

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-D-448-DB-2016(O&M)
Date of decision:-4.12.2018

Prince @ Chinnu

....Appellant

Versus

State of Haryana

....Respondent

**CORAM : HON'BLE MR. JUSTICE A.B.CHAUDHARI
HON' BLE MR. JUSTICE H.S. MADAAN**

Present : Mr.Akashdeep Singh, Advocate
for the applicant/appellant.

Ms.Tanisha Peshawaria, DAG, Haryana.

H.S. MADAAN, J.

Accused/appellant Prince @ Chinnu was tried by the Court of Additional Sessions Judge, Rohtak for the offences under Section 354-A IPC read with Section 8 of the Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as the Act), 376 IPC read with Section 6 of the Act and 120-B IPC on the allegations that on 13.9.2013 in the area of Ward No.3, Sampla, Police Station, Sampla, he

along with Vipul @ Chhotu son of Sudhir (since juvenile) caught hold of a minor girl aged about 4 years and made advances involving unwelcome and explicit sexual overtures, in addition to that committed aggravated penetrative sexual assault in the form of rape upon that minor girl and he did so in conspiracy with Vipul @ Chhotu.

Vide judgment dated 30.3.2016 the appellant accused Prince @ Chinnu was convicted under Section 6 of the Act and vide order dated 31.3.2016, he was sentenced as follows:

Under Section	Sentence Awarded
6 of Protection of Children from Sexual Offences Act, 2012	Imprisonment for life and to pay a fine of Rs.20,000/- and in default thereof, to further undergo rigorous imprisonment for a period of six months.

Feeling aggrieved by the impugned judgment and order of sentence, accused Prince @ Chinnu has filed the present appeal, notice of which was issued to the State.

We have heard learned counsel for the appellant – accused – convict and learned Deputy Advocate General for the State of Haryana besides going through the record.

During the course of arguments, it has been contended by learned counsel for the appellant/accused that in the first complaint submitted by complainant Prem to the police on 13.9.2013, the appellant/accused has not been named and no incriminating part is attributed to him and only Vipul @ Chhotu had been named as accused, who was minor at the time of occurrence, working in the tea stall owned

by father of appellant, namely, Kailash. Thereafter, there took place a verbal altercation between complainant Prem and appellant's family and on 19.9.2013 a Kalandra under Section 107/151 Cr.P.C. was filed by complainant against the appellant and his father, though no allegations of rape qua the present appellant/accused were levelled in that Kalandra, which was recorded after 6 days of the occurrence. Vipul @ Chhotu, who was a juvenile at the time of occurrence had been forwarded to Juvenile Justice Board under Section 6 of the Act for aggravated penetrative sexual assault and he has been convicted by Juvenile Justice Board vide judgment dated 19.10.2013. On account of the altercation, which had taken place between the complainant and appellant's family, he has been wrongly involved in this case.

Learned counsel for the appellant/accused contends that he has moved an application under Section 391 Cr.P.C. for placing on record certain documents in that regard in the form of Kalandra dated 19.9.2013, challan under Section 173 Cr.P.C. before Juvenile Justice Board, judgment by Juvenile Justice Board dated 19.10.2015 as additional evidence and these documents, which could not be produced during defence evidence by the appellant/accused before the trial Court, are very vital, as such, he be permitted to place on record such documents, which are public documents.

Learned State counsel has opposed such request of the counsel for the appellant.

However, keeping in view the facts and circumstances of the case more particularly noticing that the appellant/accused was initially not named in the complaint submitted by the complainant to the

police on 13.9.2013 and he is said to have been involved after verbal altercation between the complainant and family of the appellant/accused, we find that the documents sought to be placed on record are quite important for the just decision of the case and we allow the application. However, since the evidentiary value to be attached to these documents would have to be considered keeping in view the totality of the facts and circumstances of the case and genuineness of the documents shall have also to be determined, we find that it would be proper and appropriate if the trial Court is directed to carry out the said exercise.

Therefore, the judgment of conviction and order of sentence are set aside and the case is remanded to the trial Court with a direction to allow the accused to produce and prove the documents detailed above and thereafter affording an opportunity to the prosecution and the accused to address arguments, pass a fresh judgment without being influenced by the earlier one.

With such observations, the appeal stands disposed of.

The appellant/accused, who is in custody for about 7 years is ordered to be released on bail subject to his furnishing personal and surety bonds to the satisfaction of the trial Court during the pendency of the trial.

The State of Haryana and the appellant/accused through counsel are directed to appear before the trial Court on 19.12.2018. The trial Court shall make earnest endeavour to complete the exercise, hearing the arguments and then finally conclude the trial expeditiously preferably within a period of three months from the date fixed in the trial Court.

Registry is directed to send copy of this order along with trial Court record to the trial Court immediately.

(A.B.CHAUDHARI)
JUDGE

(H.S.MADAAN)
JUDGE

Dated:-4.12.2018
Brij

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