



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CRA-S No.288 of 2024 (O&M)
Date of Decision: 21.05.2024

Raju ... Appellant

Versus

State of Haryana ... Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. Siddharth Sharma, Advocate,
for the appellant.

Mr. Neeraj Poswal, AAG, Haryana,
for the respondent-State.

MANISHA BATRA, J.(Oral)

1. The instant appeal has been filed by the appellant-convict-accused Raju Singh against the judgment of conviction dated 18.10.2023 and order on quantum of sentence dated 19.10.2023 passed in Sessions Case bearing CIS No. SC-711 of 2021 titled as *State of Haryana v. Raju Singh* arising of FIR No.405 dated 19.09.2021 registered under Sections 376(2)(n) and 506 of IPC at Police Station Dabua, Faridabad whereby, the appellant had been held guilty and convicted in the manner as

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indicated below:-

Sr. No.	Offence punishable under Section	Term of punishment	Fine	In default, of payment of Fine (R.I.)
1.	376 (2) (n) of the IPC	Rigorous Imprisonment for Ten years	Rs.10,000/-	Six months
2.	452 of the IPC	Rigorous Imprisonment for Seven years	Rs.5,000/-	Three months
3.	506-II of the IPC	Rigorous Imprisonment for Seven years	Rs.5,000/-	Three months

2. For the sake of coherence and continuity, the parties shall be referred to as per their original nomenclature as given at the time of trial.

3. Brief facts of the case relevant for the purpose of disposal of the present appeal are that on 19.09.2021, the complainant "J" (name withheld) reached at the police station and got recorded her statement alleging therein that she was a widow and was working as a helper in a cardboard company at Faridabad. The accused Raju was working as a Foreman in the same company. Their acquaintance started in January 2021 and the accused had started maintaining intimacy with her. In January 2021, he came to her house on the pretext of knowing about her well being while she was sick, and forcibly committed rape upon her. He extended threat to kill her 13 year old daughter and herself if she disclosed about the incident to anyone. Thereafter, he started visiting her house regularly without her consent and committed rape upon her. She prayed for taking action against the culprit. A case under Sections 376(2)(n) and 506 of IPC was registered. Investigation proceedings were initiated. The victim was medically examined. Her statement under Section 164 of Cr.P.C. was also recorded. The accused was

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arrested on 20.09.2021. He suffered disclosure statement admitting his involvement in the subject crime. After completion of necessary investigation and usual formalities, challan under Section 173 Cr.P.C. was presented against him.

4. On finding a prima facie case, the accused was chargesheeted for commission of offences under Sections 376(2)(n) and 506 of IPC. He pleaded not guilty to the charges and claimed trial.

5. To substantiate its case, the prosecution examined ten witnesses besides placing reliance upon certain documents and thereafter the prosecution evidence was closed.

6. Statement of accused was recorded under Section 313 of Cr.P.C. wherein he abjured his guilt and pleaded false implication. No evidence in his defence had, however, been adduced.

7. On appraising the evidence produced on record and on hearing the contentions as raised by both the sides, the learned trial Court held the accused guilty for commission of aforementioned offences vide judgment dated 18.10.2023 and he was sentenced in the manner as mentioned above.

8. Feeling aggrieved, the instant appeal has been filed by the accused.

9. Learned counsel for the accused has argued that the impugned judgment and order on quantum of sentence are not sustainable in the eyes of law and are liable to be set aside as the findings as given by learned trial Court are based on conjectures and surmises and are also suffering from several material infirmities. The prosecutrix who was the most important

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witness of the case had not appeared into the witness box and there was no other eye-witnessed account of the version as set up by the prosecution. The medical evidence also did not connect the accused with the commission of the subject offence. However, the learned trial Court while relying upon the statement of the prosecutrix allegedly recorded under Sectionn 161 of Cr.P.C. and statement made by her under Section 164 of Cr.P.C., recorded finding of guilt of the accused by completely ignoring that both these statements could not be treated as substantive evidence by any stretch of imagination. It is further argued that the learned trial Court had relied upon the medical evidence and statements of PW-4 Smt. Pushpa and PW-9 Ms. Neelam Rai, Legal Aid Counsel which was totally misplaced.

10. It is further argued that the allegations as levelled against the accused had not been proved by any legally admissible, direct or indirect incriminating evidence as there was not even an iota of evidence on record to prove that the accused at any point of time had criminally trespassed into the house of the prosecutrix to commit any offence or had criminally intimidated her or had repeatedly subjected her to rape. However, the learned trial Court still held him guilty for commission of these offences. Therefore, it is urged that the impugned judgment and order be set aside, the appeal be accepted and the accused be acquitted of the charges for which he has been held guilty and convicted.

11. Per contra, learned State counsel has argued that keeping in view the gravity of the allegations as levelled against the accused, the appeal does not deserve to be accepted.

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12. I have heard learned counsel for the appellant and learned State counsel and have gone through the trial Court record as well as the judgment passed by it and on perusal of the same, I am of the considered opinion that the findings as given by learned trial Court are liable to be reversed for the foregoing reasons.

