

2025:PHHC:081194-DB



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

211

**CRA-AD-53-2021 (O&M).
Date of Decision: 08.07.2025.**

Xxxxxx

....Appellant

VERSUS

Sonu and another

....Respondents

**CORAM : HON'BLE MR. JUSTICE ANUPINDER SINGH GREWAL
HON'BLE MR. JUSTICE DEEPAK MANCHANDA**

Present: Mr. Sumit Sangwan, Advocate for the appellant.

Mr. Anant Kataria, Deputy Advocate General, Haryana.

ANUPINDER SINGH GREWAL, J.

In view of the directions issued by the Supreme Court in the case of **Nipun Saxena Versus Union of India, (2019) 2 SCC 703**, the identity of the appellant, being the alleged victim, is being masked.

2. This appeal by the prosecutrix 'P', is directed against the judgement of the trial Court dated 02.02.2021, whereby respondent No.1 has been acquitted of the charges framed against him under Sections 451, 323, 376 read with Section 511, 506 IPC and Section 8 of the Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as 'the POCSO Act'), in FIR No.203 dated 26.10.2019 registered under Sections 323, 451, 506, 376, 511 IPC and Sections 8 & 18 of the POCSO Act at Police Station Behal.

3. Learned counsel for the appellant submits that respondent No.1 had been erroneously acquitted, although, there was cogent evidence warranting his conviction. The appellant was a child of tender age at the time of the incident. She had supported the prosecution case on all major aspects but the trial court has given undue weight to minor inconsistencies in her statement. The victim had categorically stated that respondent No.1 had tried to assault her and had slapped her. It was only when she did not stop crying and strongly resisted, that he left.

4. Heard.

5. It is the case of the prosecution that on 26.10.2019, the victim submitted a complaint stating that she was about 13 years old and on 25.10.2019 around 3 p.m., when she along with her younger brother was on her way back from school, respondent No.1 followed them on his motorcycle. He was in an inebriated condition and insisted on dropping them to their house on his motorcycle, but they refused. Thereafter, her brother went to the fields while she went home. Respondent No.1 followed her to her house and enquired about the whereabouts of her parents. When she apprised him that they were in the fields, he slapped her. He also insisted on coming inside the house and when she refused, he caught hold of her hands and she started crying. He again insisted that she come to the back of the house. When she continued crying, he let go off her hands. Thereafter, she came outside and he criminally intimidated her by threatening to kill her if she discloses the incident to anyone. It was also stated that respondent No.1 tried to rape her and requested that appropriate legal action be taken against him. On the basis of the complaint, FIR No. 203

dated 26.10.2019 was registered under Sections 323, 376, 451, 506, 511 of the IPC and Sections 8 & 18 of the POCSO Act at Police Station Behal.

6. On 26.10.2019 itself, the victim informed the police that she was not feeling well and requested them to defer the legal formalities for two days. On 28.10.2019, the child victim was taken to the Child welfare Committee, Bhiwani, for counselling. She was also taken to the Government Hospital, Bhiwani but refused to undergo medical examination. Her statement under Section 164 Cr.P.C. was recorded by the Judicial Magistrate First Class, Bhiwani. The statements of the victim and her mother, namely, 'MD' were recorded under Section 161 Cr.P.C. The accused was arrested on 11.12.2019 and produced before the Magistrate, who remanded him to the judicial custody.

7. After completion of the investigation, the police submitted the final report under Section 173 Cr.P.C. and the Trial Court framed charges against respondent No.1 for offences punishable under Sections 451, 323, 376 read with Section 511, and 506 of the IPC and Section 8 of the POCSO Act. Respondent No.1 pleaded not guilty and claimed trial. To prove its case, the prosecution examined five witnesses including Inspector Sunil Kumar (PW-1), Dharmender Singh, Draftsman (PW-2), SI Prem Kumar (PW-3), the victim (PW-4) and LSI Sunita, the Investigating Officer (PW-5).

8. Inspector Sunil Kumar, who was examined as PW-1, deposed about his role in conducting the investigation. Dharmender Singh, Draftsman, was examined as PW-2 and he stated that he had prepared a scaled site plan, as per which the alleged incident took place in the courtyard of the house and the house is surrounded by other houses. PW- 3, SI Prem Kumar, stated that he had got the scaled site plan of the place of occurrence prepared by the draftsman (PW-2) and that he had arrested the accused on 11.12.2019 from Village

Dinod. The victim, in her testimony before the trial Court as PW-4, had reiterated her version as stated in the FIR. LSI, Sunita, Investigating Officer, was examined as PW-5. She stated that the mother of the victim had handed over the original birth certificate of the victim in which her date of birth is recorded as 23.12.2005. She further deposed regarding the investigation carried out by her. However, the mother of the victim was given up as a witness by the prosecution, which is reflected in the order of the trial Court dated 12.02.2020.

