

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.355 of 2025**

Arising Out of PS. Case No.-56 Year-2021 Thana- BAHERI District- Darbhanga

XXXXXXXXXX

... .. Appellant

Versus

1. The State of Bihar
2. Niraj Kumar S/o Ram Kumar Yadav R/o vill - Baskatti, P.S.- Baheri, Distt.- Darbhanga

... .. Respondents

Appearance :

For the Appellant	:	Mr. Vinay Kumar Singh, Adv.
For the State	:	Mr. Mukeshwar Dayal, APP

**CORAM: HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY
CAV JUDGMENT**

Date : 24 -11-2025

Heard the parties.

2. The present appeal is directed against the judgment dated 20.11.2024 passed by the learned Exclusive Special Judge (POCSO Act), Darbhanga in POCSO G.R. Case No. 21 of 2021, Registration No. 22 of 2021 arising out Baheri P.S. Case No. 56 of 2021 registered under Section 376 of the I.P.C. and Section 4/8 of the POCSO Act whereby and whereunder Respondent no. 2 has been acquitted by the Trial Court from the charges under Sections 376(3), 376(2) of the I.P.C. and Sections 4(2), 6 read with Section 5(1) of the POCSO Act.

3. The name of the victim/informant has not been disclosed in the present judgment to protect her prestige and



dignity.

4. According to written statement of the informant (appellant herein), respondent no. 2 is said to have committed rape upon the victim/informant for the last two years on the pretext of marriage and accused has already communicated to his grand-father as well as parents regarding marriage and the respondent no. 2 has assured that he would marry with the informant. It is alleged that informant's parents also made contact regarding the said relation where the family members of the respondent no. 2 agreed with the proposal of marriage. It is alleged that respondent no. 2 used to commit rape upon the victim after reaching the house of the informant on the basis of communication made through mobile. It is alleged that on 02.03.2021, respondent no. 2 reached at the house of informant and committed rape upon her. It is further alleged that now the accused is said to have refused to marry the informant. It is alleged that the informant became pregnant and accused is said to have caused her miscarriage forcefully.

5. On the basis of written statement of the informant, Baheri P. S. Case No. 56 of 2021 was registered under Section 376 of the I.P.C. and Section 4/8 of the POCSO Act and investigation was taken up by the police. The police



after investigation submitted charge-sheet under Section 376(3) of the IPC and Sections 4, 8 of the POCSO Act against the respondent no. 2 and accordingly, cognizance was taken under the aforesaid sections. Thereafter, the case was committed to the Court of Sessions. The learned trial court framed charges under Sections 376(3), 376(2) of the IPC and Section 4(2), 6 read with Section 5(1) of the POCSO Act against the respondent no. 2 to which he pleaded not guilty and claimed to be tried.

6. In order to bring home guilt of the respondent no. 2, the prosecution examined altogether eight witnesses viz. PW-1 mother of the victim, PW-2 father of the victim, PW-3 victim/informant, PW-4 Satruhan Mahto (hostile), PW-5 Vishwanath Mahto (hostile), PW-6 Payal Bharti (police), PW-7 Investigating Officer and PW-8 doctor.

7. The prosecution has also produced the following documentary evidence:-

Ext P-1/PW 3 :- Signature of victim on application.

Mark-X :- Photo copy of SLC of victim

Ext P-2/PW3:- Signature of victim on statement recorded under Section 164 of Cr.P.C.

Ext.P-3 :- Certificate of Secondary School Examination Board, 2020.



Ext.P-4/PW6 :- Endorsement in writing and signature of Ex. SHO on the written application of informant.

Ext-P-5/PW6 :- Formal FIR

Ext-P-6/PW8 :- Writing and signature of witness on medical report.

Ext-P-7 :- Entire Statement of victim recorded under Section 164 of Cr.P.C.

8. The defence has also not adduced any oral or documentary evidence.

9. After closure of prosecution evidence, the statement of the accused was recorded under Section 313 Cr.P.C. and after conclusion of trial, learned trial court has acquitted the accused person.

