

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

**CRM-A No. 2263- MA of 2017
Date of Decision: 22.08.2019**

Shiv Kali Devi

..... Appellant

Versus

State of Haryana and another

..... Respondents

**CORAM: HON'BLE MR. JUSTICE JASWANT SINGH
HON'BLE MR. JUSTICE LALIT BATRA**

Present: Mr. Deepak Basatia, Advocate,
for the appellant.

JASWANT SINGH, J.

1. Present application has been filed under section 378 (4) of the Code of Criminal Procedure, 1973 (in short “the Code”) for grant of Special Leave to Appeal against the judgment of acquittal dated 10.07.2017 passed by learned Additional Sessions Judge, (Exclusive Court for Heinous Crimes against Women and Children), Yamuna Nagar at Jagadhri.

2. Tersely put the facts of the prosecution case are that the complainant moved an application (Ex. PW1/A) to the local police to the effect that her grand daughter Victim – 'X' aged about 15 years went missing and her whereabouts could not be known to her despite making frantic search. It is also the alleged case of the prosecution that when complainant on 04.06.2015 at about 9.00 a.m. visited to the house of her relative and left the Victim – 'X' all alone at the home, respondent No. 2/accused (Anjesh Kumar) took the victim with him on a pretext to marry with her. On the basis of this application, a formal F.I.R. (Ex.PW3/A) was registered. The investigation was commenced. During investigation, Victim -'X' was produced by Ex-Sarpanch Ram Lal of village Badhi Majra, who appeared in

witness box as PW-2 . Statements of witnesses under Section 161 Cr.P.C. were recorded and also of victim (PW-1) under Section 164 Cr.P.C. was got recorded by the Investigating Officer and victim was also medico legally examined. After completion of necessary formalities of investigation, the report under Section 173 Cr.P.C. was presented before the trial Court.

Finding a *prime facie* case, the respondent-accused was charge-sheeted for the commission of offences under **Sections 363, 366, 376 (2) (n) of Indian Penal Code (IPC) and under Section 6 of the Protection of Children from Sexual Offences Act, 2012 (in short “POCSO Act”)**.

To prove its case against the respondent-accused, the prosecution has examined the following thirteen (13) witnesses, which are as under:-

Complainant as PW-1, Ram Lal as PW-2, Sub Inspector Rajender Kumar as PW-3, Dr. Shelly Goyal as PW-4, Dr. Manisha Singh as PW-5, ASI Sushma as PW-3 (though it ought to have been mentioned as PW-6), Ms. Rashida Bano as PW-7, EHC Rajiv Kumar as PW-8, Maternal Aunt (Massi) of victim as PW-9, EHC Rajbir as PW-10, Victim as PW-11, HC Gurcharan as PW-12 and Sub Inspector Vijay Vivek as PW-4 (though it ought to have been mentioned as PW-13).

On completion of prosecution evidence, the statement under Section 313 Cr.P.C. was recorded by the trial Court in which all the incriminating circumstances appearing by way of evidence of prosecution against the respondent/accused were put to him and he pleaded his innocence and false implication.

On the basis of weak evidence produced by the prosecution against the respondent-accused, he has been acquitted of the charge for the commission of offences under **Sections 363, 366, 376 (2) (n) of Indian Penal Code (IPC) and under Section 6 of the POCSO Act.** No defence evidence was produced.

3. We have heard learned counsel for the applicant-appellant and have also gone through the paper-book very carefully with his assistance.

Firstly, coming to the statement of **Dr. Shelly Goyal, Medical Officer (PW-4)**, before whom the victim was produced for her medical examination and this witness has categorically stated that victim refused to get herself medico legally examined. Similarly, **Dr. Manisha Singh, Medical Officer (PW-5)**, has testified that on 16.06.2015, victim was produced before her for medico legal examination, but she refused for it vide her statement (Ex.PW5/A). In this manner, the prosecution has failed to establish its alleged version that respondent No. 2 (Anjesh Kumar) committed the sexual intercourse with the victim. We are of the view that in the absence of medical evidence, it cannot be ascertained on the basis of oral evidence especially on the basis of statement of victim that she was subjected to sexual intercourse particularly when victim in her statement under Section 164 Cr.P.C. has stated in clear cut manner that the said respondent did not commit any bad act with her.

Like wise **Sh. Ram Lal (PW-2)**, who produced the victim before the police has stated that victim came to him all alone and she also said nothing against the respondent. As such, on the basis of statement of (PW-2), it could be said that the respondent did not commit the sexual

intercourse with the victim (PW-1). The victim is the most vital witness in

the instant case. The medical experts have said nothing against the respondent-accused, because the victim herself did not allow the medical experts to examine her. It is also established on record that the victim was not recovered from the custody of the respondent. As such, the case of the prosecution suffers from inherent weaknesses to prove its case within the ambit of the offences, for which, respondent has been charge-sheeted. The evidence on record overwhelmingly and unerringly points to the probability of the respondent being falsely implicated.

4. That apart, the scope of the Appellate Court, while dealing with the appeals against acquittal, is settled. Though there is no embargo on the Appellate Court to reverse the decision based on the evidence upon which the acquittal is based, generally the order of acquittal based on presumption of innocence of the accused, is further strengthened by acquittal. The Appellate Court, while considering an appeal against acquittal, has to consider whether there are compelling and substantial reasons for reversing the order of acquittal. The Appellate Court can reverse the order of acquittal if the view taken by the Court is palpably erroneous and it could not have been taken by the Court of competent jurisdiction and is taken against well settled canon of criminal jurisprudence. Merely because the Appellate Court, on re-appreciation and re-evaluation of the evidence, is inclined to take a different view, interference with the Judgment of acquittal is not justified. If the view taken by the trial Court is a possible view, even if two views are equally balanced, it need not result in interference by the Appellate Court in the judgment of the trial Court of acquittal. The Appellate Court will have to see whether there is perversity in the decision, if the conclusions are contrary to the evidence on record, or the Court's

entire approach is patently illegal or it is based on erroneous understanding. If the order of acquittal is to be reversed, the Appellate Court must examine and discuss the grounds given by the trial Court to acquit the accused and must give cogent reasons to overturn the findings. Thus, while considering the order against acquittal, generally the Appellate Court should not interfere where view taken by the trial Court is not unreasonable or perverse. With this legal position in mind, we have considered the view taken by the trial Court is a possible view and it does not require any interference by this Court.

5. In view of the above discussion, this Court is of the opinion that the trial Court, while appreciating the entire evidence in its proper perspective, has rightly held that the prosecution has failed to prove its case against the accused-respondent beyond any reasonable doubt. Thus, no case is made out for any kind of interference in the impugned judgment. The view of the trial Court is hereby affirmed and is maintained.

The instant **application** is without any merit and, therefore, **dismissed**. Leave to Appeal is declined.

(JASWANT SINGH)
JUDGE

August 22, 2019
'dk kamra'

(LALIT BATRA)
JUDGE

<i>Whether Speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>