

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

**CRM-A-2464-MA-2018
Date of decision:05.02.2019**

Vinod

...Appellant

Vs.

State of Haryana and another

....Respondents

**Coram: Hon'ble Mr. Justice Rakesh Kumar Jain
 Hon'ble Mr. Justice Harnaresh Singh Gill**

**Present: Mr. Sachin Mittal, Advocate,
 for the appellant.**

None for the respondent.

Rakesh Kumar Jain, J.

This application is filed under Section 378(4) of the Code of Criminal Procedure, 1973 (hereinafter referred to as the "Cr.P.C.") for seeking leave to appeal to impugn the order of acquittal dated 04.08.2018 passed by the learned trial Court.

In brief, respondent no.2 was tried in a case registered vide FIR No.488 dated 24.05.2017, under Sections 363/366-A/302/201 of IPC and 6 of POCSO Act, 2012 at Police Station Sadar, Karnal. The FIR was registered at the instance of complainant 'B' (father of victim/deceased) whose daughter 'S', aged about 12 years, had allegedly been murdered by respondent no.2. The complaint was made to the police on 24.05.2017 that in the night of 21.05.2017, the complainant and his family members had retired for night after taking their meals and in the morning at about 5.00 a.m., they found their daughter 'S' missing. They tried to search her in the neighbourhood, school and relations but her whereabouts could not be traced out and hence, raised

suspicion regarding her abduction by some unknown person and also apprehended that her daughter 'S' might have been murdered. Respondent no.2 was arrested on 06.06.2017, who has allegedly suffered a disclosure statement on 07.06.2017 in which he disclosed that in the night of 21/22.05.2017, he had induced the victim 'S' telephonically to visit him at his home. She reached his house at around 1.00 am in the wee hours and both of them established physical relations with each other at his home. Thereafter, the victim asked him to marry her and she also offered to run away with him and being afraid of it, he disclosed it to his friend Golu Tyagi in the night itself and left his house with the victim 'S' on Meerut Road and when they reached near Aavardhan canal, he pushed the victim into the canal and her body was swept away.

On the alleged disclosure statement, offence punishable under Sections 302/201 IPC and Section 6 of the POCSO Act, 2012 were introduced. However, the body of the victim 'S' could not be recovered. After the challan was presented, respondent no.2 was charge sheeted for the offences mentioned here-in-above on 13.09.2017 but he pleaded not guilty and claimed trial. As many as 12 witnesses were examined by the prosecution besides tendering documentary evidence. The entire evidence was allegedly put to the accused, one by one, while he was examined but he denied it and claimed his false implication but did not lead any evidence.

Since there was no direct evidence, therefore, the prosecution tried to prove the culpability of respondent no.2 on the basis of circumstantial evidence. The learned trial Court found various missing links in the chain of circumstantial evidence to establish the guilt beyond any shadow of doubt. The motive also could not be proved and as such, after taking into

consideration the delay in registration of the FIR, the trial Court had acquitted respondent no.2 but at the same time, direction was issued to the Superintendent of Police, Karnal to get the matter re-investigated from a different investigating officer than the ones who have earlier investigated the matter so that an unbiased and fair re-investigation may be carried out.

Aggrieved against the order of acquittal, the present appeal has been filed along with the application for seeking leave to appeal.

The only argument raised by the counsel for the appellant is in regard to the statement of PW4 Nikhil Tyagi who has tried to be projected as the person last seen with the accused and the victim 'S'. According to the appellant, respondent no.2 had called PW4 on the fateful night itself and the said witness had allegedly heard a female voice on the phone while having conversation with the accused, from which it is sought to be projected that the female voice was of the deceased 'S'. In this regard, the finding recorded by the learned trial Court is that the statement of Golu Tyagi (PW4) is of no help to the prosecution because neither the name of the girl 'S' was disclosed by the accused to him at that time nor the said witnesses (PW4) had earlier known 'S' nor identified her voice overheard by him on phone. Moreover, PW4 had categorically stated that he had never seen respondent no.2 in the company of the deceased 'S' and the complainant had also stated in his cross-examination that he had never seen his daughter in the company of respondent no.2. Thus, the theory of last seen together could not be established by the prosecution against respondent no.2-accused.

Even otherwise, we have thoroughly gone through the order passed by the learned trial Court and are of the considered opinion that all aspects of the prosecution evidence have been minutely taken into

consideration by it before forming an opinion that the prosecution has failed to establish the guilt of respondent no.2 in respect of the alleged incident in which daughter of the complainant is still missing because the death has not been established for want of recovery of the dead body.

No other point has been raised.

Hence, in view of the aforesaid facts and circumstances, we do not find any reason to grant permission for the purpose of pursuing the appeal on merits and hence, the present application is hereby dismissed.

(Rakesh Kumar Jain)
Judge

February 05, 2019
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(Harnaresh Singh Gill)
Judge

Whether speaking / reasoned : Yes / No

Whether Reportable : Yes / No

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