10. Learned counsel for the appellant/informant submits that victim has supported the case of the prosecution in her statement recorded under Section 164 Cr.P.C. before the learned Magistrate marked as Exhibit P-2/PW-3. It is further submitted that prosecution has proved the case against the respondent no. 2 beyond the shadow of reasonable doubt as the prosecution witnesses have supported the prosecution case. It is submitted that prosecution has examined eight witnesses and all the witnesses have supported the prosecution case but two



witnesses are hostile. He further submits that P.W. 1, P.W. 2 and P.W. 3 have clearly supported the case of prosecution but the learned trial court has not appreciated and evaluated the evidence of witnesses and reached to the wrong finding and passed the judgment of acquittal. In the light of the aforesaid facts and circumstances of the case, the judgment of acquittal passed by the concerned court is neither tenable nor sustainable in the eye of law or on facts and hence, same is liable to be set aside.

11. Learned APP appearing for the State submits that in the present case prosecution has examined altogether eight witnesses. Out of the eight witnesses, PW-4 and PW-5 have been declared hostile. He further submits that judgment of acquittal passed by the concerned court on 20.11.2024 is justified and legal as statement of victim suffers from several infirmities and her statement cannot be relied upon and there is inordinate delay of seven days in lodging the FIR and the said delay has not been explained by the prosecution. He further submits that statement of victim suffers from several infirmities as referred in para 20 of the judgment passed by the concerned court where it has been mentioned that victim has not mentioned the mobile number of her mother on which accused/respondent



no. 2 used to call her. He further submits that on 02.03.2021 accused called her at agricultural field and she went there and physical relationship has been established between the victim and accused and someone has seen them and the said person is not examined. He further submits that application was written by someone and she herself has not read the content of the said application and the said application was read over to her. He further submits that the original copy of application was misplaced, then, photocopy of the said application was given and thereafter case was registered. He further submits that original version of FIR is not available on record and the very authenticity of the prosecution story is doubtful. He further submits that victim used to talk accused secretly without telling her mother and during the course of cross-examination victim has admitted that no injury was caused to her body. He further submits that victim established physical relation with respondent no. 2 but she changed her cloth and then, she did not tell her mother. He further submits that medical evidence has not supported the story of prosecution and hence, victim cannot be put in the category of sterling witness and statement of victim is not corroborated by the other prosecution witnesses and eye witness, as claimed, have not been examined during the



trial. He further submits that there is doubt regarding the commission of offence as alleged in charge. The discrepancies and exaggeration made in the statement of victim and her parents. He further submits that FIR got registered after seven days of occurrence and the delay has not been explained. He further submits that the statement of victim has not been supported by the medical examination as PW 8 has not found any injury on her genitals. He further submits that there is no any evidence of recent sexual intercourse. He further submits that victim has herself stated that during the course of examination there was no injury or stains present on the body of the victim. He further submits that the statement of victim and other PWs regarding commission of offence on alleged date of occurrence and time as alleged is not reliable. He further submits that victim herself stated that she was standing at distance from the accused and they were caught by the villager but no injury or sign of sexual assault was found upon the body of the victim. The alleged villager whose name mentioned as eye witness by P.W.s was also not examined. The finding of the concerned court that there is doubt and the benefit of doubt goes in favour of the accused. From perusal of the impugned judgment, it is evident that the same has been passed on the



basis of material available on record and there is no reason to differ from the finding of concerned court.

12. In criminal appeal against acquittal what the Appellate Court has to examine is whether the finding of the learned trial court is perverse and *prima facie* illegal. Once the Appellate Court comes to the finding that the grounds on which the judgment is based is 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 the case of ***Surajpal Singh & Ors. Versus The State*** reported in ***1952 SCR 193***, paragraph 13 of which reads as under:

“..the High court has full power to review the evidence upon which the order of acquittal was founded. But it is equally well settled that the presumption of innocence of the accused is further reinforced by his acquittal by the trial Court and the findings of the trial Court which had the advantage of seeing the witnesses and hearing their evidence can be reversed only for very substantial and compelling reasons.”



