2025 INSC 1061

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. /2025
(arising out of SLP(Crl.) No. 18377 of 2024)

SUSHIL KUMAR TIWARI ….APPELLANT

VERSUS

HARE RAM SAH & ORS. ….RESPONDENT(S)

J U D G M E N T

SATISH CHANDRA SHARMA, J.

1. Leave granted.

2. The struggle for sensitivity towards offences against women, children and other marginalized groups passes through various phases of evolution. Whereas, the end goal is most desirable, the journey is not always a pleasant one. At times, the victims find themselves pitched against a system full of

insensitive stakeholders and at other times, the victims find themselves in conflict with the procedural intricacies of the laws in place. Despite the importance of procedural sanctity, it is always a matter of utter failure for the system as a whole when a culprit, that too of a heinous sexual offence, manages to walk free by entangling the victim in misapplication of procedural rules, without the knowledge of the victim and without any control of the victim. The present case presents one such illustration from a place called Piro, District Bhojpur, Bihar.

3. In 2016, a few months after the festival of Holi, the victim - *the appellant's daughter* – started feeling unwell. Upon finding that her health was constantly deteriorating, the appellant's wife took their daughter to her native place in Ballia, Uttar Pradesh for treatment. There, she was taken to Zila Mahila Chikitsalaya on 01.07.2016 and upon examination, the victim was found to be 3 months pregnant. Upon questioning, she disclosed that she was raped by the respondents, namely, Hare Ram Sah and Manish Tiwari about 3-4 months ago, sometime after the festival of Holi. On the strength of this disclosure, the appellant lodged a complaint at PS Piro, District Bhojpur, Bihar on 02.07.2016, which culminated into FIR/Criminal Case No. 209/2016. Investigation commenced and chargesheet was filed in the concerned Court.

4. After trial, Learned Additional District & Sessions Judge-cum-Special Judge, POCSO Act, Bhojpur at Ara found the Respondent Nos. 1 and 2 guilty for the commission of offences under Sections 376(2) of Indian Penal Code, 1860[1], and Sections 4 & 6 of Protection of Children from Sexual Offences (POCSO) Act, 2012[2]. For the commission of the offence under Section 376 IPC, the Respondent Nos. 1 and 2 were sentenced to undergo rigorous life imprisonment along with a fine of Rs. 50,000/- each. In default of payment of fine, additional sentence of imprisonment for one year was imposed. For the commission of the offence under Section 6 of POCSO Act, the Respondent Nos. 1 and 2 were sentenced to undergo rigorous life imprisonment along with a fine of Rs. 25,000/- each. In default of payment of fine, additional sentence of imprisonment for one year was imposed. For the commission of the offence under Section 4 of POCSO Act, the Respondent Nos. 1 and 2 were sentenced to undergo rigorous imprisonment of 7 years along with a fine of Rs. 10,000/- each. In default of payment of fine, additional sentence of imprisonment for three months was imposed. The sentences were directed to run concurrently.

[1] *Hereinafter referred as "IPC"*
[2] *Hereinafter referred as "POCSO Act"*

IMPUGNED JUDGMENT

5. In appeal, the High Court examined the entire evidence on record and came to the conclusion that the prosecution did not succeed in proving the case against the Respondent Nos. 1 and 2. In doing so, the High Court primarily found the following infirmities in the prosecution case:

i. The date and time of the alleged incident were not proved;

ii. The determination of age of the victim was not carried out;

iii. No proof of abortion of the victim was placed on record;

iv. The charge was not framed properly as it recorded the date as 02.07.2016, whereas the incident was reported on 01.07.2016 and offence was committed 3-4 months prior to its reporting;

v. The Trial Court committed an error in conducting the joint trial of the Respondent Nos. 1 and 2, despite the case not falling within the conditions stipulated in Section 223 of the Code of Criminal Procedure, 1973[3] for conducting joint trial. The

[3] *Hereinafter referred as "Cr.P.C."*

High Court observed that the trial was bad in law, as the Respondent Nos. 1 and 2 were accused of committing different offences committed at different points of time, and the joinder of trial had caused grave prejudice to them and led to miscarriage of justice.

6. The High Court emphasized that in addition to the procedural infirmities that resulted from the non-compliance of Section 223 Cr.P.C., there were major inconsistencies in the deposition of prosecution witnesses. However, it clarified that the conviction was not set aside solely due to procedural lapses. The relevant para reads thus:

> *"42. As per the principles laid down by the Hon'ble Supreme Court, and the two pronged test satisfies this case that the joint trial conducted has prejudiced the defence of the accused and has successfully proven to cause a miscarriage of justice. In view of the aforesaid facts and circumstances of the present case, we are of the view that the prosecution has failed to prove the case on various grounds. The conviction of the present appellants is not being set aside on the mere ground that the procedure of Section 223 of the Code has not been adhered to but there are numerous laches on the part of the prosecution in proving the case beyond reasonable doubt. The learned Trial Court has also failed to consider the fact that Section 223 was applicable in this matter, but the same has not been considered in this case*

and the appellants have been tried jointly, causing prejudice to the appellants, despite which, the learned Trial Court has recorded the impugned judgment of conviction and the order of sentence. As such, the same are required to be quashed and set aside."