13. The case as set up by the prosecution is that on 19.09.2021, the prosecutrix had recorded her statement before the police levelling allegation that since January 2021, the accused had been repeatedly committing rape upon her by extending threats and by visiting her house. In her statement recorded under Section 164 of Cr.P.C. also, she had stated so. The learned trial Court discussed the statements of the prosecutrix as claimed to have been recorded under Section 161 of Cr.P.C. and upon the statement recorded under Section 164 of Cr.P.C. for holding that the allegations as levelled against the accused had been established by being totally oblivious of the fact that the prosecutrix herself had not been examined by the prosecution. The reliance as placed by the learned trial Court on both these statements was entirely misplaced because the well settled proposition of law is that the statements recorded under Section 164 of Cr.P.C. cannot be considered as a substantive piece of evidence and the same can be used only for the limited purpose to corroborate and contradict the statement made by a witness in the Court as provided under Sections 157 and 145 of the Indian Evidence Act and such statement cannot be solely relied on for the purpose of conviction. Reliance in this regard can be placed upon **Phool Chand v. State of U.P.**, 2004 Criminal Law Journal, 1094; **Soumen @ Nemai Patra v. State of**

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West Bengal, 2021 Cri LJ 2056, **Utpal Das and another v. State of West Bengal**, AIR 2010 SC 1894, **Madan Rai v. The State of Bihar**, 2023 Cri LJ 4651, **Ram Kishan Singh v. Harmit Kaur and another**, (1972) 3 SCC 280, **Baij Nath Sah v. State of Bihar**, (2010) 6 SCC 736 and **Somasundaram alias Somu v. State Rep. by the Deputy Commissioner of Police**, AIR 2020 SC 3320. The ratio of law as laid down in all these authorities is that a mere statement of a prosecutrix recorded under Section 164 of Cr.P.C. is not enough to convict an accused and it can be utilized only as a previous statement and nothing more and only for the purpose of corroborating or contradicting a witness. Substantive evidence is the evidence adduced in the Court and if there is no substantive evidence against the accused as recorded before the Court, it is not permissible to convict him on the basis of statement under Section 164 of Cr.P.C. Similar is the position with regard to the statement under Section 161 of Cr.P.C.

14. In view of the discussion as made above, it is crystal clear that the learned trial Court committed a grave error in placing reliance upon the statements of prosecutrix recorded under Sections 161 and 164 of Cr.P.C. and holding the accused guilty on the basis thereof, especially in view of the circumstance that neither of these statements had formally been proved in evidence and were not even exhibited. Even the Magistrate who had recorded the statement of the prosecutrix under Section 164 of Cr.P.C. had not been examined.

15. The learned trial Court had also relied upon the testimony of PW-6 Dr. Monika and the medico legal report Ex.P4/PW6 as per which the

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possibility of the prosecutrix being subjected to sexual intercourse could not be ruled out. The prosecutrix was an adult woman with a child whose husband had died. There is nothing on record to show that any semen was detected on the vaginal swabs or clothing of the prosecutrix which was connected to the appellant-accused and in the absence of the same, in the considered opinion of this Court, the medical evidence produced on record also did not help the prosecution in proving its case.

16. Further reliance was placed upon by the learned trial Court upon the statement of PW-4 Smt. Pushpa who was residing in the neighbourhood of the prosecutrix who simply stated that the accused used to visit the house of the prosecutrix but such statement led the prosecution nowhere to connect the accused with the allegations as levelled against him. The learned trial Court also relied upon the testimony of PW-9 Ms. Neelam Rai, Legal Aid Counsel who had recorded Ex.P9/PW9 statement of the prosecutrix which has ultimately culminated into the lodging of the FIR. However, her statement can also be stated to be hearsay evidence and formal in nature and the same could not be made basis to prove the guilt of the accused. The position which as such emerges is that no positive, cogent, convincing, reliable and direct incriminating evidence had come on record to prove that the accused at any point of time, criminally intimidated her or repeatedly committed rape upon her. In view of the discussion as made above, the findings given by learned trial Court thereby holding the accused guilty for commission of offences punishable under Sections 376 (2) (n) and 506 of IPC have become liable to be reversed. The same are accordingly set

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aside.

17. Interestingly and strangely, the learned trial Court had also held the accused guilty for commission of offence punishable under Section 452 of IPC without looking into the fact that the accused had never been chargesheeted under the aforementioned section. By holding the accused guilty under Section 452 of IPC, the learned trial Court is obviously shown to have adopted a very casual and lackadaisical approach which is ofcourse not expected from an officer of rank of Additional Sessions Judge, who is assumed to be an experienced officer. Needless to say that even otherwise the evidence produced on record did not make out any case for commission of offence punishable under the aforementioned section as against the accused. The findings given by learned trial Court holding the appellant-accused guilty for commission of offence punishable under Section 452 of IPC are also not sustainable at all and are therefore set aside. Accordingly, the appeal is accepted. The appellant-accused is acquitted of offences for which he has been held guilty and convicted and is ordered to be released forthwith if not required in any other case.

18 Learned Registrar General is directed to circulate a copy of this order amongst the Judicial Officers of the States of Punjab and Haryana as well as Union Territory Chandigarh through the District and Sessions Judges concerned.

21.05.2024
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(MANISHA BATRA)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No