

CRA-AS-560-2023

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRA-AS-560-2023
Date of decision:07.06.2024

RASHID

... PETITIONER

V/s

STATE OF HARYANA AND ANOTHER ... RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Dr. Rishi Pal Singh, Advocate for the petitioner.

Ms. Mahima Yashpal, DAG, Haryana.

SUMEET GOEL, J.

1. This appeal is directed against the judgment of acquittal dated 29.09.2023 passed by learned Additional Sessions Judge-cum-Exclusive Court for Fast Tracking of Heinous Crimes Against Women, Karnal.

2. Facts pertinent to adjudication of the present appeal as gathered from the trial Court record are that the appellant-complainant on 18.12.2018 moved an application Ex.P-9 before the Police, in Police Station Taraori, District Karnal (Haryana) alleging that on 16.12.2018, his daughter, had left her house by stating that she was going to meet her maternal grand-father in village Randeva, Saharanpur (UP). However, she did not reach the house of her grandfather and nor did returned back to her own house. On the said complaint the Police registered FIR No.409, dated 18.12.2018 under Section 346 of IPC. On 26.12.2018 supplementary statement of appellant-complainant was recorded by police, stating therein that his minor daughter has been enticed away by accused with the promise

of marriage. Thereafter, Sections 363, 366-A of the IPC were added to the FIR.

3. During the course of investigation, daughter of appellant-complainant was recovered by the Police from Indore (MP) on 21.05.2019. Her statement under Section 164 of the Cr.P.C. was got recorded by the police. Finding a prima facie case against the accused, learned trial Court framed charges against him under Sections 363 and 366-A of the IPC.

4. After considering the detailed evidence led by the prosecution and all the relevant material available on record of the case the learned trial Court acquitted the accused.

5. I have heard learned counsel for the appellant and have gone through the record of the case minutely.

6. The learned counsel for the appellant while assailing the judgment of acquittal passed by the learned trial Court has argued that the appellant-complainant while appearing as PW-6 had deposed before the learned trial Court that his minor daughter was recovered from the accused-respondent No.2. Being minor she was forcefully kidnapped by the accused. He further argued that (victim) daughter of the appellant-complainant herself, while appearing as PW-2 in the case deposed that besides accused, his brother-in-law, and his elder brother were also involved in her abduction. It is argued that an application seeking further investigation in the case was filed before the learned trial Court, which was subsequently withdrawn by the counsel for the appellant-complainant without his consent. It is submitted that an application under Section 319 of the Cr.P.C. was filed before the learned trial Court seeking summoning of additional accused Sandeep, Mohit, and Pooja in the case. But the same was dismissed by the trial Court on 03.04.2023. The order dated

03.04.2023 passed by trial Court was challenged before this Court by filing CRR No.1676 of 2023, but the same was also dismissed on 12.10.2023. It is argued that the trial Court has erred in not considering the age of the minor daughter of appellant and also overlooked the statement of PW-2 wherein, she stated that rape was committed with her by the accused, repeatedly.

7. The principles governing the scope of interference by the High Court in an appeal filed by the State for challenging acquittal of the accused recorded by the trial Court, as laid down by various judgments passed by the Hon'ble Supreme Court of India are as under:

In case of ***Rajesh Prasad v. State of Bihar, (2022) 3 SCC 471***

it is held as under:

“29. After referring to a catena of judgments, this Court culled out the following general principles regarding the powers of the appellate Court while dealing with an appeal against an order of acquittal in the following words:

42. From the above decisions, in our considered view, the following general principles regarding powers of the appellate Court while dealing with an appeal against an order of acquittal emerge:

(1) An appellate Court has full power to review, reappraise and reconsider the evidence upon which the order of acquittal is founded.

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate Court on the evidence before

it may reach its own conclusion, both on questions of fact and of law.

(3) Various expressions, such as, "substantial and compelling reasons", "good and sufficient grounds", "very strong circumstances", "distorted conclusions", "glaring mistakes", etc. are not intended to curtail extensive powers of an Appellate Court in an appeal against acquittal. Such phraseologies are more in the nature of "flourishes of language" to emphasise the reluctance of an Appellate Court to interfere with acquittal than to curtail the power of the Court to review the evidence and to come to its own conclusion.

(4) An Appellate Court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent Court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial Court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the Appellate Court should not disturb the finding of acquittal recorded by the trial Court."