THE CHALLENGE

7. Taking exception to the impugned judgment, Learned Counsel on behalf of the appellant submits that the High Court fell in a grave error in concluding that prejudice was caused to the Respondent Nos. 1 and 2 due to non-compliance of Section 223 Cr.P.C. He submits that the ground qua non-compliance of Section 223 was never taken by the Respondent Nos. 1 and 2 and the High Court examined the same on its own. To buttress the submission, it is submitted that even if Section 223 was not complied, it did not cause any prejudice to the Respondent Nos. 1 and 2 and they had sufficient opportunity to participate and defend themselves during the trial.

8. It is further submitted that the age of the victim was established to be under 18 years without any doubt, on the strength of the school transfer certificate, statement of the victim under Section 164 Cr.P.C. and the medical report dated 01.07.2016. It is further submitted that there was no reason to doubt the testimony of the victim and in a case of this nature, the testimony of the victim could form the sole basis of conviction.

It is further submitted that the aspects of pregnancy and abortion were duly proved in the case on the basis of the medical reports and abortion papers.

9. It is further submitted that there was no enmity between the victim and the Respondent Nos. 1 and 2 and thus, there was no motive to implicate the Respondent Nos. 1 and 2. It is further submitted that even if the High Court had found any procedural irregularity, it ought to have remanded the matter back for fresh adjudication instead of acquitting the Respondent Nos. 1 and 2. To buttress, it is submitted that the impugned decision completely disregarded the rights of the victim.

10. Per contra, the respondents advanced submissions in support of the impugned decision. On their behalf, it is submitted that the investigation was carried out in a completely casual and negligent manner and the same cause prejudice to the Respondent Nos. 1 and 2. The submissions draw attention to the aspects of age determination, absence of proof of pregnancy and abortion, lack of investigation qua the date, time and place of the incidents, etc. It is further submitted that the charges framed by the Trial Court were defective and the entire trial was conducted on the basis of defective charges, thereby disentitling the Respondent Nos. 1 and 2 from a fair participation.

11. It is further submitted that the Trial Court conducted a joint trial of the Respondent Nos. 1 and 2 in utter violation of Section 223 Cr.P.C. and without fulfilment of the conditions contemplated thereunder. It is further submitted that even at the stage of Section 313 Cr.P.C., the incriminating evidence was not put properly to the Respondent Nos. 1 and 2 and consequently, the Respondent Nos. 1 and 2 were prevented from explaining the evidence against them in a proper manner. Further, it is submitted that the version of the prosecution witnesses, especially that of the victim, was not consistent and the Trial Court committed an error in placing reliance upon their testimonies. It is further submitted that the defence witnesses presented a valid defence and the same out to have been considered.

12. Both the parties have filed written submissions and compilation of judgments in support of their case. We have considered the same.

DISCUSSION

13. We have carefully considered the contentions advanced by the parties, impugned judgment, judgment of the Trial Court and the decisions relied upon by the parties. In light of the controversy involved in the matter, the following two issues arise for our consideration:

i. Whether the High Court fell in a grave error in acquitting the Respondent Nos. 1 and 2 by holding that the prosecution failed to discharge its evidentiary burden as the evidence led by the prosecution was full of inconsistencies and contradictions?

ii. Whether the High Court erred in its finding that the trial was carried out in violation of Section 223 Cr.P.C. and non-adherence to the same had caused prejudice to the Respondent Nos. 1 and 2, thereby leading to miscarriage of justice?

14. We may first consider the issue regarding inconsistencies and contradictions in the prosecution evidence, which would require some degree of examination of the evidence on record. At the outset, it needs to be noted that the High Court has outlined a few specific issues in the case i.e. victim's age, date and time of the incident, proof of pregnancy and abortion, and delay in lodging the FIR.

