



CRA-AD-369-2022 (O&M) 1

212

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CRA-AD-369-2022 (O&M)
Date of decision: 08.07.2025**

Sxxxx

...Appellant

Vs.

Rajesh and others

...Respondents

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

Present: Mr. Raman Chawla, Advocate
for the appellant.

DEEPAK MANCHANDA, J.

The present appeal has been filed against the judgment of acquittal dated 31.05.2022 passed by Additional Sessions Judge-cum-Judge, Fast Track Special Court, Bhiwani in a case bearing FIR No. 12 dated 23.01.2019 registered at Police Station Women Bhiwani under Sections 323, 34, 376(3) and 506 of IPC, Section 4 of POCSO Act and Section 3(2)(v) of SC/ST Act, where respondent Nos.1 and 2 were acquitted.

2. The facts in brief emanating from the pleadings of the present appeal are that the appellant/complainant (hereinafter to be referred as prosecutrix) got her statement recorded, which led to registration of the present FIR alleging therein that on 20.01.2019 at about 3.30 p.m. when she was returning from her field after taking fodder, her co-villager, namely, Rajesh (respondent No.1) forcibly dragged her in mustard field and committed rape upon her. Due to fear she did not disclose anything on the day of the incident,



but, on the next day i.e., 21.01.2019 at about 7.30 a.m. when respondent No.1 came to her house, she got frightened and revealed everything to her mother. Thereafter, mother of prosecutrix enquired from accused/respondent No.1, who called his father, namely, Chanderpal (respondent No.2), who abused and quarreled with father of prosecutrix at their home and also extended threats to their family. On these allegations, present FIR was registered.

3. On registration of the said FIR, investigation was carried out and on completion of the same, final report under Section 173 Cr.P.C. was presented before the Court. Finding a *prima facie* case under Sections 376, 323 and 506 IPC, Section 4 of POCSO Act, 2012 and Section 3 of SC/ST Act, 1989 was registered against respondent No.1 and respondent No.2 (father of the respondent No.1) was charged for commission of offence punishable under Sections 323 and 506 IPC. Charges were framed under the aforementioned sections against both accused, who pleaded not guilty and claimed trial.

4. The prosecution examined as many as 16 witnesses, including Virender Singh DSP as PW 1; Dr.Monika as PW-2, who conducted the medicolegal examination; SI Neelam as PW-3, who prepared final report under Section 173 of Cr.P.C., L/ASI Rekha as PW-4, ESI Neelam as PW-5, HC Yogender as PW-6, Sushil Kumar, Data Entry Operator, Board of School Education Haryana as PW-7, Devender Singh, Patwari as PW-8, SI Dharmali as PW-9, L/HC Sunita as PW-10, Vishal Kumar, Clerk from the office of Naib Tehsildar as PW-11, Roshal Lal, Member, Child Welfare Committee, Bhiwani as PW-12, Child victim as PW-13, Father of the child victim as PW-14, Dr. Sonia, who medico legally examined accused-Rajesh as PW-15 and DSP Jagat Singh as PW-16. All the exhibits, including MLR, were tendered in evidence.



5. Statements of both the accused were recorded under Section 313 Cr.P.C., wherein they denied the allegations levelled against them by the prosecution and pleaded their innocence and false implication in the present case. No witness was examined in their defence.

6. The trial court, after considering the material available on record, acquitted the accused/respondents by holding that the prosecution miserably failed to prove their case against respondents No. 1 and 2, beyond reasonable shadow of doubt vide judgment dated 31.05.2022.

7. Aggrieved against the said judgment of acquittal, the appellant has filed the present appeal.

8. Learned counsel for the appellant contends that the trial Court did not appreciate the evidence produced by the prosecution and acquitted the accused/respondents No.1 and 2 based on conjectures and surmises. He further contends that the material witnesses supported the prosecution version, which has not been objectively considered in its proper prospective and the trial Court while discarding the evidence available on record, has erroneously proceeded to acquit the accused/respondents No.1 and 2 by giving benefit of doubt and has prayed for setting aside the impugned judgment passed by the trial Court.

9. We have heard counsel for the appellant and have reviewed the trial Court record.

10. The sole question that requires consideration by this Court is whether the impugned judgment of acquittal requires interference.

