

Court No. - 40

Case :- GOVERNMENT APPEAL No. - 2705 of 2017

Appellant :- State Of U.P.

Respondent :- Anil

Counsel for Appellant :- G.A.

Hon'ble Bala Krishna Narayana, J.

Hon'ble Arvind Kumar Mishra-I, J.

Heard learned AGA for the appellant- State of U.P.- and perused the record as available on the file.

By way of instant Government Appeal the appellant (State) is seeking leave to appeal against the judgment and order of acquittal dated 10.02.2017 passed by Additional Sessions Judge (Fast Track Court), court no.03, Bulandshahr in **Sessions Trial No.768 of 2014** (State of U.P. versus Anil) by which the accused-respondent was acquitted of the charges levelled against him under Sections 363, 366 and 376 IPC.

Relevant facts as discernible from the record giving rise to this appeal appear to be that informant- Rashid son of Rahimuddin r/o Chndiyna, P.S. Narsaina, district Bulandshahr lodged the written report, which is scribed by Mohd. Faizi Khan son of Yakub Ali Khan on 12.06.2014 to the Incharge of police outpost Bangrasi, police station Narsaina, district Bulandshahr alleging therein, inter allia, that her sister- Anjum- aged

about 16 years had gone to purchase medicine from home around 2.00 P.M. on 06.06.2014, when the accused Anil son of Chatar Singh at floor mill of Kallan enticed her away. Accused was sighted while going with his sister by Sajid son of Wahid Khan of his village. In order to avoid his family being defamed, the informant kept quiet and did not tell this incident to anyone in the village, but he kept on searching for his sister. This report is noted at case crime no.50/107 of 2014, under Sections 363, 366 IPC on 12.6.2014 at 17.00 hours.

The investigation ensued and the girl was recovered on 13.06.2014 by the police, whereupon her statement under Section 164 Cr.P.C. was recorded and on the basis of her statement Section 376 IPC was added in the case. The Investigating Officer recorded the statement of the prosecution witnesses and also arrested the appellant and after completion of the investigation submitted charge- sheet against the appellant under aforesaid sections of the Indian Penal Code i.e. 363, 366, 376 IPC.

Thereafter, committal proceedings took place and the case was committed to the sessions court, from where it was transferred to the concerned court below, after allotting Sessions Trial No.768 of 2014.

The learned trial Judge after hearing the prosecution and the accused on point of charge was prima-facie satisfied with the case against the accused, therefore, framed charges against the accused under the aforesaid Sections of Indian Penal Code. Charges were read over and explained to the accused, who abjured the charges and opted for trial.

In order to substantiate the charges against the accused, prosecution examined six witnesses. P.W.1 Rashid is informant of this case and brother of the victim. P.W.2 Sajid is the only eye-witness of scene of taking away of the victim in company with the accused. P.W.3 Anjum is the victim of the incident in question. P.W.4 Dr. Peetam Singh is the doctor witness. P.W.5 Dr. Madhu Sharma is also a doctor witness. P.W.6 Neeraj Kumar is the Investigating Officer of this case.

It is also evident from the record that during the trial and/or investigation a number of papers were proved i.e., written report Exhibit Ka-1, statement of the victim under Section 164 Cr.P.C. Exhibit Ka-2, Pathology report of the victim Exhibit Ka-3, medical examination report of the victim Exhibit Ka-4 and Ka-5, Spot map of the incident Exhibit Ka-6, recovery report of victim Exhibit Ka-7, site plan of the recovery of the victim Exhibit Ka-

8, General Diary of added Section 376 IPC Exhibit Ka-9, Charge-sheet Exhibit Ka-10, Check FIR Exhibit Ka-11 and G.D. entry Exhibit Ka-12.

Thereafter, evidence for the prosecution was closed and statement of accused recorded under Section 313 Cr.P.C., wherein accused claimed to have been falsely implicated in the case on account of inter-state religion and caste. He has also stated in this statement that victim herself married him of her own will in Delhi, and in support thereof, he has produced Marriage Certificate dated 10.04.2014 vide list no.17B and 18B and report No.19B and Photographs.

Thereafter, the evidence for defence was closed and, the trial court after considering the case on its merit and appraisal of facts and circumstances of the case, and evaluation of testimony returned finding of acquittal against the accused.

Consequently, this Government Appeal.

Heard learned AGA for the State and perused the impugned judgment of acquittal dated 10.02.2017.

Learned AGA on behalf of the State submits that the trial court has not properly

appreciated the evidence for the prosecution and has decided the case only on the basis of conjectures and surmises. He also submits that impugned judgment and order of acquittal of the accused-respondents is not sustainable in the eyes of law and as such the same is liable to be set-aside by this Court.

The moot point involved for consideration of this appeal relates to fact whether the finding of acquittal recorded by the trial court is erroneous and perverse, as alleged by the appellant?

From perusal of the record, it transpires that in her statement under section 164 Cr.P.C. the victim has herself conceded her age to be 20 years which is corroborated in the medical report of C.M.O. Bulandshahr dated 17.6.2014, wherein age of the victim is found to be 20-21 years. Besides, on the application dated 18.6.2014 for taking of custody of the victim moved by Rashid- brother of the victim, the Additional Chief Judicial Magistrate Court No. 3, Bulandshahr passed the order dated 18.6.2014 rejecting the aforesaid application treating the victim as major and directing that she (victim) can go on her sweet will anywhere she

likes. Therefore, the trial court rightly acquitted the accused of the charge under section 363 I.P.C. So far offence under section 366 I.P.C. is concerned, the same is also not made out in view of the fact that the report lodged by P.W.1 Rashid on the basis of information given by Sajid P.W. 2, It has emerged in the statement of P.W.1 Rashid that he had knowledge of the fact that his sister (victim) got married on her own sweet- will with the accused respondent and he has also recognized photograph of his sister-victim and accused respondent where the accused respondent was offering sweets to the victim. The P.W. 1 has admitted that since the family members of the victim was annoyed with the marriage of victim and accused respondent, therefore, P.W. 1 Rashid lodged the first information report.

It has also come in the statement of P.W. 2 Sajid that he received hearsay information in regard to the unopposed marriage of victim and accused respondent on basis in the village.

In so far as statement of P.W. 3 Anjum victim is concerned, it emerges out categorically that she visited at different places along with the accused respondent without any protest and complaint to any one. In this back drop of

the case, the benefit of doubt was accorded to the defence side and prosecution story was disbelieved. The learned A.G.A. failed to point out any illegality or infirmity in the findings so recorded by the court below. Thus, the court below has rightly acquitted the accused respondent of the charges levelled against him.

Thus, it cannot be said that the view taken by the trial judge is either perverse or unreasonable. Simply because another view might have been taken, provides no good ground for interfering with the order of acquittal unless the view taken by the trial Judge is not a possible view on the material available on record. The court below has given cogent, convincing and satisfactory reasons while passing the impugned judgement and order of acquittal. .

We, after comprehensive scrutiny of both facts and law involved in this case, do not consider it to be a fit case for grant of leave to appeal to the applicant. The application seeking leave to appeal is, refused.

Consequently the appeal is also dismissed.

Order Date :- 30.5.2017
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