15. Before appreciation of evidence led on these aspects, we may first traverse through the testimony of the victim, examined before the Trial Court as PW-2, in order to understand the precise allegations. After the discovery of pregnancy, PW-2 deposed that the incident took place in 2016, a few days after the festival of

Holi. She deposed that one afternoon, her mother and father were not at home and she was sleeping alone in the house. Respondent No. 2 Manish Tiwari entered the house and raped her, and before leaving, he threatened her saying that should she tell anyone about it, she would be killed. Two or three days after this incident, the victim went near Shivala in the evening hours to look for her brother Himanshu. On the way, she passed respondent No. 1 Hare Ram Sah's room and inquired if he had seen her brother. The said respondent pointed towards an inner room (used as coaching center) and suggested to the victim that her brother had gone in that direction. She went to check inside the room and found no one there. At the same time, Hare Ram Sah came from behind and grabbed her. She deposed that he took her inside and raped her. He also threatened her by saying that should she tell anyone about it, she would be killed. The victim further deposed that she got scared and told no one about it. The story does not end here. She further deposed that after this incident, for two-three successive months, the Respondent Nos. 1 and 2 took turns and raped her multiple times. Thereafter, she fell sick and started experiencing stomach pain and vomiting. She informed her mother and her mother firstly took her to a doctor in Ara. Despite administration of medicines, her health did not improve. Thereafter, the victim was taken to her maternal uncle's house in Ballia, Uttar Pradesh, where an ultrasound was

conducted and the pregnancy was discovered. It is noteworthy that the statement of the victim recorded by the police, statement recorded by the concerned Magistrate under Section 164 Cr.P.C. and the deposition recorded in the Court, are fairly consistent. There appears to be no variance insofar as the material aspects of the offence are concerned.

16. As regards the first issue concerning the age of the victim, it is quite understandable that for an offence under the POCSO Act, the victim must be aged under 18 years. In order to prove so, the prosecution has relied upon both oral and documentary evidence. The oral testimony of the mother of the victim, examined before the Trial Court as PW-3, reveals that the victim was 12 years old at the time of incident. Further, the statement of victim under Section 164 Cr.P.C. also bears an endorsement regarding her age. The concerned ACJM, examined as PW-4, has recorded her age as 13 years. The father of the victim, examined as PW-5, has deposed that the victim's age at the time of incident was 12 years. Insofar as the documentary evidence is concerned, the Transfer Certificate (Annexure P-10) issued by the government school attended by the victim records her date of birth as 03.10.2004, thereby meaning that during the concerned time-frame of the year 2016, the victim was around 12 years old. The medical report dated 01.07.2016 (Annexure P-1) is also relevant on this aspect. The said medical report pertains to the

ultrasound examination of the victim and records her age as 15 years.

17. It cannot be denied that there are slight variations in the age of the victim at the relevant point of time, as discernible from the oral and documentary evidence. However, we do not find ourselves in agreement with the High Court that the age was not proved during trial. The oral testimonies of PW-3, PW-5 and PW-6 are consistent *inter-se* as well as with the Transfer Certificate issued by the government school. The age of the victim appears to be within the range of 12-13 years at the relevant point of time. The medical report records the age as 15 years. However, we cannot lose sight of the fact that the age of the victim was not challenged during cross-examination of any of the witnesses mentioned above. Their testimonies, on the point of age, have largely remained unrebutted, thereby meaning that the Respondent Nos. 1 and 2 had no claim that she was not a minor at the relevant point. We do not mean to say in cases involving POCSO Act or Juvenile Justice (Care & Protection) Act, 2015, the determination of age is not required. Most certainly, the determination of minority is essential to extend the protection of these legislations, however, as long as the age conclusively appears to be under 18 years, the special protections carved out in favour of children cannot be diluted by insisting upon a rigid determination of the age, that too when it was not even

questioned at the right time. In the present case, even if it is believed that the age of the victim was not determined to the hilt, the Trial Court had concluded that the victim was aged between 12 to 15 years at the relevant point of time and thus, was a minor. Thus, it could not be stated that the Trial Court had not determined the minority of the victim. It was done and, in our opinion, rightly so, on the basis of the unrebutted oral and documentary evidence.

18. Interestingly, the Respondent Nos. 1 and 2 neither claimed that the victim was not a minor at any point of time nor led any evidence to that effect. We find that the High Court has erred in raising a doubt where none existed, even *inter-se* the parties to the case. We are also of the opinion that once the minority of the victim was beyond doubt, the special protection of POCSO Act ought not to have been diluted by raising a fictious doubt regarding the precise age of the victim. For, the Courts must remain alive to the socio-economic circumstances of the victims, especially those who are based in remoter regions of the country. In rural regions, discrepancies in the educational and identification documents are not unknown and, in such circumstances, the Courts must be sensitive to the ground realities of the society, so as to ensure that the intent of the law is not suppressed and protections created by the legislature reach the intended persons in their right spirit.

