

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

**CRA-AD-351-2022 (O&M).
Date of Decision: 26.04.2024.**

Sxxx

....Appellant.

VERSUS

State of Haryana and another

....Respondents.

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

Argued by: Mr. Abhimanyu Singh, Advocate for the appellant.

Mr. P.P. Chahar, Senior Deputy Advocate General, Haryana.

LALIT BATRA, J.

This criminal appeal has been preferred by appellant/victim/prosecutrix-Sxxx (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 05.09.2022 rendered by learned Additional Sessions Judge, Gurugram, in Sessions Case No.203 of 2022, in terms of which, respondent No.2/accused-Rahul was acquitted of charges under Sections 376(2)(n) and 506 IPC, in case FIR No.68 dated 10.03.2022 under Sections 376(2)(n), 506 and 509 read with Section 34 IPC, registered at Police Station Sector-65, Gurugram and while deciding application under Sections 340 and 344 Cr.P.C., moved by Public Prosecutor, it was directed that cognizance of offence in terms of Section 344 Cr.P.C. be taken against victim/prosecutrix for the purpose of

eradication of evil of perjury and notice to her was ordered to be issued for showing cause as to why she should not be punished and separate proceedings in this regard were ordered to be initiated.

2. As per prosecution version, on 10.03.2022, complaint (Ex.P-2) was received in Police Station Sector-65, Gurugram, wherein complainant/victim alleged that in October, 2020, respondent No.2/accused helped her in shifting her house and after giving offer of marriage persuaded her to make sexual relations and many times he sexually assaulted her, however, later on she came to know that respondent No.2/accused was already married and, thus, on the false pretext of solemnization of marriage, he sexually assaulted her. Though respondent No.2/accused felt sorry and assured victim/prosecutrix that he would keep her with him, however, later on he refused to marry her or to live with her. Even respondent No.2/accused and his brother threatened her to face dire consequences. On the basis of complaint (Ex.P-2), formal FIR (Ex.P-18) was registered. After sending special reports to learned Area Magistrate and higher police officials, PW-9 Lady Sub Inspector Meenawanti (Investigating Officer), along with victim/prosecutrix visited the place of occurrence and prepared rough site-plan (Ex.P-20). Thereafter, victim/prosecutrix was taken to General Hospital, Gurugram, and on application Ex.P-13 moved by Investigating Officer, she (victim) was medico-legally examined, vide Medico-Legal Report (Ex.P-12), in terms of which, it was opined that possibility of sexual intercourse cannot be ruled out. Vide arrest memo (Ex.P-9), respondent No.2/accused was arrested, who during interrogation, suffered disclosure statement (Ex.P-10) and in pursuant to the said disclosure statement, he got demarcated the place

prosecutrix was produced before learned Area Magistrate and on application Ex.P-21, her statement under Section 164 Cr.P.C. was recorded. On the same day, on application (Ex.P-15), respondent No.2/ accused was medico-legally examined, vide Medico-Legal Report (Ex.P-14), in terms of which, it was opined that there was nothing to suggest that the person examined was unable to perform sexual intercourse. After medico-legal examination of respondent No.2/accused, one sealed parcel containing his blood sample, sample seal and forwarding letter, were handed over to police, which were taken into police possession, vide memo (Ex.P-16). On 15.03.2022, Head Constable Irfan (PW-3) handed over copy of Complaint No.172-5P dated 07.02.2022 (Ex.P-7) and final report in said complaint (Ex.P-8), to the Investigating Officer, which were taken into police possession, vide memo (Ex.P-6). During investigation, on 16.03.2022, allegations levelled against Vijay Kumar, brother of respondent No.2/accused, for threatening victim/ prosecutrix were found false and, thus, offence under Section 509 IPC read with Section 34 IPC was deleted from the array of offences. On 21.03.2022, Investigating Officer got prepared scaled site-plan (Ex.P-17) through Draftsman Assistant Sub Inspector Dharampal. On 24.03.2022, victim/ prosecutrix handed over eight photographs (Ex.P-4), which were taken into police possession, vide memo (Ex.P-5). Statements of witnesses under Section 161 Cr.P.C. were recorded and case property was deposited in the *Malkhana*. 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

Sections 376(2)(n) and 506 IPC, to which he pleaded not guilty and claimed trial.

4. To substantiate its case, prosecution has examined PW-1 Lady Constable Pushpa, PW-2 victim/prosecutrix, PW-3 Head Constable Irfan, PW-4 Constable Vinit Kumar, PW-5 Dr. Amandeep Kamboj (Medical Officer), PW-6 Dr. Manav Chauhan (Medical Officer), PW-7 Constable Nirदेश, PW-8 ASI Dharampal (Draftsman) and PW-9 Lady/SI Meenwanti (Investigating Officer). Thereafter, prosecution evidence was closed by learned 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 charges under Sections 376(2)(n) and 506 IPC, vide judgment of acquittal dated 05.09.2022 and while deciding application under Sections 340 and 344 Cr.P.C., moved by learned Public Prosecutor, it was directed that cognizance of offence in terms of Section 344 Cr.P.C. be taken against victim/prosecutrix and notice was ordered to be issued for showing cause as to why she should not be punished and separate proceedings in this regard were ordered to be initiated.

