

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH.

CRA-AD-12-2023 (O&M).
Date of Decision: 14.05.2024.

A
VERSUS
State of Haryana and others

....Appellant.
....Respondents.

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

Argued by: Mr. Raghav Sharma, 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-A (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 27.10.2022 rendered by learned Additional Sessions Judge (Fast Track Court), Panipat, in Sessions Case No.48 of 2020, in terms of which, respondents No.2 and 4/accused namely Deepak and Anil, were acquitted of charge under Section 376-D IPC, whereas respondent No.3/accused-Subhash was acquitted of charge under Section 354-A IPC, in case FIR No.112 dated 17.09.2020 under Sections 354-A and 376 IPC, registered at Police Station Sadar, Panipat.

2. As per prosecution version, complainant/victim/prosecutrix moved complaint (Ex.P-8) against respondents No.2 and 4/accused alleging

therein that respondent No.4/accused-Anil had an evil eye upon her for the last two months. On 22.07.2020 at around 12.00 O'clock, when she was going to her maternal uncle's house, respondents/accused Deepak and Anil intercepted her. Accused Anil gagged her mouth and then both of them pulled her inside the shack (*Kotha*). Accused Deepak brandished a knife to her and thereafter both of them committed rape upon her and threatened to kill her in case she made any complaint to anyone. She alongwith her husband went to Police Station Sadar, Panipat, however, before their arrival, accused had already hobnobbed with the police with the assistance of Ex.Sarpanch. Police had obtained her signatures on some blank papers and assured to take action against the accused. Thereafter, she was pressurized to compromise the matter and when she made an effort to approach higher police officers, she was threatened by the accused that they would viral her video to malign her reputation. On the basis of Complaint (Ex.P-8), formal FIR (Ex.P-16) under Section 354-A IPC was registered on 17.09.2020. Investigation was conducted by Lady Head Constable Kiran. During investigation, rough site-plan (Ex.P-6) of the place of occurrence was prepared and statements of witnesses were recorded. On 18.09.2020, statement of prosecutrix (Ex.P-12) under Section 164 Cr.P.C. was got recorded and offence under Section 376-D IPC was added in the instant case. On 18.09.2020 complainant/prosecutrix was medico-legally examined in General Hospital, Panipat, vide MLR (Ex.P-23). Vaginal swabs of victim alongwith slides and sample seal were handed over to Investigating Officer by the doctor concerned for FSL examination. On 25.09.2020, Assistant Sub Inspector Dilbag Singh conducted further investigation of the case and

during investigation, accused Anil was found innocent and accordingly offence under Section 376-D IPC was deleted, whereas offence under Section 376 IPC was added in the case. Accused Deepak and Subhash were joined in the investigation and they were arrested. On 26.09.2020, accused Deepak and Subhash suffered disclosure statements (Ex.P-18 and P-19) and in pursuant to the said disclosure statements, they got demarcated the place of occurrence, vide demarcation memos (Ex.P-20 and P-21). On the same day, accused Deepak was medico-legally examined at General Hospital, Panipat, vide MLR (Ex.P-24), wherein doctor concerned opined that nothing was suggestive that the person was incapable of doing sexual intercourse. Blood sample of accused Deepak was collected for DNA analysis and thereafter sample seal alongwith blood sample was handed over to Investigating Officer for FSL examination. General medical examination of accused Subhash was also got conducted. Samples were sent to Forensic Science Laboratory, Madhuban, for analysis and after having received FSL Reports (Ex.PX and Ex.PY), Dr. Lipika (PW-11), who conducted medico-legal examination of victim/prosecutrix opined that possibility of sexual intercourse cannot be ruled out. FSL Report (Ex.PY) has come in negative as DNA of accused Deepak did not match with DNA retrieved from swabs and slides of victim collected during her medico-legal examination. After completion of investigation, final report as envisaged under Section 173 Cr.P.C. (*Challan*) was presented in the Court against respondents No.2 and 3/accused-Deepak and Subhash.

3. Finding a *prima facie* case, respondent No.2-accused Deepak was charge-sheeted to face trial for the commission of offence punishable

under Section 376 IPC, whereas respondent No.3/accused Subhash was charge-sheeted to face trial for the commission of offence punishable under Section 354-A IPC, to which they pleaded not guilty and claimed trial.

4. To substantiate its case, prosecution has examined PW-1 (Prosecutrix) and in her statement, she reiterated the contents of Complaint (Ex.P-8) and specifically stated that accused Anil was also involved and he had also committed rape upon her on 22.07.2020. Cross-examination of PW-1 (Prosecutrix) was deferred as application under Section 319 Cr.P.C. for summoning of Anil as additional accused was moved by the prosecution, which was allowed, vide order dated 03.08.2021 and Anil was summoned as additional accused to face trial alongwith co-accused Deepak and Subhash.