19. As regards the issue regarding date and time of the incident, the High Court has observed that the prosecution had failed to prove the date and time of the offence. In order to examine this aspect, we must appreciate the circumstances in which the offence was committed and discovered. The main witness pertaining to the commission of the offence is the victim herself, examined as PW-2. She has expressed the entire chain in a consistent manner and her version is also consistent with other PWs. She has deposed that the offence took place in the days following the festival of Holi and the same is corroborated by the medical report dated 01.07.2016, which indicates that she was 3-4 months pregnant as on 01.07.2016. The medical report corroborates the time frame stated by the victim. Further, as regards the time, the victim has deposed that the first incident took place during the afternoon and the second incident took place in the evening. Importantly, it is not a case wherein the victim reported the offence immediately after its commission. The victim was scared to report the incident to anyone as she was threatened by the Respondent Nos. 1 and 2 and probably, if not for the pregnancy and deterioration of health, she would not have reported either. Therefore, the inability of the victim, a minor girl, to recollect the precise time and date of the offence is completely natural. Furthermore, the victim has specified the places used for the commission of the alleged offence, including her house and

coaching center of Respondent No. 1-Hare Ram Sah, and has also correctly identified both the respondent Nos. 1 and 2. during trial. Therefore, the victim has deposed in a completely natural manner and her inability to depose about some facts in precise terms is not only natural, but is also inconsequential as the medical report has corroborated the time-frame of the offence. The testimony of the victim is fairly consistent and there is no reasonable ground to doubt the same. Moreover, this deficiency has not caused any prejudice to the Respondent Nos. 1 and 2.

20. As regards the proof of pregnancy and abortion, we find that the High Court has fell in a grave error by failing to acknowledge the evidence on record. The medical report dated 01.07.2016 categorically indicates that at the time of ultrasound, the victim was 15 weeks pregnant. In the subsequent examination conducted on 02.07.2016 at Ara, the victim was again found to be 16 weeks pregnant and in support of the same, PW-7 has deposed before the Trial Court. No infirmity has been pointed out in the examination of PW-7. The factum of abortion has been proved on the basis of the medical documents/Discharge Ticket dated 30.07.2016 issued by Sadar Hospital, Ara. Further, the Trial Court has noted that the letter dated 28.07.2016 bearing Letter No. 60/BSLSA/AccT/2472 issued by the Bihar State Legal Services Authority indicated that the victim's father had sought permission for her abortion. The said letter is Annexure P-4 and

it aligns with the observation of the Trial Court. It is also averred that abortion was conducted after the constitution of medical board by the Executive Chairman, BSLSA, Patna High Court, a fact which has not been disputed. Thus, it appears preposterous to hold that the prosecution could not prove the elements of pregnancy and abortion. There is ample documentary and oral evidence to prove these elements and we feel that the High Court has overlooked relevant evidence in arriving at its finding. This fact was duly proved in the common course of natural events, but the natural events were overlooked.

21. As regards the delay in lodging the FIR, we feel that the same has been appropriately explained. The incident came to light only after the ultrasound conducted on 01.07.2016 and the FIR was lodged on the very next day. Before the discovery of offence, the delay of 3-4 months was a consequence of the intimidation made by the Respondent Nos. 1 and 2, which prevented the victim from opening up before her parents. It is completely natural and understandable. We do not find that the victim could be faulted in any manner on account of delay.

22. On an examination of the concerns, which formed the basis of the impugned decision, we are of the view that undue emphasis has been laid on these aspects by the High Court. One of the foremost principles of appreciation of evidence is that natural

variations, errors and inconsistencies are not to be elevated to the standard of a reasonable doubt or to hold that the prosecution has failed. There is nothing like perfect evidence in a Court and in fact, perfection is often suggestive of tutoring and manufacturing of evidence. The availability of evidence as well as the quality of evidence are not open to judgment on any pre-determined parameters. For, these aspects not only depend upon the quality of investigation but also upon the societal circumstances prevalent in the area of crime. They also depend upon the level of awareness, not only of the persons involved in the case but also of the members of the locality who often appear as witnesses. Therefore, the Courts must be alive to the state of affairs on the ground and in that backdrop, it must examine whether the inconsistencies and gaps have been properly explained or not. If so, such inconsistencies and gaps may not affect the case of the prosecution. However, if the prosecution fails to explain the inconsistencies in its case, an adverse inference may be drawn against it.

23. Be that as it may, the present case does not fall in such category, as the prosecution witnesses have invariably deposed in support of the version put across by the victim. The medical reports and other documentary evidence have corroborated the oral statement of the victim. Moreover, the oral statement of the victim has remained fairly consistent at all levels of the

proceeding, including before the Magistrate who recorded her statement under Section 164 Cr.P.C. and the Trial Court where she was subjected to cross examination. The version of the victim has remained completely natural and consistent with the chain of circumstances of the case. Despite cross-examination, there is nothing to suggest that she is not creditworthy as a witness.

