

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Criminal Misc. A-711-MA of 2015
Date of Decision : December 05, 2018

YadramApplicant
Versus
SatbirRespondent

CORAM : HON'BLE MR. JUSTICE T.P.S. MANN
HON'BLE MR. JUSTICE ARUN KUMAR TYAGI

Present : Mr. Lalit Narang, Advocate for
Mr. Johan Kumar, Advocate
for the applicant.

Mr. Jagjot Singh, Advocate for
Mr. Kunal Dawar, Advocate
for the respondent.

T.P.S. MANN, J.

The complainant has filed the present application under Section 378(4) of the Code of Criminal Procedure, 1973 seeking special leave to appeal against the judgment dated 13.1.2015 passed by the learned Judicial Magistrate 1st Class, Palwal, whereby the accused, namely, Satbir was acquitted of the charge under Section 377 IPC.

According to the complainant, on 27.3.2008 at about 2.00 p.m. his daughter, who was aged four years, was playing in the house of the accused with other children. The accused then

took her inside a room and after removing her underwear, inserted his finger in her vagina due to which she started bleeding and crying. When she returned home, she narrated the incident to her mother. The incident was witnessed by complainant's son Gulshan who had brought her to the house. When the complainant informed other persons about the incident, the accused confessed his guilt. The complainant went to the Police Station and got registered FIR No.62 dated 28.3.2008 under Section 377 IPC. The victim was taken to Civil Hospital, Palwal for medical examination. However, due to pressure, the police did not take any action in the case and, accordingly, the present complaint was filed.

After recording the preliminary evidence, learned Judicial Magistrate 1st Class, Palwal summoned the accused to face trial under Section 377 IPC. In pre-charge evidence, the complainant examined himself as CW1, Dharamwati as CW2, Harlal as CW3 and Dr. Usha Mathur as CW4. The accused was, thereafter, charged under Section 377 IPC, to which he pleaded not guilty and claimed trial.

In post-charge evidence, the accused cross-examined CW1 Yadram and CW2 Dharamwati. However, CW3 Harlal was not presented for further cross-examination.

When examined under Section 313 Cr.P.C., the accused

denied the incriminating circumstances found in the evidence of the prosecution witnesses and claimed that he had been falsely implicated.

In his defence, the accused examined DW1 Lattur, DW2 Netram and DW3 Inspector Bijender Singh.

After hearing learned counsel for the parties and on going through the evidence, learned trial court came to the conclusion that the complainant had failed to prove his case beyond reasonable doubt and, therefore, the accused was entitled to the benefit of doubt. Accordingly, he was acquitted of the charge against him.

From the medical evidence brought on record by way of the testimony of Dr. Usha Mathur, it is apparent that neither there was any bleeding from the private parts of the victim nor any injury found on other parts of her body. The hymen of the victim was found intact. Though vaginal swabs were taken and sent to the Forensic Science Laboratory yet the complainant did not produce any report from the said laboratory.

Neither the complainant, who stepped into the witness box as CW1 nor his wife CW2 Dharamwati were present at the time of the alleged incident. According to them, they had been informed by their son Gulshan about the incident. However, no attempt was

made to produce Gulshan before the trial Court in support of the ocular account. CW3 Harlal was examined in pre-charge evidence. In his cross-examination he stated that the incident had not happened in his presence. He was, however, not presented before the learned trial Court while post-charge evidence was being led.

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

The application is without any merit and, therefore, dismissed. Special leave to appeal is declined.

(T.P.S. MANN)
JUDGE

(ARUN KUMAR TYAGI)
JUDGE

December 05, 2018
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Whether speaking/reasoned : YES/NO

Whether reportable : YES/NO