13. In the case of *Ghurey Lal versus State of Uttar Pradesh* reported in (2008) 10 SCC 450 in paragraph 75, the Hon'ble Supreme Court reiterated the said view and observed as under:

“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.”

14. From the perusal of FIR, it is crystal clear that there is physical relationship between the informant/victim and accused since two years from the date of lodging FIR and the affairs of the said relation was not in the knowledge of parents of the informant as the same is reflected from the evidence of P.W. 1 and 2 and the facts narrated by the informant who is the victim is merely a hypothesis as no prudent person can think that the said relationship continues by the informant/victim who is residing at her parental house and she is in continuous touch with the other fellow who is accused. The authenticity of FIR is quite questionable where occurrence lastly committed by the appellant on 02.03.2021 and the FIR was lodged after delay of



seven days and the original copy is not found on record rather a copy of FIR is placed with the signature of victim as informant/victim did not point out the name of the author of the written report and author has also not been examined which is reflected from the record. In the aforesaid facts and circumstances of the case, investigating office has not stated regarding the original copy of the written report and the name of author has also not been come to fore and the author has not been examined. The authenticity of the FIR in the light of the aforesaid fact is very much doubtful keeping in view the delay in lodging the FIR and the statement of victim is exaggerated version of FIR where original version of the same is not available on record. The reason behind the filing of the case is that the respondent no. 2 has committed rape of the victim on the pretext of marriage and the statement of victim recorded under 164 of Cr.P.C. clearly reflects that the proposal of marriage was refused at the behest of other person which is not consistent with the evidence adduced in the court and the same is also not found in the FIR. During the course of cross-examination, P.W. 1 (the mother of the victim) has stated that she has not seen respondent no. 2 and the victim has not stated anything with regard to respondent no. 2 which is totally



inconsistent with the initial version of the prosecution story as alleged by the informant/victim herself. During the course of cross-examination, PW 2 (father of the victim) has stated that he never seen respondent no. 2 in his house and he has also stated that prior to this occurrence no occurrence has been committed against her daughter. In this way, preliminary version of prosecution story is totally inconsistent. It is merely a calculated device which falsely implicates the respondent no. 2.

15. The question which arises for consideration is :-

Whether the prosecution has proved the case beyond the shadow of reasonable doubt ?

16. It is necessary to evaluate, analyze and screen out the evidence of the witnesses adduced before the trial court in the light of the offence punishable under Sections 376(3), 376(2) of the IPC and Section 4(2), 6 read with Section 5(1) of the POCSO Act.

17. P.W. 1 who is the mother of the victim, has stated in her examination-in-chief that she has never seen the respondent no. 2 prior to the occurrence. In this way, the statement of the P.W. 1 is totally inconsistent with the statement of the victim as alleged in the initial version of FIR and no



reliance can be placed on the deposition of P.W. 1 in the light of the facts and circumstances of the case.

18. P.W. 2 who is the father of the victim, has also stated that no offence has been committed upon his daughter prior to the alleged occurrence. He has stated that he has never seen respondent no. 2 in his house. In this way, the statement of P.W. 2 is totally inconsistent with the statement of victim as alleged in the initial version of FIR and no reliance can be placed on the deposition of P.W. 2 in the light of the facts and circumstances of the case. P.W.-3 who is informant has narrated the initial version of prosecution story that the love affairs of the appellant with respondent no.2 is in the knowledge of her parents but neither P.W.-1 nor P.W.-2 has stated that they are aware of the said relation. Neither P.W.-1 nor P.W.-2 has stated regarding the relation between the two as they are in relationship and both have decided to solemnize the marriage.

19. P.W.-3, is the victim, in her initial version has stated that respondent no.2 came to her house and committed rape upon her, but P.W.-2 has stated that he has not seen respondent no.2 in his house. It has been stated by victim that someone had seen the occurrence and he informed the police and the police took away the appellant, appellant's father and



respondent no.2 and appellant was left in the way. She has further stated that she has given the application before the Thana and the application was written by someone else. She has not read the said application rather the application was read over to her. She has stated that the said application was written by Munsif of Thana. She has further stated that Barababu has misplaced the original copy of the application and she has submitted photocopy of the said application and she has again put signature on the same after that case was registered.