24. Having said so, we do agree that better investigation could have been conducted in the present matter on certain aspects. For instance, the accused persons ought to have been tested for DNA analysis as it could have enabled more fool-proofing of the prosecution's case. This argument has been taken by the Respondent Nos. 1 and 2 in the written submissions and reliance has been placed upon the decision of this Court in ***Krishan Kumar Malik v. State of Haryana***[4]. We have carefully considered this aspect and are of the opinion that despite this error, the case of the Respondent Nos. 1 and 2 cannot be advanced as it does not give rise to any reasonable doubt. It is so because the factual matrix of the present case is substantially distinct from that in ***Krishan Kumar Malik***. In the said case, the version of the prosecutrix was found to be doubtful as she had failed to disclose the name of the accused in the FIR, despite admitting that she knew his name. She had also failed to explain

[4] *(2011) 7 SCC 130*

the identity of the accused in an accurate manner and in fact, stated that the accused was a short-structured person, which was found to be contrary to his appearance. The prosecutrix had also concealed and falsely presented certain material aspects of the case. Thus, in this backdrop, the Court had observed that the prosecution had failed to prove the identity of the accused therein and DNA test ought to have been carried out to obtain scientific evidence of identification. However, in the present case, the victim has correctly named and identified both the Respondent Nos. 1 and 2 right from the beginning of the case. In the Trial Court as well, she had correctly identified them and no doubt qua identity was raised at that stage. On the point of identity, the victim has not even been rebutted at any stage. The Respondent Nos. 1 and 2 have not shown any circumstance which could enable this Court to raise a question on the identification of the Respondent Nos. 1 and 2 by the victim. Perhaps, there is none. Therefore, merely on account of non-availability of DNA analysis, the case of the prosecution cannot be discarded, especially because the purpose of identification has been fulfilled on the strength of other credible evidence. The reliance placed on ***Krishan Kumar Malik*** *(supra)* is, thus, wholly misplaced.

25. Another important aspect that has weighed with the High Court is the manner of framing

of charge by the Trial Court. On this aspect, the High Court has noted thus:

> *"25. The Code lays down various provisions with regard to the framing of charges against an accused. On perusal of charge sheet dated 06.12.2017, it is mentioned that the date of occurrence of the incident was on 02.07.2016, but the ferdbeyan dated 02.07.2016, states that the daughter of the informant was pregnant for three months and few days as according to the treatment of the victim which was done on 01.07.2016. Further, on perusal of the F.I.R and case diary, the statement of the victim which is in para-3 of the case diary dated 02.07.2016, she has stated that the first incident, where Manish Tiwary (appellant no. 2) raped her three to four months back during the time of Holi and after a few days, the victim stated that Hare Ram Sah (appellant no. 1) raped her while she was searching for her brother. It is factually impossible that the incident was reported on 01.07.2016 and the charge was framed for the occurrence of incident dated 02.07.2016, but the ferdbeyan and the statement of the victim itself states that the incident had occurred three to four months before the F.I.R was filed.*
>
> *26. Thus, it is clear to us that the charges framed are not in accordance with law and, thus, causing prejudice to the accused persons / appellants as mentioned in the trial court record. The framing of charge is the most basic step of the process of initiation of a trial in a criminal proceeding. Utmost care must be taken while the charges are being framed as wrong framing may lead to denial*

> *of justice. Therefore, one should abstain from wrongful framing and joinder of charges as such an inefficiency would vitiate the very basic essence of a fair trial."*

26. A perusal of the charge framed by the Trial Court in this matter reveals that the charge stated to the Respondent Nos. 1 and 2 pertained to the commission of offences "*on or about the 2nd day of July 2016*". It is an admitted position that the date of offence was a few days after the festival of Holi and 3-4 months prior to the date of discovery of the offence i.e. 01.07.2016. In fact, 2nd July, 2016 was the date of registration of FIR and the same has been put to the Respondent Nos. 1 and 2 as the date of commission of the offences. We have no doubt in observing that the charge stated to the Respondent Nos. 1 and 2 was not free from defects. Even if the exact date of commission of the offence was not known, the charge ought to have stated that the offences was committed before 2nd July 2016 and a few days after the festival of Holi, so as to correctly state the time frame. The Trial Court clearly fell in error in not doing so. However, the consequence of error or defect in charge is to be determined in a nuanced manner. Section 464 Cr.P.C. is of instructive value in this regard and it provides that no finding, sentence or order of any Court shall be deemed invalid merely on account of any error, omission or irregularity in the framing of charge, unless the

same has occasioned any failure of justice. Sub-section (1) of Section 464 Cr.P.C. reads thus:

> "***464. Effect of omission to frame, or absence of, or error in, charge.—*** (1) No finding, sentence or order by a Court of competent jurisdiction shall be deemed invalid merely on the ground that no charge was framed or on the ground of any error, omission or irregularity in the charge including any misjoinder of charges, unless, in the opinion of the Court of appeal, confirmation or revision, a failure of justice has in fact been occasioned thereby."