9. Thereafter, statement of the accused (respondent No.1 herein) was recorded under Section 313 of Cr.P.C. In his statement, he pleaded that he had been falsely implicated in the case, as the brother of the grandfather of the victim namely 'KL' nursed a grudge against him due to conflicting political affiliations. He further stated that during the elections, he had organised a programme in support of the candidate from a national party. While that candidate had attended the programme organised by him, he did not attend the programme organised by 'KL'. Furthermore, although he (accused) and the family of the victim belong to the same caste, but he had solemnized marriage with a girl from another caste. His inter-caste marriage had ruffled feathers in the community and was also objected to by 'KR', who was the *Pradhan* of the community.

10. In his defence, respondent No.1 (accused) examined two witnesses, namely, Sunil (DW-1) and Rameshwar (DW-2) and thereafter closed his evidence. DW-1 deposed that accused (respondent No.1 herein) and 'KL' were neighbours. There was a pre-existing rivalry between the families regarding the position of '*pradhan*'. He stated that the accused had arranged a programme in support of the candidate 'J.P. Dalal', who was contesting the legislative assembly elections. J.P. Dalal had attended the programme

organised by the accused, but he did not attend the one organised by 'KL'. KL had threatened the accused stating that he would teach him a lesson. DW-2 had stated that he, respondent No.1 (accused) and KL belonged to the 'Nayak' caste/community. Some time ago, 'KL' had organised a meeting of the community regarding the position of 'pradhan', which he had also attended. In the meeting, the accused had stated that he would like to serve as 'pradhan'. This angered 'KL' and hot words were exchanged, particularly regarding the marriage of the accused with a girl from another caste. 'KL' threatened the accused. He stated that 'KL' had got lodged a false FIR against him as well. The trial court after appreciating the evidence on record had arrived at the conclusion that the prosecution evidence suffers from material contradictions and acquitted respondent No.1 of all the charges.

11. It is not in dispute that the prosecutrix was a child victim aged 13 year and 10 month. However, the fundamental issue for our consideration in the instant case is whether the evidence adduced by the prosecution, particularly the testimony of the prosecutrix, is trustworthy, credible and worthy of credence so as to warrant conviction of respondent No.1.

12. It is a settled principle of law that in the cases involving sexual offences, a conviction can be based solely on the testimony of the victim of sexual assault without being corroborated by any other evidence. Where the testimony is of such a nature that it instils confidence in the Court, the same can be relied upon for convicting the accused. It is also a well settled principle of law that when a conviction is to be based on the sole testimony of the prosecutrix, the Court has to be extremely careful while examining this sole testimony. Reference can be made to the judgement of the Supreme Court in

the case of ***Sadashiv Ramrao Hadbe v. State of Maharashtra***, (2006) 10 SCC 92, wherein the Supreme Court made the following observation:

“8. It is true that in a rape case the accused could be convicted on the sole testimony of the prosecutrix, if it is capable of inspiring confidence in the mind of the court. If the version given by the prosecutrix is unsupported by any medical evidence or the whole surrounding circumstances are highly improbable and belie the case set up by the prosecutrix, the court shall not act on the solitary evidence of the prosecutrix. The courts shall be extremely careful in accepting the sole testimony of the prosecutrix when the entire case is improbable and unlikely to happen.”
(Emphasis supplied)

13. The Supreme Court in ***Rai Sandeep vs. State (NCT of Delhi)*** (2012) 8 SCC 21 had the occasion to opine as to who can be said to be a ‘sterling witness’. The relevant extract of the judgment is reproduced hereunder:-

“15. In our considered opinion, the ‘sterling witness’ should be of a very high quality and calibre whose version should, therefore, be unassailable. The Court considering the version of such witness should be in a position to accept it for its face value without any hesitation. To test the quality of such a witness, the status of the witness would be immaterial and what would be relevant is the truthfulness of the statement made by such a witness. What would be more relevant would be the consistency of the statement right from the starting point till the end, namely, at the time when the witness makes the initial statement and ultimately before the Court. It should be natural and consistent with the case of the prosecution qua the accused. There should not be any prevarication in the version of such a witness. The witness should be in a position to withstand the cross- examination of any length and howsoever strenuous it may be and under no circumstance should give room for any doubt as to the factum of