20. During course of Panchayat the marriage was fixed between the appellant and respondent no.2 but the said Panchayat was denied by P.W.-1 who is mother of the victim and one of the persons who has apprehended respondent no.2, has not been examined. The appellant has stated that no injury had taken place when respondent no. 2 had made physical relation with her and her statement is quite inconsistent with the statement recorded under Section 164 Cr.P.C. that the proposal of marriage was refused at the behest of other person. Neither in initial version word 'Panchayati' has come out nor in her statement recorded under Section 164 of Cr.P.C., she has stated that Panchayat was called for solemnizing the marriage. In this way, the appellant has improvised her statement from initial



version to statement recorded Section-164 Cr.P.C. and her statement is quite inconsistent with the initial version of prosecution story and her statement is neither corroborated by any of the witnesses.

21. P.W.-4 (Satruhan Mahto) has not supported the prosecution story and has turned hostile.

22. P.W.-5 (Vishwanath Mahto) has also not supported the prosecution story and has turned hostile.

23. P.W.-6 (Payal Bharti) is one of the Investigating Officers and she has recorded the statement of some of the witnesses but during course of investigation she did not visit the place of occurrence. During course of investigation, she met the victim, but the same has not been recorded in the case diary. Her statement suffers from infirmity. Neither she has recorded the statement of the victim nor has she visited the place of occurrence.

24. P.W.-7 (Shailendra Kumar) is another Investigating Officer who has recorded the restatement of the victim and he inspected the first place of occurrence and he has also inspected the second place of occurrence as pointed out by the appellant. Field of wheat as place of occurrence has not been mentioned in the re-statement of the appellant/victim.



Appellant/victim has not described the occurrence at the field of wheat in FIR and during course of investigation the field of wheat was disclosed as the place of occurrence. No videography or photography was conducted by the said witness regarding the occurrence at field of wheat. No incriminating material was recovered for the offence of rape and he has also mentioned in para 27 of the cross-examination that on second place of occurrence, nothing was recovered and no mark of violence was found at the said place and no material connecting respondent no. 2 was recovered from the place of occurrence. He has not recorded the statement of persons whose names came to fore around the boundary of second place of occurrence. He has stated in para 29 of his cross-examination that the mother of the appellant has stated in para 9 of the case diary that she has no knowledge regarding the occurrence nor has she stated that respondent no. 2 visited her house and she has no knowledge regarding the miscarriage of the appellant. He has also stated in para 30 of his cross-examination that not a single witness has stated regarding teasing by respondent no. 2 while talking. In the written statement, re-statement of victim recorded under Sections, 161, 164 Cr.P.C. no mobile number was discussed, as mentioned in para 31 of his cross-examination. He has further



stated that the cloth of the victim was not produced during course of investigation nor any incriminating or suspected articles were produced before the court, as mentioned in para 34 & 35 of his cross-examination.

25. P.W.-8 (Dr. Suchendra) is a Medical Officer. She has stated that there is no positive evidence which suggests commission of sexual intercourse and there was no injury or stains present on the body of victim and the pregnancy test was negative. Following observations are made:-

Injury and stains-

Multiple tinea lesions present on lower abdomen perineum and thigh. Old healed hymenal tear seen.

Genital (General)

Examination- No other injury/stain present at the time examination.

Radiological Examination

Finding:-

(i) X-ray both elbow (A.P. View)- There is complete fusion of the epiphysis of the medial epicondyle of humerus on both sides. There is complete fusion of the epiphysis of head of radius on both sides.

(ii) X-ray both wrist (A.P. View)- there is incomplete fusion of the distal ulnar epiphysis on the both sides.



There is incomplete fusion of the distal radial epiphysis on the both sides.

(iii) Epiphysis of end of metacarpal are seems just completely fused

(iv) X-ray pelvis (A.P. View)

- There is appearance of the epiphysis of the iliac crest on both sides.

6. Result of Pregnancy

Test:- Pregnancy test-Negative.

