SUPREME COURT OF INDIA

Prem Kaur

Vs.

State of Punjab & Ors.

Crl.A.No.1364 of 2008

(B.S. Chauhan and Fakkir Mohamed Ibrahim Kalifulla JJ.)

25.04.2013

ORDER

B.S. Chauhan, J.

1. This appeal has been preferred against the judgment and order dated 21.8.2006 in Criminal Revision No. 392 of 2001 passed by the High Court of Punjab and Haryana at Chandigarh, by way of which it has dismissed the revision petition and affirmed the judgment and order of acquittal of respondents-accused in Sessions Case No. 9 of 1995/2000 dated 7.6.2000 of the charges punishable under Sections 148, 323, 149, 363, 376, 342 and 506 Of Indian Penal Code, 1860 (hereinafter referred to as the 'IPC').

2. Facts and circumstances giving rise to this appeal are that:

A. On 7.2.1995, the appellant, a labourer by occupation was dragged by the respondents-accused into their car and taken to Dera Khushian Dass at village Thatha. She was beaten by the respondents and was forced to keep mum and sign certain papers. Baba Jagir Singh (now dead) raped the appellant. Thereafter, she was raped by respondent Nos. 3 and 4 herein, also. The appellant was mal-treated to the extent that one lady at Dera, namely Sawinder Kaur put chilly powder in her private parts and she was detained in the room.

B. On 8.2.1995, appellant's husband came with several persons and rescued her from the Dera. She was taken to the Civil Hospital, Tarn Taran in unconscious state and the police was informed.

C. The appellant regained consciousness only on 9.2.1995. Her statement was recorded by the Sub-Inspector, Kabala Singh (PW-13) on the same day. He appellant was then pressurized by the respondents to compromise and they tried to hush up the

matter and even produced a signed agreement of compromise. In view thereof, the police refused to register the FIR on 9.2.1995. It was only at the instance of the appellant that an FIR could be lodged on 10.2.1995 at Tarn Taran Police Station.

D. After investigation, the chargesheet was submitted against the respondents-accused for the offences punishable under sections referred to hereinabove, and the case was committed to the Sessions Court. The Trial Court vide its judgment and order dated 7.6.2000 acquitted all the accused persons on the ground that there was delay in lodging the FIR and the prosecution could not explain the same, though the compromise deed was filed but the court could not consider it, as the offences were not compoundable. The Trial Court was swayed by the fact that the father and son cannot rape a woman together.

E. Aggrieved, the appellant preferred the Criminal Revision No. 392 of 2001 before the High Court and the same stood dismissed vide its judgment and order dated 21.8.2006. Hence, this appeal.

3. This Court was not satisfied with the judgments and orders of the courts below. Since the appellant could not furnish the copies of the statements of all the witnesses, this court vide order dated 2.4.2013 directed the counsel appearing for the State to file two sets of the depositions of the prosecution witnesses and defence witnesses, if any. However, the said order has not been complied with for the reasons best known to the State authorities.

4. The Trial Court recorded a finding that the prosecution had failed to explain the inordinate delay in lodging the FIR, as the incident occurred on 7.2.1995, three days before the FIR was lodged. The appellant- prosecutrix herself had given a version, furnishing complete explanation for the delay. The so-called compromise deed was also placed on record. Appellant had also deposed that when she regained her consciousness, her statement was recorded by the Sub-Inspector on 9.2.1995. The same had been admitted by Shri Kabala Singh (PW-13).

5. The Trial Court took note of the contentions raised by the learned counsel for the parties upto paragraph 9, and thereafter dealt with the entire case in just one paragraph i.e. paragraph 10.In that paragraph also, the learned Trial Court, made a passing reference to the statement of the prosecutrix, or to those of any other witness but failed to appreciate the same properly.

6. The Trial Court took note of the statement of Dr. Tejwinder Singh (PW-1), with respect to the injuries that were found on the person of the prosecutrix, which read as under:

> "1. An abrasion 5x5 inch on the right iliac bone, radish blue in colour. No fresh bleeding was seen.
>
> 2. A defused swelling 3x3 inch on the head in the region of right parietal bone. Underlying bone was found intact. Injury was kept under observation.

3. An abrasion 5x5 inch on the outer side of left elbow joint.

4. Complaint of pain in the abdomen, injury was kept under observation.

5. Complaint of difficulty in swallowing and speech allegedly due to attempt to strangulate. For opinion of ENT Specialist.

6. As alleged by the complainant that she had been raped, so Opinion of the Gynecologist was sought."

Dr. Karnail Kaur (PW-9), who had also examined the appellant observed:

"(i) Dirty blood stained discharge was coming out of vagina.

ii. The introitus was tender and at 6'o clock position there was present a small laceration.

ii. The examining fingers were stained with blood stained discharge.

ii. In my opinion I cannot rule out the possibility of Sexual intercourse."

