

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

Crl. Misc. No.A-267-MA of 2017(O&M)

Date of Decision: 19.03.2018

Azad Singh & Anr.

.. Applicants

Vs.

Gajender

.. Respondent

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

**Argued by:- Mr. Inder Pal Goyat, Advocate
for the applicants.**

ANITA CHAUDHRY, J.

Delay condoned.

The applicants are seeking leave to challenge the judgment dated 03.10.2016 by virtue of which the trial court has ordered acquittal. The FIR No. 113 was registered on 23.05.2015 under Sections 341, 354-A, 506 IPC and Section 8 of the Protection of Children from Sexual Offences Act, 2012.

Applicant No.1 in his complaint alleged that his daughter-applicant No.2 was returning from school on 22.05.2015. The accused came on motor cycle and blocked her way and gave a threat to kill her. The reason given was old rivalry between applicant No.1 and father of the accused.

FIR was registered and statements of victim and her mother were recorded. Accused was formally arrested and put to trial.

At the trial, the prosecution examined 12 witnesses, including the complainant, his daughter and wife and the investigating officer.

On conclusion of trial, the court below observed that the prosecution had failed to prove its case against the accused beyond shadow

of reasonable doubt and recorded his acquittal.

Dis-satisfied with the same, the complainant and the victim has filed the instant application seeking leave to question the legality and propriety of the judgment dated 03.10.2016.

It is evident that the FIR was belated. The occurrence was of 22.05.2015 and the complaint was given after 24 hours of the occurrence. Initially, the allegations were under Sections 341 and 506 IPC to the effect that the accused obstructed her passage and criminally intimidated her. There was no allegations of making casteist remarks or of sexual assault. After about 8 days, allegations regarding caste were introduced for the first time when the statement of the victim was recorded under Section 164 Cr.P.C. and of her mother under Section 161 Cr.P.C. Though the mother of the victim claimed that the accused held her daughter's hand, but in her statement under Section 164 Cr.P.C. the victim did not disclose it. It was held that the time was used for concocting the story. The statement of the complainant, his wife and daughter were found to be discrepant regarding the manner in which the incident had occurred. Their statements were found to be inconsistent. The trial Court noted that there was no reference to any sexual assault at the time of FIR, but later it was claimed that the accused had caught the hand of the victim. The victim had admitted that her friend was with her when the incident took place and she (friend) stepped into the witness box and denied having seen such incident. The alleged incident took place in broad day light, but no alarm was raised by the victim. The matter was reported after more than 24 hours. It was not disputed that the parties were having strained relations. The sister of the victim had levelled allegations against the accused earlier and that matter was compromised.

The trial Court held that the story was cooked up to settle scores with the accused and his family.

The trial Court had elaborately discussed the facts and evidence and had given reasons in para No.12 of the judgment to disbelieve the prosecution case. The findings returned are based on correct appreciation of evidence.

The High Court ought not to interfere with the order of acquittal unless the judgment of acquittal is perverse or highly unreasonable as held in **Vimal Singh Vs. Khuman Singh, 1998(4) RCR(Crl.) 423**. In the instant case, the judgment of acquittal rendered by the Court below is neither perverse nor unreasonable and it cannot be said that the court based its findings on irrelevant or inadmissible evidence. In the circumstances, the application for leave to appeal is dismissed.

March 19, 2018

Jiten

Whether speaking/ reasoned

Whether reportable

(ANITA CHAUDHRY)

JUDGE

Yes/ No

Yes/ No