Thus, mere discovery of an error, irregularity or omission in the framing of charge does not *ipso facto* render the decision of the Court as invalid. In fact, even a case of non-framing of charge is not liable to be discarded on that ground alone. In order to vitiate the decision, what is necessary is the failure of justice as a result of such error or omission or irregularity. Thus, the quintessential issue that requires an answer is whether the defect in the framing of charge in the instant matter has occasioned a failure of justice for the Respondent Nos. 1 and 2. In other words, has it prevented the Respondent Nos. 1 and 2 from having a fair trial or has denied them any opportunity to present a valid defence before the Trial Court? We feel not.

27. Ordinarily, in a criminal trial, the stage of charge is sandwiched between the stages of investigation and trial. It is the

gateway to trial and prior to this stage, the stages of registration of FIR, filing of chargesheet and arguments on charge occur. During all these stages, the accused has a right to be informed, and is informed, about the allegations against him and the chargesheet finally culminates the entire case of the prosecution and makes it clearly known to the accused persons the colour and content of the allegations. Thus, on receipt of the chargesheet, the Respondent Nos. 1 and 2 were conscious of the allegations. Merely for non-statement of the correct date in the formal charge, it could not be said that the accused persons have been robbed of a fair trial or that failure of justice has been occasioned. Throughout the trial, there was no confusion regarding the date or time frame of the commission of the offence. Had there been so, the error in charge could have been suitably corrected under Section 216 Cr.P.C. However, the error in question did not have the effect of misleading the Respondent Nos. 1 and 2 in any manner during the trial. Section 215 Cr.P.C., which finds place in the chapter of "Charge" and deals with the effect of errors, also provides that no error in the framing of charge shall be regarded as material, unless it has the effect of misleading the accused and results into failure of justice. In this matter, there is no explanation as to how the Respondent Nos. 1 and 2were misled by the charge or had suffered any failure of justice. During their statements under Section 313 Cr.P.C. and defence evidence as

well, the allegations were fully addressed by the Respondent Nos. 1 and 2 without any confusion with respect to the time-frame of offence. The time frame alleged by the victim was well known to the Respondent Nos. 1 and 2 and there was no occasion for any confusion on that count, let aside any failure of justice. The decision relied upon by the Respondent Nos. 1 and 2, rendered by this Court in ***Soundarajan v. State (Represented by the Inspector of Police, Vigilance Anti-Corruption, Dindigul)***[5], is of no consequence in the present matter. Ironically, in the said decision, the contention regarding failure of justice due to defective framing of charge was turned down by the Court. Despite finding that non-statement of correct date in the charge had rendered the charge as defective, the Court went on to hold that it had not occasioned any failure of justice.

28. Nevertheless, we consider it a fit matter to call upon the Trial Courts to be vigilant and cautious in framing of charges. The prosecutors representing the State are also duty bound to render suitable assistance during the trial and to remain vigilant in identifying the errors in statement of charges. For, timely intervention is always better in a trial and the criminal procedure provides ample provisions for rectifying the mistakes in framing of charges during the trial itself. The identification of such

[5] *(2023) 16 SCC 141*

mistakes at appellate stages, which could have easily been spotted and corrected during the trial, does not only affect the finality of cases but also affects the credibility of the criminal justice system as a whole. The Trial Court does the job of raising the building from the scratch, brick by brick. In the performance of this onerous task, some mistakes are quite natural. While finding defects in the building, the Appellate Court must carefully weigh the mistakes and analyze their consequence on the outcome of the trial. We may suffice to observe that not every mistake is fatal.

29. As an extension of the same discussion, we must also refer to the next ground of contention i.e. non-compliance of Section 223 Cr.P.C. The High Court has observed that the joinder of trial of both the Respondent Nos. 1 and 2 was impermissible and consequently, the Respondent Nos. 1 and 2 have been prejudiced before the Trial Court. Ordinarily, distinct offences committed by different persons are to be tried separately. The principle becomes clear from a reading of Section 218 Cr.P.C. However, from Sections 219 to 223 of Cr.P.C., various situations are envisaged wherein multiple offences committed by the same person could be tried together or different offences committed by different persons could be tried together. Whereas, a joint trial of different offences committed by the same person is contingent upon the fulfilment of the conditions envisaged in Sections 219

to 221; a joint trial of different offences committed by different persons is solely governed by Section 223. In the present case, we are concerned with the second scenario.