7. The Trial Court further referred to the statement of the Doctor (PW- 9) as under:

"Dr. Karnail Kaur (PW-9) who medically examined Prem Kaur on 9.2.95, found abrasion 5x5 cm on the outer side of the left iliac rest...the vagina of the prosecutrix admitted two fingers. Dirty blood stained discharge was coming out of the vagina."

The Trial Court acquitted all the accused giving reasons as under:

"There is no cogent evidence that the prosecutrix was raped by the accused, Baba Jagir Singh and his son Karaj Singh and Jagtar Singh. It is not possible that father and son will commit the rape at the same time."

(Emphasis added)

8. When the matter came up before the High Court, the High Court also did not show any sensitivity, and did not consider the gravity of the charges levelled against the accused persons. It was thus persuaded only by the circumstance, that the State had not filed the appeal against the order of acquittal passed by the Trial Court. No other reasons were given by the High Court, while dealing with the revision. Further, the High Court had without examining any medical report, gone to the extent of stating that the prosecutrix had no injury upon her person whatsoever, though the finding is admittedly contrary to the evidence on record.

9. We have considered the rival submissions made by learned counsel for the parties, but had no occasion or opportunity to examine the evidence, as the State for the reasons best known to it, did not ensure compliance of the order passed by this court on 2.4.2013, nor the State had preferred any appeal in the High Court against the order of acquittal by the Trial Court, nor it has rendered any assistance before this Court. Thus, the State authorities have taken a complete indifferent attitude towards the appellant, for the reasons best known to it.

10. The findings recorded by the courts below may be perverse for the reasons that the Trial Court did not record any sound reasoning for acquittal, though it had been the case of the prosecutrix that she remained hospitalised. She had deposed in court that she had been subjected to the aforesaid crime. The High Court had also been swayed by the reasoning recorded by the Trial Court without making much effort to find out the truth in the case.

11.In *H.B. Gandhi & Ors. v. Gopi Nath & Sons,*[1] *1992 Supp. (2)SCC 312*, this Court held that if a finding of fact is arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant material or if the finding so outrageously defies logic as to suffer from the vice of irrationality incurring the blame of being perverse, then, the finding is rendered infirm in law.

12. In *Triveni Rubber & Plastics v. Collector of Central Excise, Cochin*[2]*, AIR 1994 SC 1341*, this Court held that an order suffers from perversity, if relevant piece of evidence has not been considered or if certain inadmissible material has been taken into consideration or where it can be said that the findings of the authorities are based on no evidence at all or if they are so perverse hat no reasonable person would have arrived at those findings.

13.In *Kuldeep Singh v. Commissioner of Police & Ors*[3]*., AIR 1999 SC 677*, this29/04/2013 Court while re-iterating the same view added that, if there is some evidence on record which is acceptable and which could be relied upon, howsoever, compendious it may be,

the conclusions would not be treated as perverse and the findings would not be interfered with.

14. In *Gaya Din & Ors. v. Hanuman Prasad & Ors*[4]*., AIR 2001 SC 386* this Court further added that an order is perverse, if it suffers from the vice of procedural irregularity.

15. In *Rajinder Kumar Kindra v. Delhi Administration*[5]*, AIR 1984 SC 1805*, the Court while dealing with a case of disciplinary proceedings against an employee considered the issue and held as under-

> "It is equally well-settled that where a quasi-judicial tribunal or arbitrator records findings based on no legal evidence and the findings are either his ipse dixit or based on conjectures and surmises, the enquiry suffers from the additional infirmity of non-application of mind and stands vitiated. ....they disclose total non-application of mind.... The High Court, in our opinion, was clearly in error in declining to examine the contention that the findings were perverse on the short, specious and wholly untenable ground that the matter depends on appraisal of evidence."

16. This Court in *Satyavir Singh v. State of Uttar Pradesh*[6], *(2010) 3 SCC 174*, held :

> "'Perverse' was stated to be behaviour which most of the people would take as wrong, unacceptable, unreasonable and a 'perverse' verdict may probably be defined as one that is not only against the weight of the evidence but is altogether against the evidence. Besides, a finding being 'perverse', it could alsosuffer from the infirmity of distorted conclusions and glaring mistakes."

17. If the judgments of the courts below are examined in the light of the aforesaid settled legal proposition, the same have to be labeled as suffering from perversity.

