex.D12 and Ex.D13. After conclusion of the trial, the learned Trial Court acquitted the accused (respondent No.2).

6. The grounds considered by the learned Trial Court for acquitting respondent No.2 are as under:-

“1. There were contradictions in the complaint Ex.P22; the statement under made by the prosecutrix Section 164 Cr.P.C. Ex.P23 and the deposition made by her before the Court while appearing as PW9. In the complaint Ex.P22 and statement Ex.P23, the prosecutrix had mentioned about some intoxicated medicine administered to her, but in her statement as PW9, she stated that the accused offered her water and after drinking the same, she felt dizziness. As per FSL report Ex.PX, no semen was detected on the clothes, vaginal swab and cervical swab of

the prosecutrix.

2. The prosecutrix had provided a forged Aadhaar card to the police and had also mentioned wrong address in her complaint Ex.P22. Therefore, the credibility of the victim/prosecutrix was found to be doubtful. Still further, the timing of the occurrence was also found to be doubtful. Due to this reason, the trial Court had directed the SHO concerned to register an FIR against the prosecutrix under the relevant sections of the IPC.

3. The prosecutrix, while appearing as PW9, had admitted about receiving injuries during the alleged sexual assault, but no such injuries were reflected in the MLR Ex.P2.”

7. The learned counsel for the appellant, while assailing the judgment of acquittal passed by the trial Court, has vehemently argued that the impugned judgment of acquittal suffers from patent illegality, inasmuch as, the learned trial Court has wrongly held that the prosecutrix had produced a forged Aadhaar Card, whereas there was no evidence on record to return such a finding. It is, yet further submitted that merely because the prosecutrix failed to appear for recording her evidence, the learned trial Court could not have granted the benefit of acquittal to accused-respondent No.2. It is further submitted that the learned trial Court has wrongly held that the prosecutrix has falsely implicated the accused and this was an act of collusion between the prosecutrix and one Gulbir @ Gabbu.

It is, yet further contended by learned counsel for the appellant that even if, the alleged act was consensual one, then also the act of sexual assault was established on the part of the accused-respondent No.2. It is further contended that the consent so obtained by the accused-respondent No.2 for committing the act of sexual assault was obtained by him by threatening the complainant-prosecutrix and therefore, such consent could not have been taken to give benefit of doubt to the accused-respondent No.2.

8. On the other hand, learned counsel appearing for respondent No.2, while defending the judgment of acquittal passed by the learned trial Court contends that the learned trial Court, while recording its finding, has referred to the evidence on record. It is further argued that the act and conduct of the prosecutrix will go to show that she had framed respondent No.2 in this case for an oblique motive. Still further, it is argued that for such act and conduct of the prosecutrix, the trial Court has ordered for initiation of appropriate proceedings against her under Section 420 of the IPC.

9. After hearing the submissions made by the learned counsel for the parties, the following question arises for consideration in the present appeal:-

“Whether in the absence of any conclusive clinical or scientific evidence, accused-respondent No.2 can be held guilty for committing the offence under Section 376 IPC?

10. In the cases for the offence under Section 376 IPC, the testimony of the prosecutrix holds the thrill. It is settled law that the statement of the prosecutrix, if corroborated by other evidence, can be the sole ground for the conviction of the accused. However, in the instant case, on the basis of the evidence on record, it was found by the learned trial Court that there was a consensual relationship between the prosecutrix and the accused and the prosecutrix had colluded with one Gulbir @ Gabbu to indict the accused-respondent No.2 in the present case. It was still further found that the testimony of the prosecutrix suffers from contradictions. In the complaint Ex.P22 and the statement Ex.P23 under Section 164 Cr.P.C., the prosecutrix had mentioned about some intoxicant having been administered to her, but while appearing as PW9 before the Court, she had deposed that the accused had offered her water and after drinking the same, she felt dizziness. It was further found that the factum of giving intoxicated substance mixed in the water was disclosed by the prosecutrix for the first time in the Court, whereas there was no such mention in Ex.P22 and Ex.P23 as referred to above. It was also noticed by the learned trial Court that in the FSL report Ex.PX, no semen was detected on the clothes of the prosecutrix or on the cervical swab. Though the prosecutrix had mentioned about some struggle at the time

of the occurrence, but no marks of injury were reflected on her person in the MLR. Yet further, the trial Court has also found that she had produced a forged Aadhaar Card containing wrong address and the said factum was admitted by her in her testimony. Apart from that, the time of occurrence was also found to be doubtful.

