

**IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH**

CRM-A-1434-MA-2018 (O&M)

Date of Decision: October 06, 2018

State of Haryana

...Applicant

Versus

Ladi alias Pawan Kumar and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. P.P. Chahar, DAG Haryana
for the applicant.

JAISHREE THAKUR, J. (Oral)

CRM-25267-2018

1. This application has been preferred for condoning the delay of 14 days in filing the accompanying appeal.
2. For the reasons mentioned in the application, the same is allowed.

CRM-A-1434-MA-2018

1. This is an application that has been filed under Section 378(3) Cr.P.C. for grant of special leave to file appeal against the judgment dated 14.03.2018 passed by the Additional Sessions Judge, Kaithal.
2. In brief, the facts of the case are that FIR No.22 dated 29.03.2016 has been registered under Sections 354, 365, 511, 334 of Indian Penal Code and Section 12 of Protection of Children from Sexual Offences

Act, 2012 at Police Station Women Kaithal on the application moved by Raj Bala wife of Shri Jai Krishan, resident of Ward No.4, Saini Mohalla, Pundri with the allegations that her grand daughter (daughter's daughter) aged about 13 years was residing with her. Whenever she used to go out to fetch milk, three boys namely Rahul son of Hari Singh, Sethi alias Rakesh Kumar son of Nafe Singh and Ladi alias Pawan Kumar son of Rameshwar would tease her. On 26.02.2016 at about 7.00 p.m., when she and her maternal grand daughter were returning back to their house, all the said three boys kidnapped her maternal grand daughter on motorcycle. She was at some distance from her. When she returned back, the girl was not present in the house. She jumped down from the motorcycle and suffered serious injuries near her waist. All the three boys ran away and her maternal grand daughter was dropped by some other two persons. She requested the police authorities to take action against them. On the basis of this application, the aforesaid FIR was registered.

3. During the course of investigation, spot was inspected and statement of the witnesses were recorded. Statement of the victim was recorded under Section 164 Cr.P.C. by learned Magistrate on 30.03.2016. As nothing incriminating was found against Rahul son of Hari Singh, he was kept in column No.2. Accused namely Pawan Kumar @ Ladi and Rakesh @ Sethi were arrested on 16.04.2016. Motorcycle used by them in the commission of offence was taken into police possession and their disclosure statements were recorded. After completion of investigation, challan was presented in the court.

4. Copy of the challan was supplied to the accused persons and on

finding a prima facie case, they were charge-sheeted for the commission of offence punishable under Sections 365, 354-D and 511 read with Section 34 of Indian Penal Code and Section 12 of Protection of Children from Sexual Offences Act, 2012.

5. During the course of prosecution evidence, an application was moved under Section 319 Cr.P.C. for summoning Rahul son of Hari Singh as an accused to face trial along with co-accused, which application was allowed. Thereafter, all the accused persons were charge-sheeted under Sections 364, 354, 511 read with Section 34 of Indian Penal Code and Section 12 of Protection of Children from Sexual Offences Act, 2012. After that, prosecution moved an application under Section 216 Cr.P.C. for alternation of charge, which was allowed. The accused persons were also charge-sheeted for the commission of offence punishable under Section 365 read with Section 511 of Indian Penal Code and Section 354 read with Section 34 of Indian Penal Code and Section 12 of Protection of Children from Sexual Offences Act, 2012 read with Section 34 of Indian Penal Code, to which they pleaded not guilty and claimed trial.

6. In order to prove its case, the prosecution has examined as many as 08 witnesses i.e. SI Sunita as PW1, Jai Kishan as PW2, Ms. Sanjam Dhanda as PW3, Sushila, Head Teacher as PW4, SI Harpreet Kaur as PW5, Inspector Nirmala, SHO, PS Women Kaithal as PW6, Smt. Raj Bala as PW7 and chief victim as PW8. The statement of the accused persons were recorded under Section 313 Cr.P.C. in which they denied each and every allegation and pleaded innocence. They stated that they are innocent and have been falsely implicated in the present case. In their defence, the

accused persons examined Kuldeep Singh as DW1, Isham Singh as DW2, Sukhbir as DW3, Bishan Sharma as DW4.