7.1 Further in the case of ***H.D. Sundara & Ors vs. State of Karnataka, 2023 (9) SCC 581*** Hon'ble Supreme Court of India summarized the principles governing the exercise of appellate jurisdiction while dealing with an appeal against acquittal as under:

“8.1 The acquittal of the accused further strengthens the presumption of innocence;

8.2 The Appellate Court, while hearing an appeal against acquittal, is entitled to re-appreciate the oral and documentary evidence;

8.3 The Appellate Court, while deciding an appeal against acquittal, after re-appreciating the evidence, is required to consider whether the view taken by the trial Court is a possible view which could have been taken on the basis of the evidence on record;

8.4 If the view taken is a possible view, the Appellate Court cannot overturn the order of acquittal on the ground that another view was also possible; and

8.5 The Appellate Court can interfere with the order of acquittal only if it comes to a finding that the only conclusion which can be recorded on the basis of the evidence on record was that the guilt of the accused was proved beyond a reasonable doubt and no other conclusion was possible.”

7.2 While reiterating the above principles governing the exercise of power by the appellate Court in an appeal against acquittal, the Hon'ble Supreme Court in the judgment passed in Case titled as ***“Babu Sahebagouda Rudragoudar and others***

versus State of Karnataka” , 2024 INSC 320 = 2024 Livelaw (SC)

316 held as under:

“39. Thus, it is beyond the pale of doubt that the scope of interference by an Appellate Court for reversing the judgment of acquittal recorded by the trial Court in favour of the accused has to be exercised within the four corners of the following principles:-

(a) That the judgment of acquittal suffers from patent perversity;

(b) That the same is based on a misreading/omission to consider material evidence on record;

(c) That no two reasonable views are possible and only the view consistent with the guilt of the accused is possible from the evidence available on record.”

8. In the light of the above principles laid down by the Hon’ble Supreme Court, I now proceed to examine the arguments advanced by the appellant.

9. Perusal of the statement of victim under Section 164 of the Cr.P.C. (Ex.P-3), shows that she deposed, that on 16.12.2018 she went from her house, in search of some job, to Yamunanagar. From there she went to Indore with her friend (accused). She went on her own accord. She was not pressurised by anyone. She is in love with the accused and wants to marry him. She wants to get the case registered against the accused cancelled.

10. In view of this statement of the victim made under Section 164 of the Cr.P.C. the trial Court disbelieved her subsequent statement in

Court as PW-2. As PW-2 she stated that she was forcibly abducted by the accused, his brother-in-law, elder brother, in a car and after being taken to the house of sister of accused at Indri, she was administered some intoxicant mixed in water. Upon gaining consciousness she found herself in the State of Madhya Pradesh, where she lived for 5 months with accused and was repeatedly raped and beaten by the accused.

11. After giving my careful & deliberate consideration to the entire evidence led on record of the case, I find myself unable to agree with the argument advanced on behalf of the appellant that the victim was raped by the accused. The subsequent statement of PW-2 in the Court is wholly contradictory to her previous and initial version in her statement under Section 164 of the Cr.P.C. The contradiction and variation in the stand of the victim while deposing as PW-2 blemishes her testimony and casts serious shadow of doubt over her version in the case. It is highly unbelievable from the point of view of a common prudent man also, that the victim while living at Indore for a long duration of 5 months, after being allegedly abducted, despite being beaten and raped by the accused, did not raise any hue and cry in that regard. A thorough perusal of her cross-examination indicates that she explicitly stated that she did not lodge any complaint with the police during the 5-6 months period in question, when she lived at Indore (MP). However, she tried to justify the same by deposing that accused did not let her do so and while going for his job, accused used to put her under lock. She denied the suggestion that she was living in a hut, having no door to lock. Perusal of Ex.P-2, recovery memo of the victim prepared by the police, makes it clear that she was not recovered from any locked premises. Meaning thereby she was residing at Indore in a hut independently with no restriction to her movement. At the

time of her recovery by the police she was found alone in her hut constructed within the premises of Akash Global Food Private Ltd., Indore (MP). In view of these facts, it is totally imprudent to believe that the victim was living at Indore for 5-6 months in confinement as alleged. Therefore, it can be well presumed that the victim was living at Indore willingly.

12. The testimony of PW-2 in Court, under the aforementioned circumstances, cannot be deemed reliable due to significant improvements & inconsistencies, which cast doubt on its credibility. The possibility of PW-2, the victim having retracted her earlier statement made under Section 164 of Cr.P.C., 1973 in her subsequent Court testimony to have resulted because of the pressure exerted by family members, cannot be ruled out. Perusal of record shows that the medical evidence to ascertain the allegations regarding offence of rape against the accused could not be procured by the police in view of the voluntary refusal of the victim to get herself medically examined, after she was recovered by the police from Indore. As such the best evidence to prove the allegations against the accused has been withheld in the case. This omission gives rise to adverse inference against the case of prosecution as embodied under Section 114(g) of the Indian Evidence Act.