11. The perusal of the impugned judgment and material available on record reveals that the accused/respondents No.1 and 2 have pleaded that they had been falsely implicated on account of previous enmity with the



complainant's family, where the dispute arose over the illegal use of water from the well installed in the field of the accused adjacent to the house of the complainant party. The complainant party also used to wash clothes and utensils on the said well of the accused/respondents No.1 and 2 and when the accused resisted them, an altercation took place which also led to registration of FIR No.13, under Sections 323, 341, 34 of IPC against the complainant party. It has also been pleaded by the accused/respondents No.1 and 2 that the present case is a counter blast of aforesaid FIR, which was got registered to pressurize the accused/respondents No.1 and 2 to compromise in the said matter.

12. Further, the trial Court after examining the witnesses and evidence available on record observed that the accused/respondents No.1 had been charged for forcibly committing rape upon the victim who was below 16 years of age, and belong to Scheduled Castes community for causing hurt to her and for extending threats. Apart from this, the accused/respondent No.2 had been charged under Sections 323 and 506 of IPC. As per the impugned judgment, the trial Court firstly settled the issue of age of the victim, and concluded that victim had not completed 18 years of age on the day of incident i.e., 20.01.2019. Thus, she was covered under the definition of child under Section 2(d) of the POCSO Act, 2012. It was further observed by the trial Court that no evidence was led by the accused/respondents No.1 and 2 to rebut the document i.e., Ex.PW7/B (Secondary Examination Certificate) and to show that the date of birth of the victim was not 04.03.2003 or that she was major on the day of the incident i.e., 20.01.2019.

13. The second issue dealt with by the trial Court was whether the



statements of the prosecution witnesses inspire confidence regarding commission of offence by the accused and observed that the statement of the child victim is not consistent where several contradictions were found which makes the incident of 21.01.2019 doubtful.

14. The FIR was registered based on the statement given by the child victim to the police. She stated that when on 21.01.2019 i.e., the next day of the alleged incident, the accused/respondent No.1 came to her house she got frightened and revealed everything to her mother and on being enquired by her mother, accused/respondent No.1 brought his father Chanderpal who quarreled with her father and gave abuses.

15. While recording her statement under Section 164 Cr.P.C., on 24.01.2019 the child victim stated that only accused/respondent No.1 visited her house on the next day of the alleged incident and extended threats to kill her and her family members and gave abuses. A bare reading of the vernacular of the said statement shows that it was stated by her that nobody else except accused/respondent No.1 visited her house and it was her father who went to the house of the accused/respondents and was abused.

16. Thereafter, the child victim while appearing as PW-13 stated that she revealed everything about the alleged incident to her mother and aunt namely Sunita and on enquiry from accused/respondent No.1 he fled away from the spot and came back after some time with his father namely Chanderpal, tau Mahabir and one Amit who quarreled with her father and extended threats.

17. A bare reading of the above three statements made by the child victim goes to show that material contradictions have crept in her statement as



in her statement under Section 161 Cr.P.C., she named father of the accused/respondent No.1 Chanderpal, who quarreled and gave abuses; in her statement under Section 164 Cr.P.C., she did not mention anyone else except accused/respondent No.1, who extended threats and kill her and her family members. She has also gone to say that it was his father, who went to the house of accused/respondent No.1; whereas while appearing as PW-13 she introduced one Sunita (aunt) along with her mother to whom she revealed everything about the alleged incident. In the said statement, the child victim also introduced one Tau Mahabir and Amit, who accompanied Chanderpal and quarreled with her family.

18. Therefore, keeping in view that material contradictions made in the statement of the child victim, the same does not inspire confidence.

19. Furthermore, the statement of the child victim does not find corroboration from her father PW-14, who stated that accused/respondent No.1 brought his father Chanderpal, Tau Mahabir and one Teja Ram, who gave him injuries, whereas no other person in the name of Amit has been named, as stated by the child victim in her statement while appearing as PW-13.