the occurrence, the persons involved, as well as, the sequence of it. Such a version should have co-relation with each and everyone of other supporting material such as the recoveries made, the weapons used, the manner of offence committed, the scientific evidence and the expert opinion. The said version should consistently match with the version of every other witness. It can even be stated that it should be akin to the test applied in the case of circumstantial evidence where there should not be any missing link in the chain of circumstances to hold the accused guilty of the offence alleged against him. Only if the version of such a witness qualifies the above test as well as all other similar such tests to be applied, it can be held that such a witness can be called as a 'sterling witness' whose version can be accepted by the Court without any corroboration and based on which the guilty can be punished. To be more precise, the version of the said witness on the core spectrum of the crime should remain intact while all other attendant materials, namely, oral, documentary and material objects should match the said version in material particulars in order to enable the Court trying the offence to rely on the core version to sieve the other supporting materials for holding the offender guilty of the charge alleged."

14, An analysis of the testimony of the prosecutrix, in light of the aforementioned principles laid down by the Supreme Court, makes it crystal clear that there are several material inconsistencies in the prosecution evidence, particularly the testimony of the prosecutrix and therefore, she is not a reliable witness. In her deposition before the Court, she had stated that while she was going from the school to her home, she was accompanied by her cousin brother but in her statement to the police, she had stated that her younger brother was accompanying her. Neither her cousin nor her younger brother had been associated with the investigation or examined as witnesses, although they are stated to have witnessed the occurrence. She had also stated that she had

narrated the incident to her mother and thereafter the complaint had been made to the police. However, as noted above, even her mother was not examined as a witness. Furthermore, in the complaint, the prosecutrix had stated that respondent No.1 had attempted to assault her and caused hurt by slapping her and forcibly grabbing her hands. However, she did not get herself medically examined on 26.10.2019 when FIR was lodged and, in fact, she had refused to undergo medical examination two days later as well, despite the police accompanying her to the hospital.

15. Moreover, as per the site plan prepared by PW-2, the alleged incident took place in the courtyard of the house. However, in her testimony, the prosecutrix stated that the accused entered the house, caught hold of her hand and pinched her body. In her cross examination, however, she put forth an altogether new version stating that she was sitting in the ‘*chowk*’ of her house and there was no main gate. She further admitted that the incident occurred around 3:00 p.m. in broad daylight and that she had raised a hue and cry. It is implausible that despite the house of the victim being surrounded by other houses adjacent to a metalled road, no one came to the spot or witnessed the incident.

16. As noted above, respondent No.1 had led evidence in support of his defence that there was prior political rivalry between the families. DW-1 had stated that respondent No.1/accused and the grandfather of the victim were neighbours and there was a political dispute between them, as both of them were politically ambitious and had been organizing rallies. During the legislative assembly elections, the local candidate had not attended the event organised by the family of the victim in the early October, 2019, but had attended that of the accused. DW-2 had mentioned that KL being the *pradhan*

of the community had objected to the marriage of the accused with a girl from another caste. It is trite that defence witnesses are to be given equal credence at par with the witnesses examined by the prosecution. We may refer to the judgment of the Supreme Court in the case of **Dudh Nath Pandey v. State of U.P., (1981) 2 SCC 166**, wherein it was held as under:-

“19....Defence witnesses are entitled to equal treatment with those of the prosecution. And, courts ought to overcome their traditional, instinctive disbelief in defence witnesses. Quite often, they tell lies but so do the prosecution witnesses...”

17. In view of the afore-noted facts and circumstances especially when the prosecution case is full of loopholes, we do not find any manifest illegality in the judgement of the trial Court whereby respondent No.1 has been acquitted.

18. Even otherwise, it is trite that interference in an appeal against acquittal would be warranted only where the judgement is perverse or manifestly illegal. By the judgement of acquittal, the presumption of innocence of the accused is reinforced. Even if, another view is possible on appreciation of evidence, the appellate Court should refrain from interfering in an order of acquittal. Reference may be made to the judgement of the Supreme Court in the case of **Chandrappa & Ors vs State of Karnataka, (2007) 4 SCC 415**. The relevant extract of the judgment is reproduced as under:

“xxx xxx the following general principles regarding powers of appellate Court while dealing with an appeal against an order of acquittal emerge;

(1) to (3) xxx xxxx xxx

(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 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.

xxx xxx” (Emphasis supplied)

19. Consequently, the appeal being devoid of any merit stands dismissed.

20. All pending miscellaneous application(s) also stand disposed of.

(ANUPINDER SINGH GREWAL)
JUDGE

(DEEPAK MANCHANDA)
JUDGE

08.07.2025

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Whether speaking/ reasoned : Yes/ No

Whether Reportable : Yes/ No