7. Result of Ultra

Sonography of lower abdomen- U/S no 25, dated 17-03-2021, Urinary Bladder-Normal wall thickness lumen echofree. Uterus-Normal Anteverted uterus of size 7.2 x 4.5 x 4.1 cm. No sign of intrauterine pregnancy noted at present scan. Adnexa- Bilateral no abnormality noted.

8. Opinion :- (i)

*According to the radiologist:
According to radiological findings the bony age of Sanjeela Kumari is in between 15 to 16 (fifteen to sixteen) years. (ii) According the report of USG from radiologist- USG- Normal Sonogram. Report from department of Pathology.*

9. Vaginalswab+Aspiration:- Vaginal swab and vaginal aspiration on



microscopic examination shows a few mature squamous epithelial cells. No spermatozoa (dead, live or degenerated) seen. So, according to the above findings there is no positive evidence to suggest commission of recent sexual intercourse with emission at the time of examination.

26. The learned trial court has recorded in para 16 of the impugned judgment that the victim was minor on the alleged date of occurrence on the basis of certificate issued by Bihar School Examination Board which is exhibited as Exhibit -P-3 and hence, there is no need to give any finding on this point.

27. It is necessary to evaluate the evidence of prosecution witnesses adduced during the trial. It is crystal clear from the evidence of P.Ws. that the statement of victim has not been corroborated by any of the P.Ws. and the eye witness who has seen the occurrence, has not been examined and the statements of victim and her parents are quite inconsistent on the point of initial version of prosecution story as narrated by PW-3 showing that the affairs between victim and respondent no. 2 was in the knowledge of parents. There was no averment either in examination-in-chief or cross-examination to show that



love affairs between the two was in the knowledge of parents and there is discrepancy and exaggeration in the statement of the victim and her parents. Based on the second place of occurrence, the case has been lodged. It is very important to note that victim in her restatement has not mentioned about the incident occurred in agricultural field of wheat and in FIR victim has not mentioned about the incident occurred in agricultural field. In both ways, first place of occurrence creates doubt regarding the authenticity of occurrence and doubt is also reinforced when no objectionable material was found at particular place i.e. agricultural field of wheat. On this point, two Investigating Officers have been examined. They have not stated as to why original version has been misplaced. In this way, first version is not found, which questions the authenticity of FIR as the photocopy has been placed in place of original copy coupled with delay in lodging the FIR has totally shattered the prosecution story. The victim herself has admitted that the said application was written by someone, then, the question arises as to why the said person has not been examined in the light of the fact that when original application of written statement has been misplaced coupled with delay in lodging of FIR. The aforesaid anomalies raises serious doubt against the



story of prosecution. The appellant has herself admitted that she has not read the contents of the written application rather the contents were read over to her. The every aspect of initial version of prosecution story also raises question regarding authenticity of initial version of prosecution story. Second aspect is that if the FIR is lodged assuming that the occurrence took place at the second place of occurrence, then, as to why the statement of persons whose names came to fore around the boundary of second place of occurrence has not been recorded. Neither the witnesses whose names were found at the second place of occurrence have been examined nor any incriminating material relating to Respondent No. 2 was recovered. Once the second place of occurrence which is the genesis of lodging the FIR, is not proved, the whole prosecution story is liable to be disbelieved.

28. I am dealing with an appeal against acquittal and shall keep in mind the principles governing the cases of appeal against acquittal. The principles have been reiterated by the Hon'ble Supreme Court in catena of decisions.

29. In the case of *H.D. Sundara and Others vs. State of Karnataka* reported in (2023) 9 SCC 581, Hon'ble Supreme Court, in paragraph 8, has held as follows :



“8. In this appeal, we are called upon to consider the legality and validity of the impugned judgment State of Karnataka v. H.K. Mariyapp, 2010 SCC OnLine Kar 5591 rendered by the High Court while deciding an appeal against acquittal under Section 378 of the Code of Criminal Procedure, 1973 (for short “Cr.P.C”). The principles which govern the exercise of appellate jurisdiction while dealing with an appeal against acquittal under Section 378 Cr.P.C can be summarized as follows:

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

2. The appellate court, while hearing an appeal against acquittal, is entitled to the oral and documentary evidence;

8.3. The appellate court, while deciding an appeal against acquittal, after reappreciating 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.”