18. The Trial Court did not decide the case giving adherence to the provisions of Section 354 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the 'Cr.P.C.'). The said provisions provide for a particular procedure and style to be followed while delivering a judgment in a criminal case and such format includes a reference to the points for determination, the decision thereon, and the reasons for the decision, as pronouncing a final order without a reasoned judgment may not be valid, having sanctity in the eyes of the law. The judgment must show proper application of the mind of the Presiding Officer of the court, and that there was proper evaluation of all the evidence on record, and the conclusion is based on such appreciation/evaluation of evidence. Thus, every court is duty bound to state reasons for its conclusions.

19. In *State of Punjab v. Jagir Singh Baljit Singh & Karam Singh*[7]*, AIR 1973 SC 2407*, this Court held as under:

> "A criminal trial is not like a fairy tale wherein one is free to give flight to one's imagination and phantasy. It concerns itself with the question as to whether the accused arraigned at the trial is guilty of the crime with which he is charged. Crime is an event in real life and is the product of interplay of different human emotions. In arriving at the conclusion about the guilt of the accused charged with the commission of a crime, the court has to judge the evidence by the yardstick of probabilities, its intrinsic worth and the animus of witnesses. Every case in the final analysis would have to depend upon its own facts. Although the benefit of every reasonable doubt should be given to the accused the courts should not at the same time reject evidence which is ex facie trustworthy on grounds which are fanciful or in the nature of conjectures."

20. In *Mukhtiar Singh & Anr. v. State of Punjab*[8]*, AIR 1995 SC686*, this Court emphasised on the compliance of the statutory requirement of Section 354 Cr.P.C., observing as under:

> "Same is far from satisfactory. Both, the order of acquittal as well as the order of conviction, have been made by the trial Court in a most perfunctory manner without even noticing much less, considering and discussing the evidence led by the prosecution or the arguments raised at the bar....It was in paragraphs 28 to 32, noticed above, that the orders of acquittal and conviction were made. The trial Court was dealing with a serious case of murder. It was expected of it to notice and scrutinize the evidence and after considering the submissions raised at the bar arrive at appropriate findings..... There is no mention in the judgment as to what various witnesses deposed at the trial, except for the evidence of the medical witness. The judgment does not disclose as to what was argued before it on behalf of the prosecution and the defence. The judgment is so infirm.....The trial Court appears to have been blissfully ignorant of the requirements of Section 354(i)(b) Cr. P.C. Since, the first appeal lay to this Court, the trial Court should have reproduced and discussed at least the essential parts of the evidence of the witnesses besides recording the submissions made at the bar to enable the appellate Court to know the basis on which the 'decision' is based. A 'decision' does not merely mean the 'conclusion' - it embraces / within its fold the reasons which form the basis for arriving at the 'conclusions'. The judgment of the trial Court contains only the 'conclusions' and nothing more. The judgment of the trial Court cannot, therefore, be sustained. The case needs to be remanded to the trial Court for its fresh disposal by writing a fresh judgment in accordance with law."

(Emphasis added)

21. Thus, in view of the above, the law can be laid down that the court must give reasons for reaching its conclusions. The courts below have dealt with the matter in a very summary fashion. The statements of reasons, for the conclusion reached by them, which could have been more enlightening, are missing. The judgments of the courts below do not comply with the requirement of the statutory provisions as laid down in Cr.P.C. The view taken by the courts below is manifestly unreasonable and has resulted in miscarriage of justice.The courts ought not to have given the defective and cryptic judgment. In fact it is no judgment in the eyes of the law. We are not in a position to judge the correctness, legality and propriety of the findings recorded by the courts below. The absence of sound reasons is not a mere irregularity, but a patent illegality.

22. We are aghast at the judicial insensitiveness shown by the Trial Court, and we find it no less, at the level of the High Court. The view taken by the Trial Court, that the father and son cannot rape a victim together, may in itself cannot be a ground of absolute improbability, however, it may fall within the realm of rarest of rare cases. Whether the allegation is correct or not, has to be examined on the basis of the evidence on record and such an issue cannot be decided merely by observing that it is improbable.

23. We cannot approve the manner in which the courts below dealt with the case. The appeal succeeds and is allowed. Thus, the judgments of the courts below are set aside and the case is remanded to the Trial Court to decide afresh on the basis of the evidence/material on record.

24. In light of the facts and circumstances of the case, the Trial Court will hear the arguments advanced from both sides, and deal with each and every piece of evidence, taking into consideration the defence taken by the accused persons, in their respective statements under Section 313 Cr.P.C., and record findings, in accordance with law. The case shall be decided by the Trial Court within a period of 3 months from the receipt of the certified copy of this order. However, before parting with the case, we make it clear that no observation made in this order shall be taken into consideration by the Trial Court, as we have expressed no opinion on the merits of the case.