

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.**

**CRM-A-1015-MA of 2016**

**Decided On : 27.02.2018**

**Jai Pal and another**

....

**Applicants**

VS.

**State of Haryana and others**

....

**Respondents**

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

**HON'BLE MR. JUSTICE DEEPAK SIBAL.**

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Present : Mr. M. S. Kathuria, Advocate  
for Mr. Rakesh Nehra, Advocate  
for the applicants.

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**DEEPAK SIBAL, J. :**

Through the instant application filed under Section 378 (3) of the Code of Criminal Procedure, 1973 (for short – Cr.P.C.), the applicant seeks grant of leave to appeal against the judgment dated 13.01.2016 passed by the Additional Sessions Judge, Jind (for short – the trial court), through which respondents No.2 to 4 have been acquitted of the charges framed against them under Sections 363, 366-A, 376, 376(D), 506 of the Indian Penal Code, 1860 (for short – IPC) and also under Section 4 of the Protection of Children from Sexual Offences Act, 2012 (for short – the POCSO Act).

Briefly stated, the case of the prosecution is that on 26.06.2014, the prosecutrix went to Safidon for tuition but did not return

home. Her father conducted a search, in the course of which, he found a letter from her books in which the prosecutrix had written about the private respondents having attempted to outrage her modesty. On the basis of the above, on a complaint made by applicant no. 1 – father of the prosecutrix (applicant no. 2), a case was registered by the police. On 01.07.2014, the prosecutrix was recovered and her statement under Section 164 Cr.P.C. was got recorded. She was also got medico-legally examined and thereafter, in addition to Sections 363 and 366-A as also Section 4 of the POCSO Act, Section 376-D IPC was also added. During the course of investigation, respondents Balraj and Rajbir were arrested. Respondent Balraj confessed that he had committed rape with the prosecutrix near Railway Station, Panipat and in Village Hatt.

After completion of the investigation, report under Section 173 Cr.P.C. was filed against the private respondents. Since the offence, for which the respondents were charged, was exclusively triable by the Court of Sessions, the case was committed to the Sessions Court by the concerned Illaqa Magistrate, from where it was assigned to the Court of Additional Sessions Judge, Jind and it was that Court, which charged the respondents under Sections 363, 366-A, 376, 376(D), 506 IPC and also under Section 4 of the POCSO Act. On their pleading not guilty the respondents were put on trial.

The trial court, after sifting the evidence which had come on record, acquitted respondents No.2 to 4 of the charges levelled against them as the trial court was of the opinion that the prosecution had miserably

failed to prove its case to bring home their guilt. It is such acquittal of respondents No.2 to 4 which is the subject matter of challenge in the present proceedings.

Learned counsel for the applicants, while reiterating the submissions made on behalf of the prosecution before the trial court, submitted that the trial court erred in acquitting respondents No.2 to 4 of the charges levelled against them as there was overwhelming evidence on record to prove their guilt and therefore, there was no reason in fact or in law with the trial court to acquit them.

The submissions made by learned counsel for the applicants have been considered but the same do not warrant a favourable consideration.

After going through the evidence on record, particularly the date of birth of the prosecutrix, as recorded in her school records, the trial court arrived at a definite conclusion that at the time of the alleged occurrence, the prosecutrix was major. No arguments have been raised before us nor any evidence has been shown to persuade us to take a view to the contrary. Even otherwise, we find no error in the findings recorded by the trial Court to the effect that at the time of the alleged occurrence, the prosecutrix was major.

There is also found overwhelming evidence on the record to show that prior to the alleged occurrence the prosecutrix was well acquainted with respondent Balraj and that she was in a relationship with him. While deposing before the trial court she admitted that the mobile

phone that she was using was not in the knowledge of her father and that, respondent Balraj used to call her on that phone. She also admitted that a sim card had been given to her by respondent Balraj and that she used to talk to him for hours.

It is the case of the prosecution that respondent Balraj took the prosecutrix to Panipat and Delhi for six days where he continuously raped her. The prosecutrix has testified before the trial court that she stayed with Balraj for about three days at Panipat and another three days in Delhi where respondent Balraj used to bring meals for her. It is surprising that during this period of six days, the prosecutrix did not make any attempt to escape. In view of such evidence, the trial court has rightly concluded that the prosecutrix was a consenting party.

So far as the allegations of the prosecutrix that she was subjected to gang rape by respondents Rajbir and Surender are concerned, the same are also not found to have been proved.

In her statement recorded under Section 164 Cr.P.C. the prosecutrix has stated that about one and a half months ago Balraj had told her that Rajbir and Surender had seen them doing wrong acts and after giving him beatings they had threatened to kill him if he did not bring the prosecutrix to them. She further went on to state that one day when she had gone out to ease herself Rajbir and Surender committed rape upon her and that they threatened her with dire consequences if she disclosed about the incident to anybody. However, in the note which is referred to in the complaint filed by the applicant, the execution of which is also admitted by

the prosecutrix in her deposition before the trial Court, there is no reference to any rape having been committed upon her by Rajbir and Surender. As per the note, Rajbir and Surender only attempted to outrage her modesty and that she managed to save herself from them with great efforts. There being no other evidence or other incriminating material to implicate Rajbir and Surender, in view of the above contradiction in the version of the prosecutrix a doubt is created with regard to their involvement in the alleged crime.

In view of the above, the present application is found devoid of any merit and, therefore, dismissed.

Leave to appeal is declined.

**( T. P. S. MANN )**  
**JUDGE**

**( DEEPAK SIBAL )**  
**JUDGE**

**February 27, 2018**  
*monika*

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|----------------------------------|---|---------------|
| <i>Whether speaking/reasoned</i> | : | <i>Yes/No</i> |
| <i>Whether reportable</i>        | : | <i>Yes/No</i> |