30. In **Chandrappa Vs. State of Karnataka, (2007) 4 SCC 415, Hon’ble Supreme Court** after referring to several authorities has held as follows:

“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, reappreciate 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.”

(Emphasis Supplied)

31. In **Murugesan Vs. State, (2012) 10 SCC 383,**

Hon’ble Supreme Court has held as follows:

“ 18. Before proceeding any further it will be useful to recall the broad principles of law governing the power of the High Court under Section 378 CrPC, while hearing an appeal against an order of acquittal passed by a trial Judge.

19. An early but exhaustive consideration of the law in this regard is to be found in the decision of Sheo Swarup v. King Emperor [(1933-34) 61 IA 398 : AIR 1934 PC 227 (2)] wherein it was held that the power of the High Court extends to a review of the entire evidence on the basis of which the order of acquittal had been passed by the trial court and thereafter to reach the necessary conclusion as to whether order of acquittal is required to be maintained or not. In the opinion of the Privy Council no limitation on the exercise of power of the High Court in this regard has been imposed by the Code though certain principles are required to be kept in mind by the High Court while exercising jurisdiction in an appeal against an order of acquittal.....

20. The principles of law laid down by the Privy Council in Sheo Swarup(supra) have been consistently followed by this Court in a series of subsequent pronouncements



21. A concise statement of the law on the issue that had emerged after over half a century of evolution since Sheo Swarup (Supra) is to be found in para 42 of the Report in **Chandrappa v. State of Karnataka [(2007) 4 SCC 415**

.....

32. In the above facts can it be said that the view taken by the trial court is not a possible view? If the answer is in the affirmative, the jurisdiction of the High Court to interfere with the acquittal of the appellant-accused, on the principles of law referred to earlier, ought not to have been exercised. In other words, the reversal of the acquittal could have been made by the High Court only if the conclusions recorded by the learned trial court did not reflect a possible view. It must be emphasised that the inhibition to interfere must be perceived only in a situation where the view taken by the trial court is not a possible view. The use of the expression “possible view” is conscious and not without good reasons. The said expression is in contra²³. Having dealt with the principles of law that ought to be kept in mind while considering an appeal against an order of acquittal passed by the trial court, we may now proceed to examine the reasons recorded by the trial court for acquitting the accused in the present case and those that prevailed with the High Court in reversing the said conclusion and in convicting and sentencing the appellant-accused.

33. The expressions “erroneous”, “wrong” and “possible” are defined in Oxford English Dictionary in the following terms:

“erroneous.— wrong; incorrect.

wrong.—(1) not correct or true, mistaken.

(2) unjust, dishonest, or immoral.

possible.—(1) capable of existing, happening, or being achieved.

(2) that may exist or happen, but that is not certain or probable.”

34. It will be necessary for us to emphasise that a possible view denotes an opinion which can exist or be formed irrespective of the correctness or otherwise of such an opinion. A view taken by a court lower in the hierarchical structure may be termed as erroneous or wrong by a superior court



upon a mere disagreement. But such a conclusion of the higher court would not take the view rendered by the subordinate court outside the arena of a possible view. The correctness or otherwise of any conclusion reached by a court has to be tested on the basis of what the superior judicial authority perceives to be the correct conclusion. A possible view, on the other hand, denotes a conclusion which can reasonably be arrived at regardless of the fact where it is agreed upon or not by the higher court. The fundamental distinction between the two situations have to be kept in mind. So long as the view taken by the trial court can be reasonably formed, regardless of whether the High Court agrees with the same or not, the view taken by the trial court cannot be interdicted and that of the High Court supplanted over and above the view of the trial court.

35. A consideration on the basis on which the learned trial court had founded its order of acquittal in the present case clearly reflects a possible view. There may, however, be disagreement on the correctness of the same. But that is not the test. So long as the view taken is not impossible to be arrived at and reasons therefor, relatable to the evidence and materials on record, are disclosed any further scrutiny in exercise of the power under Section 378 CrPC was not called for.”