30. Section 223 lays down various conditions wherein different persons who have committed different offences could be charged and tried jointly. Amongst other things, it provides that the persons alleged of committing different offences, but as a part of the same transaction, could be charged and tried jointly. It is contended that the offences alleged upon the Respondent Nos. 1 and 2 pertained to two completely independent acts and thus, they could not be considered to have formed part of the same transaction. It has also been contended that there was no allegation qua commission of any offence jointly by the Respondent Nos. 1 and 2. It is stated that the incidents took place at different points of time and there was no unity between them. The High Court has accepted this factual position. The statement of the victim reveals that allegations pertain to two specific instances of rape along with a general allegation that for 2-3 months, the Respondent Nos. 1 and 2 continued to rape her. However, we cannot lose sight of the fact that there is no direct allegation that the offences were committed together by the Respondent Nos. 1 and 2 and on a plain view of the matter, it is not a case wherein the principles of common intention under Section 34 of IPC or conspiracy would be attracted. The only

question is whether the offences committed by the Respondent Nos. 1 and 2 formed part of the same transaction, so as to attract clause (d) of Section 223 Cr.P.C., which permits joint trial of persons accused of different offences committed in the course of the same transaction.

31. In criminal law, the question whether certain acts and omissions form part of the same transaction often troubles the Courts. There is no definition of "same transaction" in the Code and more often than not, this determination is contingent upon the peculiar facts and circumstances of the case. To make it judicially determinable, we have often applied the three tests of "*unity of purpose and design*", "*proximity of time or place*" and "*continuity of action*". Reference may be drawn to the decision of this Court in ***State of Andhra Pradesh Vs. Cheemalapati Ganeswara Rao and another***[6]. Let us have a look at some admitted facts. The victim and the Respondent Nos. 1 and 2 were residing in the same village, the house of respondent No. 2-Manish Tiwari was situated one house away from that of the victim, respondent No. 2-Manish had taken the victim's father to hospital a few days prior to the incident, respondent No. 1-Hare Ram Sah was running a coaching center adjacent to his house and in the same vicinity, and both the respondents threatened the

[6] *AIR 1963 SC 1850*

victim of similar consequences if she dared to disclose their acts to anyone. Evidently, the nature of acts committed by the Respondent Nos. 1 and 2 herein and subsequent intimidation to keep the victim silent were of a similar design. Further, there was a certain proximity of time and place as the incidents were committed within a continuous time-frame and at different places in the same village. However, it is also admitted that they never committed the acts together and always acted separately. Therefore, there is no direct evidence of commission of offences in the same transaction, however, an inference may be drawn. Be that as it may, we need not render a finding on this aspect and we are not inclined to disturb the factual finding of the High Court. For, even if the conclusion of the High Court, that the joint trial was conducted in violation of Section 223 Cr.P.C., is accepted, the Respondent Nos. 1 and 2 would still have to further show that the joint trial had caused prejudice to them and had occasioned a failure of justice. Mere irregular conduct of a joint or separate trial does not vitiate the trial as a whole and the proof of failure of justice is *sine qua non* for holding the trial as invalid.

32. The legal position on Section 223 could not be termed as *res integra*, especially in light of the pronouncement in ***Nasib***

Singh v. State of Punjab and another[7], also relied upon by the High Court. The relevant extract of the decision reads thus:

> *"51. From the decisions of this Court on joint trial and separate trials, the following principles can be formulated:*
>
> *51.1 Section 218 provides that separate trials shall be conducted for distinct offences alleged to be committed by a person. Sections 219 - 221 provide exceptions to this general rule. If a person falls under these exceptions, then a joint trial for the offences which a person is charged with may be conducted. Similarly, under Section 223, a joint trial may be held for persons charged with different offences if any of the clauses in the provision are separately or on a combination satisfied;*
>
> *51.2 While applying the principles enunciated in Sections 218 - 223 on conducting joint and separate trials, the trial court should apply a two-pronged test, namely, (i) whether conducting a joint/separate trial will prejudice the defence of the accused; and/or (ii) whether conducting a joint/separate trial would cause judicial delay.*
>
> *51.3 The possibility of conducting a joint trial will have to be determined at the beginning of the trial and not after the trial based on the result of the trial. The Appellate Court may determine the validity of the argument that there ought to have been a separate/joint trial only based on whether*

[7] *2021 INSC 642*

the trial had prejudiced the right of accused or the prosecutrix;

51.4 Since the provisions which engraft an exception use the phrase 'may' with reference to conducting a joint trial, a separate trial is usually not contrary to law even if a joint trial could be conducted, unless proven to cause a miscarriage of justice; and

51.5 ***A conviction or acquittal of the accused cannot be set aside on the mere ground that there was a possibility of a joint or a separate trial. To set aside the order of conviction or acquittal, it must be proved that the rights of the parties were prejudiced because of the joint or separate trial, as the case may be****."*

(emphasis supplied)

33. On a reading of the provision as well as the exposition reproduced above, it is discernible that when a ground of non-joinder or misjoinder of charges/trial is taken before an Appellate Court, the test to be applied is whether such non-joinder or misjoinder has resulted into a failure or miscarriage of justice and has prejudiced the accused. It is not enough for the Appellate Court to merely hold that the Trial Court ought to have tried certain persons jointly or separately in the facts and circumstances of the case. That is where the High Court has clearly fell in error in the present case.