11. On the basis of the testimony of PW10 L/SI Pinky, the Investigating Officer, it was found that she (Investigating Officer) did not find any independent evidence corroborating the prosecution version. Thus, while finding the case of the prosecution being highly doubtful, the learned trial Court had directed for initiation of criminal proceedings against the prosecutrix. The relevant extract from the judgment of the trial Court in this regard, would read as under:-

“45. Before concluding the judgment, it is necessary to discuss the conduct of the prosecutrix, wherein she not only gave wrong address to the police at the time of giving complaint and to the doctor during her medical examination, but also lied about her address in the court while she was examined on oath. She gave copy of forged Aadhir Card to the police and further, admitted having in possession of Aadhar card Ex.D1, which reflects the said wrong address. Meaning thereby, the prosecutrix also forged the documents to create Aadhar Card Ex.D1, which is in her possession

and she also used it during investigation of this case and intentionally lied about her address in the court at the time of her testimony and hence she has committed the offences punishable under Sections 172/177/181/132/193/420/465/468/471 IPC. Accordingly, the concerned SHO is hereby directed to register an FIR against the prosecutrix in these offences and initiate criminal proceedings against her.

46. In the light of the facts and circumstances discussed above and also the evidence on record, the prosecution has not been able to prove its case against the "accused beyond all reasonable shadow of doubt that on 14.03.2021, the accused gave intoxicated substance to prosecutrix with intent to ravish her, committed rape upon her as well as threatened her with dire consequences and thus, the accused committed the offences punishable under Sections 328/376/506, IPC, of which he has been charge sheeted. Accordingly, the accused is hereby acquitted of the charges levelled against him while giving the benefit of reasonable doubt to the accused. His bail bonds and surety bonds stand discharged. Case property be disposed off as per rules after expiry of period of appeal/revision, if any Superdiginama furnished, if any stands cancelled. Copy of this judgment be sent to the concerned Commissioner of Police and the 'concerned SHO to ensure necessary compliance of the directions of the court in para no.45 of this

judgment within seven days from the date of receiving the judgment. File be consigned to the record room after due compliance.”

12. As noticed above, the testimony of the prosecutrix has been found to be doubtful. The testimony of other material witnesses, including the Investigating Officer, was also found to have not corroborated the prosecution version. Still further, the scientific evidence i.e. FSL report also did not establish that the prosecutrix has been subjected to sexual assault by the accused-respondent No.2. In this regard, it was found that in the FSL report, no semen was detected on the clothes (undergarments) of the prosecutrix. Thus, there is no scientific evidence to connect the accused-respondent No.2 with the alleged incident. Further, the trial Court has given sufficient reasons for coming to the conclusion that the prosecutrix herself had given forged Aadhaar Card to the Police and had admitted the said fact in her testimony before the Court. Under these circumstances, the learned trial Court was compelled to direct the SHO concerned to register an FIR against the prosecutrix under Sections 172/177/181/182/193/420/465/468/471 IPC. It is settled law that in the absence of any clinical and scientific evidence, the accused cannot be held guilty for commission of the offence under Section 376 IPC. As noticed above, in the instant case, the said scientific evidence is completely lacking. Apart from that

there is no independent or corroborative evidence, which can substantiate the allegations of the prosecutrix. Rather, when the testimony of the prosecutrix herself is found to be doubtful, we find no reason to interfere with the impugned judgment of acquittal passed by the learned trial Court.

13. 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 reappreciate, 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."

14. 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 of acquittal qua respondent No. 2 recorded by the learned trial Court are based on evidence on record and no fault can be found with the same. The question framed above, is answered in negative.

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**

15.10.2024
Ajay Prasher

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