(Emphasis Supplied)

32. In **Hakeem Khan Vs. State of M.P., (2017) 5**

SCC 719 , Hon’ble Supreme Court has held as follows:

“ 9 [Ed. : Para 9 corrected vide Official Corrigendum No. F.3/Ed.B.J./29/2017 dated 13-7-2017.] . Having heard the learned counsel for the parties, we are of the view that the trial court's judgment is more than just a possible view for arriving at the conclusion of acquittal, and that it would not be safe to convict seventeen persons accused of the crime of murder i.e. under Section 302 read with Section 149 of the Penal Code....”

(Emphasis Supplied)



33. In **Babu Sahebagouda Rudragoudar Vs. State of Karnataka, 2024 SCC Online SC 561**, Hon'ble Supreme Court, after referring to relevant precedents, has observed as follows:

“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.

40. The appellate Court, in order to interfere with the judgment of acquittal would have to record pertinent findings on the above factors if it is inclined to reverse the judgment of acquittal rendered by the trial Court.”

(Emphasis Supplied)

34. In the present case, the accusation made by P.W. 3 has not been corroborated by P.W. 8 and her statement during examination-in-chief and during cross examination is quite inconsistent as she has improvised her statement while adducing evidence before the court as well as statement of victim recorded under Section 164 of Cr.P.C. is full of infirmities, inconsistencies and discrepancies. There is delay of seven days in lodging the FIR and delay has not been explained and



discrepancies and exaggeration made in the statement of victim (P.W. 3) and her parents (P.Ws. 1 and 2). The statement of victim regarding panchayati and statement of parents regarding the panchayati are quite inconsistent. The statement of victim on the issue of the alleged act which was seen by someone but he has not been examined. Statement of victim reflects that no sexual assault was found at her body and the statement of investigating officer who has already stated that no incriminating material was found at the place of occurrence and there is no evidence that the victim was sexually assaulted on the second place of occurrence. P.W. 7 has described two places of occurrence i.e. first place of occurrence is the field of wheat and second place of occurrence is the house of victim (thatched house). No videography or photographs of the place of occurrence has been conducted by the Investigating Officer. There was not found any mark from where it can be concluded that some occurrence has been taken place. Not a single witness has stated that accused has been seen by anyone talking with the victim. In the written statement, re-statement of victim and statement of victim recorded under Sections 161 and 164 of CrPC she has not mentioned about mobile number. During the course of investigation, victim has not mentioned about the



mobile number. During investigation, victim's parents did not produce any suspicious thing. There is no recovery of mobile either from the victim or accused or mother of the victim. Neither victim nor her mother provide mobile during investigation to show that she was talking with the appellant on the point of time. There was no evidence to show that panchayti was held and the alleged second place of occurrence was not proved by any witness. It is alleged that victim and accused/respondent no.2 were in agricultural field and they were caught by the villager and thereafter, this case was registered but victim/appellant has stated in cross-examination that the occurrence took place in agricultural field and both were caught and the villager apprehended and both were standing at certain distance from each other and investigating officer has not found any mark of violence which shows that incident occurred at agricultural field and the cloth of the victim was not recovered. The incident occurred on 02.03.2021 and the case was registered on 09.03.2021 and the statement of victim recorded under Section 164 of CrPC was recorded on 15.03.2021 and the burden is upon the prosecution to prove the delay in getting FIR registered. Medical examination of victim was conducted on 16.03.2021 which shows no injury or stains on the genital of the



victim. The ultrasound report was also normal and victim pregnancy test was negative. The victim has not reported the matter prior to two years since from the date of occurrence.

35. Thus, in the opinion of this Court, the trial Court has taken a plausible view based on the evidence available on the record. The prosecution has failed to prove the case beyond the shadow of reasonable doubt. The view taken by the trial Court cannot be held to be bad or perverse. Under such circumstances, no case for interference with the impugned judgment is made out.

36. In the result, the present criminal appeal, preferred against the impugned judgment of acquittal dated 20.11.2024, stands dismissed.

(Alok Kumar Pandey, J)

amitkumar/alok

AFR/NAFR	AFR
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