5. On 11.10.2021, after summoning of co-accused Anil, respondents No.2 and 4/accused Deepak and Anil were charge-sheeted to face trial for the commission of offence punishable under Section 376-D IPC, whereas respondent No.3/accused Subhash was charge-sheeted to face trial for the commission of offence punishable under Section 354-A IPC, to which they pleaded not guilty and claimed trial.

6. To substantiate its case, prosecution has examined PW-1 EASI Jagbir Singh, PW-2 Lady Head Constable Kiran (Investigating Officer), PW-3 (victim/prosecutrix), PW-4 Lady Constable Poonam Kaushik, PW-5 Shri Kapil, the then Judicial Magistrate Ist Class, Panipat, PW-6 Inspector Ramesh Kumar, PW-7 Shankar (husband of victim), PW-8 ESI Virender Singh, PW-9 Head Constable Manoj Kumar, PW-10 ASI Dilbag Singh (Investigating Officer), PW-11 Dr. Lipika (Medical Officer) and PW-12 Dr. Raghvendra (Medical Officer). Thereafter, FSL report (Ex.PX) and DNA

Report (Ex.PY) were tendered in evidence and after giving up PWs Director, FSL, Madhuban, Criminal Ahlmad and Inspector/SHO Sunil Kumar, being unnecessary, prosecution evidence was closed by learned Public Prosecutor for the State.

7. After closure of prosecution evidence, statements of respondents No.2 to 4/accused as envisaged under Section 313 Cr.P.C. were recorded, wherein all the incriminating material/evidence were put to them, but they have denied all the allegations levelled against them and pleaded innocence and false implication. Accused Anil further explained that on the date of incident, complainant alongwith a young boy was present in his *Turra Kotha* (fodder room) and they were involved in adultery activities. Neighbours had gathered there and on receiving said information, he (accused Anil) too reached there and knocked the door of fodder room and ultimately called the police and thereafter, as a counter blast, complainant had levelled allegations of beatings and molestation against him. Police had initiated proceedings under Sections 107/151 CPC against him. Later on after long discussion with legal professionals, complainant had got involved him in the present case on false allegations, but during investigation, said allegations were found false and he (Anil) was declared innocent by the Police.

8. In defence evidence, respondent No.2/accused-Deepak has examined his mother DW-1 Kamlesh wife of Ramphal, who tendered Pen Drive (Ex.D-7) containing conversation of victim, her mother, her brother and accused Deepak and transcript of said conversation is Ex.D-8. Above said witness had tendered Certificate (Ex.D-9) under Section 65-B of

Evidence Act. Above said witness, after having seen photographs (Ex.D-1 to D-5), had identified male person as her son Deepak in the said photographs. Thereafter, defence evidence was closed.

9. On appreciation of evidence, learned Trial Court acquitted respondents No.2 to 4/accused of charges under Sections 354-A and 376-D IPC, vide judgment of acquittal dated 27.10.2022.

10. We have heard learned counsel for the appellant as well as learned State counsel and critically examined the evidence available on the record.

11. Learned counsel for appellant/victim/prosecutrix *inter alia* contended that impugned judgment rendered by learned Trial Court is cryptic, perverse and the same has been passed while ignoring scientific-cum-medical evidence. Learned Trial Court has failed to appreciate that there was no delay in registration of FIR and as a matter of fact complaint was made at the earliest, however, due to collusion of accused with the Police, no action was taken on the complaint and when victim approached the higher authorities, action was initiated and as such delay, if any, occurred in registration of FIR has been well explained. Accused were arrayed in the very first version of the complainant and there was no subsequent modification in the statement of complainant. Learned Trial Court while relying upon so called complaint (Ex.D-6) has wrongly opined that contradictory version was presented by the victim. As a matter of fact, above said document was never confronted to the appellant/ prosecutrix and Police had misused her signatures obtained on a blank paper. Learned Trial Court wrongly held that prosecutrix is not a sterling witness and completely

ignored the settled law in cases under Section 376 IPC and even sole testimony of victim is sufficient to bring home the guilt of accused. Further, learned Trial Court has wrongly relied upon the proceedings under Sections 107/151 Cr.P.C. There is substantial gap of time between the date of occurrence and the medico-legal examination of victim, and in this scenario, learned Trial Court has wrongly made 'absence of injuries on the person of victim' as shown in the MLR, a ground of acquittal. Photographs (Ex.D-1 to D-5) were also wrongly relied upon by learned Trial Court as the same were not proved on record and further it is not the case of defence that said photographs pertain to the occurrence in question. Thus, respondents No.2 to 4/accused have been wrongly acquitted of the charges levelled against them and they are liable to be punished for the same. As such, impugned judgment is liable to be set aside and instant appeal may be allowed.