34. In its appellate capacity, the High Court was required to address two aspects – *first*, whether the Respondent Nos. 1 and 2 ought to have been tried separately and *second*, whether the misjoinder of trials had caused prejudice to the Respondent Nos. 1 and 2 and resulted in failure of justice. We are afraid, the High Court restricted itself to the first aspect and did not deal with the second aspect in the manner required by law. On the first aspect, as already expressed above, we refrain from disturbing the factual finding rendered by the High Court that the offences were not committed in the same transaction. We feel that both views appear to be possible on that aspect and therefore, we do not consider it necessary to disturb the finding. On the second aspect, which is more important, the observation of the High Court reads thus:

> *"33. Considering the above provision of the Code, the present case of the appellants is nowhere applicable for joint trial and learned trial Court has convicted both the accused persons through a joint trial. For a joint trial to be conducted for two persons committing an offence at different place and at different time, the trial Court shall mention this on record or an application should be moved for conducting a joint trial, and the learned Trial Court shall apply a judicial mind while considering the matter, and the Judicial Officer while performing the duties shall make sure that the procedure prescribed in the Code is followed and no prejudice be caused to any person. But, in the present case, on perusal of the entire record,*

> *no such application or mention of conducting joint trial has been brought on record.* ***This causes a great prejudice on the accused persons as the victim herself states in para-30 of her deposition that both the appellants raped her at different time at different places and they never raped her together*** *...”*
>
> (emphasis supplied)

35. It could be seen that the sole basis of the High Court's reasoning in arriving at a finding of prejudice in the impugned decision is that a joint trial was not permissible. The finding is unsustainable and in fact, there is no finding of actual prejudice or failure of justice as a result of the joint trial, as necessitated by law. As noted above, the High Court ought to have analyzed the facts of the case to return a finding of actual prejudice. Mere non-compliance of the procedure contemplated under Section 223 does not *ipso facto* render the trial as invalid, and the same cannot form the basis of returning a finding of prejudice and failure of justice. The said conclusion must emanate from the facts of the case, after a thorough examination of the facts and evidence on record. It is not a case wherein the joint trial precluded the Respondent Nos. 1 and 2 from presenting a valid defence. It is also not a case wherein separate evidence of the prosecution witnesses could have made any difference to the end result. There is no explanation as to how separate trials could have made any

difference to the outcome of the case, except causing harassment to the victim by compelling her to face her offenders twice in the witness box for explaining the same version. Thus, we are of the considered view that the joint trial of the Respondent Nos. 1 and 2 did not cause any prejudice to them and no case for failure of justice, on account of the said irregularity, appears to be made out.

36. Before closing, we deem it fit to observe that noticeably, the principle of beyond reasonable doubt has been misunderstood to mean any and every doubt in the case of the prosecution. Often, we come across cases wherein loose acquittals are recorded on the basis of minor inconsistencies, contradictions and deficiencies, by elevating them to the standard of reasonable doubts. A reasonable doubt is one that renders the version of the prosecution as improbable, and leads the Court to believe in the existence and probability of an alternate version of the facts. It is a serious doubt which must be backed by reason. The underlying foundation of the principle of beyond reasonable doubt is that no innocent should face punishment for a crime that he has not done. But a flipside of the same, of which we are conscious, is that at times, owing to a mis-application of this principle, actual culprits manage to find their way out of the clutches of law. Such misapplication of this principle, resulting into culprits walking free by taking benefit of doubt, is equally dangerous for the

society. Every instance of acquittal of an actual culprit revolt against the sense of security of the society and acts as a blot on the criminal justice system. Therefore, not only should no innocent face punishment for something that he has not done, but equally, no culprit should manage an acquittal on the basis of unreasonable doubts and misapplication of procedure.

37. In the present case, a fairly consistent and creditworthy case of the prosecution has been discarded on what could only be termed as misapplication of procedure. It takes us back to the first principle that procedure is not supposed to control justice.

38. In view of the foregoing discussion, we are of the considered view that the impugned judgment is liable to be set aside being unsustainable. The view taken by the Trial Court was correct and we find no infirmity in the same. The judgment of the Trial Court stands restored, both on conviction and sentence.

39. The Respondent Nos. 1 and 2 shall surrender before the trial court within a period of two weeks from today. In case the Respondent Nos. 1 and 2 do not surrender within the stipulated time, the trial court shall take appropriate recourse to take them into custody for serving the remaining part of sentence. Registry is directed to suitably communicate this judgment to ensure due compliance.

40. The captioned appeal stands disposed of in the aforesaid terms. Interim application(s), if any, shall also stand disposed of.

…….J.
[SANJAY KUMAR]

…….J.
[SATISH CHANDRA SHARMA]

NEW DELHI
SEPTEMBER 01, 2025