

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-A-717-MA-2017
Date of Decision: 10.7.2017

Harbans Singh

....Applicant

Versus

State of Punjab and another

...Respondents

**CORAM: HON'BLE MR. JUSTICE T.P.S. MANN
HON'BLE MR. JUSTICE HARI PAL VERMA**

Present: Mr. Rakesh Dhiman, Advocate,
for the applicant.

T.P.S. Mann, J.

The applicant, who is father of the prosecutrix and, thus, a victim as defined under Section 2(wa) of the Code of Criminal Procedure, has filed the present application under Section 378 of the Code of Criminal Procedure for grant of leave to appeal against the judgment dated 11.02.2015 passed by the learned Judge, Special Court, Sangrur.

Vide impugned judgment, the learned trial Court acquitted Baljinder Singh accused of the charges under Sections 376D and 450 IPC and Section 6 of the Protection of Children from Sexual Offences Act, 2012.

According to the prosecution, the prosecutrix was student of 10th class. On 17.06.2014, her parents and uncle had gone to attend the bhog ceremony of her grandmother at village Dharamgarh Chhanna, whereas she along with her younger brother was present in the house. Her brother was playing in the chaubara, whereas she was reading, while sitting on a cot. At

about 11.30 a.m., the accused, namely, Harjit Singh and Baljinder Singh, entered her house. Baljinder Singh bolted the door of the main gate from inside and started guarding the same, whereas Harjit Singh, after entering into the room, committed forcible penetrative sexual assault with her. She raised an alarm, which attracted her brother, who came down and he also raised an alarm. On hearing the same, her cousin Chattar Singh, came in front of her house and when he knocked at the door, Baljinder Singh, ran away after opening the gate. Chattar Singh chased him, but in vain. Harjit Singh also escaped. She apprised her cousin of the incident, who informed her parents and relatives on phone. After the arrival of her parents and other relatives, she got recorded her statement before ASI Surjit Kaur, on the basis of which, FIR No. 81 dated 17.06.2014 under Sections 450, 376D IPC and Section 6 of the Protection of Children from Sexual Offences Act, 2012, was registered at Police Station Lehra.

Learned trial court, after going through the evidence convicted Harjit Singh accused under Section 376 IPC and sentenced him to undergo imprisonment for 10 years and to pay a fine of Rs.50,000/-. He was also convicted under Section 450 IPC and sentenced to undergo imprisonment for 10 years and to pay a fine of Rs.50,000/-. However, Baljinder Singh accused was acquitted of the charges against him.

Learned counsel for the applicant has submitted that the trial court erred in acquitting Baljinder Singh accused of the charges against him. At the time of the occurrence, he was guarding the gate of the house, where Harjinder Singh accused

had committed penetrative sexual assault with the prosecutrix. The version of the prosecution, which was brought by the prosecutrix before the trial court, while appearing as PW1, was duly corroborated by her brother Lovepreet Singh, who appeared as PW2 and her cousin Chattar Singh, who appeared as PW3. As such, the applicant be granted leave to appeal against the impugned judgment of acquittal qua Baljinder Singh accused.

Having heard learned counsel for the applicant and on going through the impugned judgment, this Court finds that the only role attributed to Baljinder Singh accused was of guarding the gate of the house when Harjit Singh committed penetrative sexual assault with prosecutrix. However, during her cross-examination, the prosecutrix stated that she had not seen Baljinder Singh accused standing at the main gate and it was her cousin Chattar Singh, who told her that Baljinder Singh, who was standing at the gate, had escaped. Thus, the statement of the prosecutrix with regard to involvement of Baljinder Singh, was not on the basis of her personal observation. Rather, the same was made at the asking of Chattar Singh. As per site plan Ex.PW5/A, Point-C, where Baljinder Singh accused was standing and guarding the gate, was not visible from Points-A and B. At Point-A, the rape was alleged to have been committed by Harjit Singh accused, whereas Point-B was the place, where Lovepreet Singh was present. Therefore, even Lovepreet Singh PW2, could not have seen Baljinder Singh accused standing and guarding the gate of the house.

While appearing as PW3, Chattar Singh stated that the main gate of the house was only 1-½/2 feet high and in case Chattar Singh was attracted to the place of occurrence on hearing the alarm raised by Lovepreet Singh, there was no occasion for Chattar Singh to give a knock at the main gate, which was said to be guarded by Baljinder Singh accused. Further, during the investigation of the case, Baljinder Singh accused was found innocent, as at the relevant time, he was working in the fields along with his father. He was later on summoned to face trial in the case. Further, there was political rivalry between father of Baljinder Singh accused on the one hand and the family of the prosecutrix on the other. Under these circumstances, possibility cannot be ruled out of Baljinder Singh accused having been falsely implicated in the case.

In view of the above, no case is made out for any interference in the impugned judgment of acquittal qua Baljinder Singh accused.

The application is without any merit and, therefore, dismissed. Leave to appeal qua Baljinder Singh accused, is declined.

[T.P.S. MANN]
JUDGE

[HARI PAL VERMA]
JUDGE

10.07.2017
Ds

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No