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

13. While having due regard to the contentions of learned counsel for the parties, it is observed that vide impugned judgment dated 27.10.2022, respondents No.2 to 4/accused have been acquitted of charges levelled against them 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).

14. Hon'ble Supreme Court in Mallappa & Ors. vs. State of Karnataka, 2024 AIR (Supreme Court) 1252, while dealing with above said guidelines has summarized the principles as under:-

“36. Our criminal jurisprudence is essentially based on the promise that no innocent shall be condemned as guilty. All the safeguards and the jurisprudential values of criminal law, are intended to prevent any failure of justice. The principles which come into play while deciding an appeal from acquittal could be summarized as:

- (i) Appreciation of evidence is the core element of a criminal trial and such appreciation must be comprehensive - inclusive of all evidence, oral or documentary;*
- (ii) Partial or selective appreciation of evidence may result in a miscarriage of justice and is in itself a ground of challenge;*
- (iii) If the Court, after appreciation of evidence, finds that two views are possible, the one in favour of the accused shall ordinarily be followed;*
- (iv) If the view of the Trial Court is a legally plausible view, mere possibility of a contrary view shall not justify the reversal of acquittal;*
- (v) If the appellate Court is inclined to reverse the acquittal in appeal on a re-appreciation of evidence, it must specifically address all the reasons given by the Trial Court for acquittal and must cover all the facts;*
- (vi) In a case of reversal from acquittal to conviction, the appellate Court must demonstrate an illegality, perversity or error of law or fact in the decision of the Trial Court.”*

15. 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 respondents No.2 to 4/

accused have committed the offence punishable under Sections 354-A and 376-D 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 respondents No.2 to 4/accused of the charges levelled against them. To arrive at said conclusion, reasons are enumerated as under:-

(i) Admittedly, PW-7 Shankar, husband of victim/prosecutrix, was not present at the time of incident, so his statement falls within the realm of hearsay evidence and after reading the statement of victim/prosecutrix, she cannot be characterized as sterling witness because her version is contradictory to other evidence on record. Testimony of victim is not sufficient to prove the accusation and demands corroboration from an independent source which is not available. As per version rendered by victim/prosecutrix, accused Anil gagged her mouth and accused Deepak showed her a knife and thereafter they both committed rape upon her one after the other and further threatened her that in case she would reveal the incident to anyone, they would eliminate her husband. Sole testimony of victim is inadequate to prove the allegations as she had moved complaint (Ex.D-6) bearing date 30.07.2020 citing the same incident. PW-7 Shanker has also corroborated this fact that his wife had moved a complaint (Ex.D-6) after the incident and while acting upon said

complaint, proceedings under Sections 107/151 Cr.P.C. were initiated against the accused. PW-10 ASI Dilbag Singh (Investigating Officer) has categorically stated that complaint (Ex.D-6) was inquired into by him, but the allegations raised therein were found to be false and since during inquiry, accused namely Anil and Deepak started abusing the family members of complainant, thus, proceedings under Sections 107/151 Cr.P.C. were initiated against them. A bare perusal of testimony of PW-10 ASI Dilbag Singh reveals that the initial complaint (Ex.D-6) was moved by complainant on 22.07.2020 and the said complaint was reduced into writing by complainant on her own. In the initial complaint (Ex.D-6), victim has categorically alleged that when she was heading towards her relative Anoop's house, on the way near the house of Anil, she was intercepted by two youngsters namely Anil son of Balbir and one unknown youngster and then they pulled her inside the house, gave beatings to her and further attempted to impose themselves upon her. Above said complaint (Ex.D-6) was inquired into by ASI Dilbag Singh (PW-10) and after his probe, the allegations levelled by the victim were found to be false and since during the course of inquiry, accused Anil and Deepak started fighting with each other and in order to prevent them, ASI Dilbag Singh initiated action against them under Sections 107/151 Cr.P.C. At this juncture, it is relevant to point out here that complaint dated 28.07.2020 (Ex.P-8), which led to the registration of

instant FIR, wherein victim has alleged that on 22.07.2020 around 12:00 O'clock, when she was going to her maternal uncle Anoop's house, on the way near the *Bara* of accused Anil, she witnessed accused Anil and Deepak standing there, then accused Anil gagged her mouth, pulled her inside the *Bara* and then accused Deepak brandished a knife to her and thereafter they both committed rape upon her one after the other. They even threatened her that in case she would complain to anyone, they would eliminate her husband. A bare perusal of initial complaint (Ex.D-6) reveals that only the name of accused Anil was disclosed therein, whereas another culprit was not known to the victim and allegedly both of them gave beatings to her and attempted to impose themselves upon her. There is no allegation in the complaint (Ex.D-6) that accused Anil gagged her mouth and then accused Deepak brandished knife to her and thereafter she was forcibly taken inside the *Bara* where she was raped by them one by one. Apart from that, no allegation was uttered in the initial complaint (Ex.D-6) that both the accused had even threatened the victim that in case she would complain to anyone, they would eliminate her husband. It is pertinent to mention here that neither in the initial complaint (Ex.D-6) nor in the complaint dated 28.07.2020 (Ex.P-8), there is any reference of accused Subhash with the allegations that he had pulled the scarf of victim when she was leaving the spot and further there is no reference to the allegations that he