13. The argument advanced on behalf of the appellant-complainant that the appellant-complainant while appearing as PW-6 had deposed before the learned trial Court that his minor daughter was recovered from the accused-respondent No.2, is ill founded. The learned trial Court has correctly recorded that the victim was not recovered from the custody of accused. The recovery memo of the victim prepared by the police Ex.P-2 does not mention that the victim was recovered from the

custody of accused. Though it is mentioned in the said recovery memo that she was recovered from jhuggi of the accused, in the premises of Aakash Global Food Private Limited, Survey No.13/1, Village Kumedi, Tehsil Sanwar, Police Station Banganga, Indore, Madhya Pradesh, but no evidence has been led to prove that the said jhuggi belonged to the accused.

14. The argument advanced that, being minor, victim was forcefully kidnapped by the accused and that besides accused, his brother-in-law, and his elder brother were also involved in her abduction. As already held in foregoing paras of this judgment the allegations in this regard were made by the victim in her statement as PW-2 in the Court. She did not utter even an *iota* of these allegations in her statement under Section 164 of the Cr.P.C., wherein she stated that she went from her house to Yamunanagar to find job and from there she went with accused out of her own will.

15. The accused in the present case was charged under Sections 363 and 366-A of the IPC. In order to constitute the offence under Section 363 of IPC it is to be proved that the accused had kidnapped the victim. Section 361 of the IPC defines the kidnapping from lawful guardianship as under:

“Whoever takes or entices any minor under sixteen years of age if a male, or under eighteen years of age if a female, or any person of unsound mind, out of the keeping of the lawful guardian of such minor or person of unsound mind, without the consent of such guardian is said to kidnap such minor or person from lawful guardianship.”

16. In view of the above quoted Section 361 of the IPC it is incumbent upon the prosecution to prove that the victim was taken or enticed out of the keeping of the lawful guardianship without consent of the guardian. In somewhat similar circumstances the Hon'ble Supreme Court of India in the case of *S. Varadarajan v. State of Madras, 1965 AIR (SC) 942* has held as under:

“There is a distinction between "taking" and allowing a minor to accompany a person. The two expressions are not synonymous though it cannot be laid down that in no conceivable circumstances can the two be regarded as meaning the same thing for the purposes of Section 361. Where the minor leaves her father's protection knowing and having capacity to know the full import of what she is doing, voluntarily joins the accused person, the accused cannot be said to have taken her away from the keeping of her lawful guardian. Something more has to be shown in a case of this kind and that is some kind of inducement held out by the accused person or an active participation by him in the formation of the intention of the minor to leave the house of the guardian.”

17. Upon consideration of the evidence on record in the present case and in the light of the above authoritative judicial precedent laid down by the Hon'ble Supreme Court, the inevitable conclusion that can be arrived at is that the prosecution has failed to prove the charge framed against the accused under Section 363 of the IPC.

18. With regard to the charge under Section 363-A of IPC against the accused, the essential ingredients thereof are notably absent in

the evidence presented by the prosecution. As discussed already, the prosecution has failed to adduce even an *iota* of evidence to indicate that the accused induced the victim to go with him. Furthermore, no evidence worth the name has been adduced by the prosecution to prove that the accused had the necessary *mens-rea* to subject the victim to forced or illicit intercourse with another person.

19. It is argued that an application seeking further investigation in the case was filed before the learned trial Court, which was subsequently withdrawn, without the consent of the appellant-complainant by his counsel. Perusal of the record reveals that the said application was withdrawn on 14.07.2021. The trial in the case was concluded on 29.09.2023. During all this while, the appellant-complainant did not raise any grievance before the learned trial Court that his application was wrongly dismissed as withdrawn. Moreover, he did not challenge the order of withdrawal of said application passed by the trial Court on 14.07.2021, nor it is his case that he changed his counsel after the said withdrawal in the case. Therefore, this argument at this stage is of no help to the cause of appellant not being germane to the merits of the case for adjudication of the present appeal.

20. The next argument that an application under Section 319 of the Cr.P.C. was filed before the learned trial Court seeking summoning of additional accused Sandeep, Mohit, and Pooja in the case, but the same was dismissed by the trial Court on 03.04.2023, is also without any substance. The order dated 03.04.2023 passed by trial Court was challenged before this Court by filing CRR No.1676 of 2023, but the same was also dismissed on 12.10.2023. As such since the order dated 03.04.2023 has already attained finality, it is not open to the appellant-

complainant to re-agitate the same issue at the stage of adjudication of the present appeal. Otherwise also this argument advanced by the learned counsel for the appellant seems to be mere academic, as the learned counsel failed to establish as to how the dismissal of application for summoning additional accused, impaired the value of evidence led against the accused who has faced the trial in the case.

21. As a result of the above discussion, no illegality or perversity is found in the judgment of acquittal dated 29.09.2023 passed by the learned trial Court & as such the same is upheld. The present appeal filed by the appellant-complainant is dismissed.

(SUMEET GOEL)
JUDGE

June 07, 2024
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Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No