20. Further, the trial Court after perusing the FSL report (Ex.PY) and DNA report (Ex.PZ) held that at the time of laboratory examination human semen was detected on the underwear of the child victim however, DNA profiling of semen detected in the underwear of the child victim did not match with the DNA profiling of blood sample of the accused/respondent No.1 and concluded that statements recorded by the child victim were not consistent and there were material inconsistencies and contradictions which made the prosecution story doubtful as the same was also not corroborated by scientific



evidence. Consequently, as prosecution failed to prove its case beyond the shadow of reasonable doubt, the trial Court acquitted the accused/respondents No.1 and 2.

21. It is well settled that in any criminal case, the burden of proof is on the prosecution to prove the case beyond reasonable doubt to secure conviction of the accused, that is to say that no reasonable doubt can be said to have arisen in the judicial mind of the Court after appreciating the evidence presented, and the outcome reached by the prosecution is the only possible outcome in the given facts and circumstances of the case.

22. So, the findings recorded by the trial do not suffer from illegality or perversity. In a criminal matter, whenever doubt is cast upon the prosecution's case, the accused is entitled to the benefit of such doubt. After examining the depositions of the prosecution and defence witnesses, the trial court held that the prosecution had failed to prove the charges regarding the offences levelled against the accused and acquitted them of the charges.

23. In an appeal filed against acquittal, the appellate Court has to examine whether the findings of the Court are perverse and *prima facie* illegal. Once the appellate court finds that the grounds on which the judgment is based are not frivolous, the scope of the appeal filed against acquittal is limited, considering that the trial court's finding further strengthens the legal presumption of the accused's innocence. At this point, it is imperative to consider the decision of the Hon'ble Supreme Court in the case of ***Mrinal Das v. State of Tripura, (2011) 9 SCC 479***, wherein it has been observed as follows:-

“13. It is clear that in an appeal against acquittal in the absence of



perversity in the judgment and order, interference by this Court exercising its extraordinary jurisdiction, is not warranted. However, if the appeal is heard by an appellate court, it being the final Court of fact, is fully competent to re-appreciate, reconsider and review the evidence and take its own decision. In other words, the law does not prescribe any limitation, restriction, or condition on the exercise of such power, and the appellate Court is free to arrive at its conclusion, keeping in mind that acquittal provides a presumption in favour of the accused. The presumption of innocence is available to the person and in criminal jurisprudence every person is presumed to be innocent unless he is proved guilty by the competent Court. If two reasonable views are possible on the basis of the evidence on record, the appellate Court should not disturb the findings of acquittal.

14. *There is no limitation on the part of the appellate Court to review the evidence upon which the order of acquittal is found and to come to its own conclusion. The appellate Court can also review the conclusion arrived at by the trial court with respect to both facts and law. While dealing with the appeal against acquittal preferred by the State, it is the duty of the appellate Court to marshal the entire evidence on record and only by giving cogent and adequate reasons set aside the judgment of acquittal. An order of acquittal is to be interfered with only when there are "compelling and substantial reasons" for doing so. If the order is "clearly unreasonable", it is a compelling reason for interference....."*

24. Similarly, in the case of ***Ghurey Lal v. State of Uttar Pradesh, (2008) 10 SCC 450***, the Hon'ble Supreme Court reiterated the same view and observed as follows:

"75. 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."

25. Thus, the judgment of acquittal is to be interfered with only for compelling and substantial reasons. In case the impugned judgment is unreasonable, it would be a compelling reason for interference. Still, where there is no perversity in the finding of the impugned judgment of acquittal, the appellate Court must not take a different view only because another view is possible. This is because the trial Court has the privilege of seeing the



demeanour of witnesses and, therefore, its decision must not be upset in the absence of strong and/or compelling grounds.

26. After perusing the impugned judgment and material available on record and considering the medical evidence and material contradictions in the testimonies of PW-13 child victim, which do not inspire confidence, this Court does not find it appropriate to interfere with the well-reasoned judgment delivered by the trial Court.

27. Given the above, we do not find any illegality or perversity in the findings recorded by the trial Court. Therefore, the application seeking a grant of leave to appeal is dismissed.

28. All pending miscellaneous application(s), if any, also stand disposed of.

(DEEPAK MANCHANDA)
JUDGE

(ANUPINDER SINGH GREWAL)
JUDGE

08.07.2025

vanita/sapna

Whether speaking/reasoned:	Yes	No
Whether Reportable:	Yes	No