clicked a video when victim was leaving the spot and later on said video was transmitted on internet. It will not be out of place to mention here that PW-3 (Prosecutrix/victim) when appeared in the witness-box has categorically stated that neither in her complaint (Ex.P-8) nor in her statement recorded under Section 164 Cr.P.C. she had ever mentioned the name of accused Subhash. Victim has categorically stated that accused Subhash did not pull her scarf; never clicked her video nor transmitted any video of her on the internet and further never threatened her. In this view of the matter, contradictory versions have been rendered by victim in her initial complaint (Ex.D-6) and complaint dated 28.07.2020 (Ex.P-8), which led to the registration of instant FIR, inasmuch as no allegations of rape were levelled by the victim against accused Anil and unknown youngsters at the first instance, thus, the possibility of introduction of coloured, exaggerated and afterthought version cannot be ruled out.

(ii) During cross-examination of victim (PW-3), photographs (Ex.D-1 to D-5) were pressed into service by accused. PW-3 (victim) when confronted with photographs (Ex.D-1 to D-5) stated that though she identifies herself in those photographs, but she cannot identify accused Deepak in the said photographs. She categorically stated that she never talked to accused Deepak on phone. However, during her cross-examination, she categorically stated that accused Deepak

belongs to another village and he was on visiting terms with her nephew Ravi and as such she knew him by name. PW-3 (victim) did not identify the male person in the photographs (Ex.D-1 to D-5) and specifically stated that the said person had not committed any wrong act upon her at any point of time. Though PW-3 (victim) did not identify the male person in the photographs (Ex.D-1 to D-5), but when her husband (PW-7 Shanker) was confronted with photographs, he categorically identified his wife and accused Deepak in those photographs (Ex.D-1 to D-5). Photographs (Ex.D-1 to D-5) of victim and accused Deepak are self explanatory where both of them can be seen hugging, kissing each other. As mentioned earlier, accused Deepak was previously known to victim and despite that in the initial complaint (Ex.D-6), she did not reveal his name for the reasons best known to her, whereas in the subsequent complaint dated 28.07.2020 (Ex.P-8), she had revealed his name as Deepak. Possibility of consensual relationship of victim and accused Deepak cannot be ruled out as in the photographs (Ex.D-1 to D-5), both of them are seen hugging and kissing each other. Photographs (Ex.D-1 to D-5) lend support to probability of defence version that since relationship between victim and accused Deepak became public due to intervention of accused Anil, victim had named both Anil and Deepak in the array of accused in complaint dated 28.07.2020 (Ex.P-8). In this view of the matter, on account of contradictory versions

rendered by victim, false implication of respondents No.2 to 4/ accused in the commission of alleged offence, is well evident on the record.

(iii) Though the alleged occurrence took place on 22.07.2020, however, victim was medico-legally examined on 18.09.2020 and as such after considerable gap of period of about two months, possibility of detection of any injury on her person on account of alleged sexual assault did not arise at all. However, in the instant case, PW-3 (victim) when appeared in the witness-box has categorically stated that she had struggled to save herself from the clutches of accused and during the said resistance, she had sustained injuries on her breast, hands and arm due to breakage of bangles and she had taken treatment from doctor for those injuries. Victim (PW-3) has categorically stated that she did not hand over any document of medical treatment to the Police. In this view of the matter, once victim did not make available the medical record, in terms of which, she was treated of injuries sustained by her during the course of alleged occurrence, this circumstance leads to clear inference that no such injury was ever sustained by her and, thus, prosecution version appears to be doubtful.

(iv) FSL Report (Ex.PY) has come in negative as DNA profile of seminal stains on source item No.1A (slides) and source of item No.1B (swab) of victim is not matching with the DNA profile of blood sample of accused Deepak (source of

item No.3).

16. 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 owing to all the reasons, it is unsafe for the Court to rely upon the solitary testimony of victim without any corroboration which does not exist on record and therefore, prosecution remained unsuccessful to prove allegations against accused persons. 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.

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

18. Pending application(s), if any, also stands disposed.

(Sureshwar Thakur)
Judge

(Lalit Batra)
Judge

14.05.2024
jitender

Whether speaking/ reasoned : Yes/ No

Whether Reportable : Yes/ No