7. After hearing learned counsel for both the sides, the trial court acquitted all the accused persons.

8. Learned State counsel for the applicant argues that the trial court has wrongly acquitted all the accused persons by holding that the prosecution has failed to prove the guilt of accused beyond reasonable doubt whereas, the prosecution very well proved the guilt of the accused by the statement of the child victim and her statement was very well corroborated by PW7 Rajbala and PW2 Jai Kishan. It is also contended that the trial court has wrongly held that the child victim changed her stand in all the statements give by her. It is also argued that if there are some omissions, contradictions and discrepancies, the entire evidence cannot be disregarded.

9. I have heard learned counsel for the applicant, apart from perusing the record.

10. The trial court, by the impugned judgment while acquitting the accused persons, has observed as under:

“It is evident from the above discussed statements of the child victim that she changed her stand frequently. In Ex.PB, she stated that three boys came on motorcycle, gagged her mouth and made her to sit on the motorcycle. However, she jumped from the motorcycle, whereas in Ex.PQ child victim stated that accused Sethi and Ladu came on motorcycle. Ladu gagged her mouth and made her to sit on motorcycle. She jumped from the motorcycle after some distance. She further stated that suddenly one motorcycle also came there and on seeing it, accused ran

away. She further stated that accused Sethi, Rahul and Ladu were on the motorcycle. However, in statement dated 21.10.2017 recorded in the court when Child Victim appeared in the witness, in addition to above discussed facts, she stated that she got an opportunity and jumped from the motorcycle. She ran away and entered in the house situated nearby. In the meantime, many persons gathered there and on seeing them accused ran away. Thereafter, two persons dropped her at her residence.

In these circumstances, this court is of the considered opinion that the sole testimony of child victim is not sufficient to prove the case of prosecution.”

11. Regarding delay in lodging of the FIR, the trial court observed as under:-

“26. So far as the contention raised by defence counsel regarding delay in lodging the FIR is concerned, in the present case the alleged occurrence took place on 26.02.2016 at about 07.00 PM and matter was reported to the concerned police authorities on 29.03.2016 about more than one month after alleged occurrence vide application Ex.PA by complainant Smt. Raj Bala. The law is explicit on this point xxx.

27. Keeping in above principle of law in mind, let us examine as to whether there is explanation of delay in lodging the First Information Report and what is the affect of the same. Perusal of testimony of complainant PW-7 Smt. Raj Bala, PW2 Jai Kishan and PW-8 Child Victim shows that none of them uttered a single word as to why the matter was not reported instantly or as to whether complainant took more than one month to report the matter to the police. In the given circumstances, this court comes to the conclusion that there is inordinate

delay in lodging the First Information Report that too without explanation which has created a serious dent in prosecution case.”

12. The trial court has further observed that from application Ex.PA it seems that complainant Smt. Raj Bala witnessed the occurrence, however, after going through her testimony, it becomes clear that she had not witnessed the occurrence and came to know about the alleged kidnapping of child victim when she reached at her house from the two unknown persons and the child victim. PW2 Jai Kishan also deposed about the facts disclosed to him by the child victim and two unknown persons. So, evidence of both these witnesses is hearsay evidence. So far as the child victim is concerned, the trial court has specifically observed that she changed her stand frequently. Learned State counsel for the applicant failed to satisfy this court as to how the findings recorded by the trial court are perverse. This court does not find any illegality or infirmity in the findings to so recorded by the trial court.

13. In view of the above, no ground is made to grant leave against the judgment of acquittal passed by the trial court. The application stands dismissed accordingly.

October 06, 2018

vijay saini

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No