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 cryptic, perverse and has been passed while ignoring scientific-cum-medical evidence. Admittedly, victim/prosecutrix had turned hostile, however, said deposition of victim/prosecutrix was not out of her free will and it was under compulsion. Even if the deposition of victim/prosecutrix (PW-2) is overlooked, the remaining evidence on record would establish the case against respondent No.2/accused because it is a clear cut case where both were having consensual relationship and the said consent was made purely on the basis of promise of marriage given by respondent No.2/accused. Thus, respondent No.2/accused has been wrongly acquitted of the charges levelled against him and he is liable to be punished for the same. Further, learned Trial Court in Para No.31 of the impugned judgment has mentioned that since victim/prosuctrix had turned hostile and took U-turn from her earlier statement recorded under Section 164 Cr.P.C. or statement recorded under Section 161 Cr.P.C. including her version in the FIR, therefore, proceedings under Section 344 Cr.P.C. be initiated against her for the charge of perjury and show cause notice has been ordered to be issued against her by initiating separate proceedings in this regard. The above said observations made by learned Trial Court as well as impugned judgment are liable to be set aside and instant appeal may be allowed.

10. On the other hand, learned State counsel has vehemently argued that since victim/prosecutrix did not support the prosecution version and turned hostile by taking U-turn from her earlier statement recorded under Section 164 Cr.P.C. or statement recorded under Section 161 Cr.P.C.

including her version in the FIR, therefore, learned Trial Court rightly

ordered for initiation of proceedings under Section 344 Cr.P.C. against her for the charge of perjury and show cause notice has been rightly ordered to be issued against her by initiating separate proceedings in this regard.

11. While having due regard to the contentions of learned counsel for the parties, it is observed that vide impugned judgment dated 05.09.2022, respondent No.2/accused has been acquitted of charges 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 utterly failed to prove that respondent No.2/accused has committed the offence punishable under Sections 376(2)(n) and 506 IPC against the victim/prosecutrix. 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 charges levelled against him and has rightly ordered for initiation of proceedings under Section 344 Cr.P.C. against victim/prosecutrix for the purpose of eradication of evil of perjury and show cause notice has been ordered to be issued against her by initiating separate proceedings in this regard. To arrive at said conclusion, reasons are enumerated as under:-

- (i) PW-2 victim/prosecutrix has not supported the prosecution version and turned hostile. She has given a total

go-bye to her original version as was narrated in the FIR and categorically stated that her previous statements were recorded under pressure of police. She specifically deposed that respondent No.2/accused neither sexually exploited her nor committed any wrongful act with her by force at any point of time nor he and his brother ever threatened to kill her. Despite her lengthy cross-examination, nothing could be extracted favourable to the cause of prosecution.

(ii) It has not been proved on record the victim/prosecutrix was subjected to sexual intercourse forcibly or otherwise by respondent No.2/accused at any point of time. PW-2 victim/prosecutrix categorically deposed that in the month of October, 2020, while she was shifting her house, respondent No.2/accused helped her in shifting her household articles in her newly rented accommodation and gradually they became friends and developed physical relationship with mutual consent and free will. She has categorically stated that whatever happened between them had taken place of their free will and there was no commitment towards each other from either side. She emphatically stated that respondent No.2/accused never promised to marry her and neither he sexually exploited her nor committed any wrongful act with her on the false promise of marriage.

(iii) The opinion of PW-6 Dr. Manav Chauhan (Medical Officer) that accused was capable of performing sexual intercourse or the opinion rendered by PW-5 Dr. Amandeep

Kamboj (Medical Officer) that possibility of sexual intercourse could not be ruled out, the said opinions *ipso facto* did not imply that victim/ prosecutrix was raped. Admittedly, victim/ prosecutrix was aged about 30 years at the relevant time and once she has categorically stated that she had developed physical relations with respondent No.2/accused with mutual consent and out of her free will, thus, it was a consensual relationship.

(iv) There is total absence of any direct or ocular evidence which could prove the guilt of respondent No.2/accused for the commission of alleged offences.

(v) Since victim/prosecutrix has not supported the prosecution version and turned hostile by taking U-turn from her earlier statement recorded under Section 164 Cr.P.C. or statement recorded under Section 161 Cr.P.C. including her version in the FIR, therefore, learned Trial Court rightly ordered for initiation of proceedings under Section 344 Cr.P.C. against her for the purpose of eradication of evil of perjury and show cause notice has been rightly ordered to be issued against her by initiating separate proceedings in this regard.

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 failed to prove its case against respondent No.2/accused. Further, since victim/prosecutrix has not supported the prosecution version in its entirety, learned Trial Court has rightly ordered for initiation of proceedings under Section 344 Cr.P.C. and

show cause notice has been rightly ordered to be issued against her by initiating separate proceedings in this regard. 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

26.04.2024
jitender

(Lalit Batra)
Judge

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