

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

CRM-A-990-MA-2017 (O&M)

Date of decision : 30.09.2019

Sunita Devi

...Applicant/appellant

Versus

Deepak and another

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Parvesh K. Saini, Advocate for the applicant/appellant.

Mr. Manish Bansal, DAG, Haryana.

Ms. Geeta Singhwal, Advocate for respondent No.1.

ANIL KSHETARPAL, J.

Leave to appeal has been sought under Section 378(4) of the Code of Criminal Procedure, 1973 to file appeal against judgment of acquittal passed by learned Special Judge-cum-Additional Session Judge, Bhiwani in Sessions Case No.36 of 2016.

Respondent-accused was charged with an offence under Sections 377, 451, 511 IPC and Section 18 of the Protection of Children from Sexual Offences Act, 2012 arising from FIR No.73 dated 07.05.2016.

As per the case of the prosecution, through application Ex.P9 moved by the appellant, she has stated that her son aged about 14 years was studying in Ved Model School, Kalanaur and respondent was employed as a Gardener in the said school and used to travel in the same vehicle alongwith

the victim and used to tease the victim since last one year. On a complaint made to the Principal, accused was removed from the post of Gardener and thereafter she made complaint on 3-4 occasions to the family members of the accused. On 04.05.2016 in the evening, when she went to her plot (*Nohra*) to take care of their cattles, she saw that the accused was committing carnal intercourse with her son and on seeing her, the accused fled away from the spot. On enquiry, her son told her that the accused used to tease him for the last about one year and had forcibly committed carnal intercourse with him. Formal FIR under Section 73 dated 07.05.2016 was registered in light of application Ex.P9.

After completion of the trial, learned Special Judge acquitted the accused.

This Court has heard learned counsel for the parties at length and with their able assistance gone through the judgment passed by the learned Special Judge as also the record.

It has come in evidence that father of the victim PW9 had allegedly given injuries to the accused on 06.05.2016 and DDR in this regard was registered on 06.05.2016 which later on was converted into FIR No.103. In the present case, occurrence is alleged to be of 04.05.2016 at 3:00 PM. However, the FIR was registered on 07.05.2016. It is the case of the accused that the present FIR is in counter blast to the DDR registered by him against the father of the victim.

PW8, the mother, appellant herein has stated that she went to the police station on 04.05.2016 and moved application Ex.P9. However, on bare perusal of Ex.P9, it is apparent that such complaint is dated

06.05.2016. Obviously, the complaint was not moved on 04.05.2016. Investigating Officer when appeared in evidence has stated that for the first time, application was filed before him on 07.05.2016. PW9, father of the victim has also submitted that the application was moved on 07.05.2016. The complaint is written by brother of father of the victim but he has not been examined. There is no evidence on the file to prove that the complaint was in fact moved on 04.05.2016 or 06.05.2016.

Still further, the medical evidence does not establish carnal intercourse as is sought to be alleged. PW2 Medical Officer has proved his opinion. He has stated that there is nothing suggestive of sexual intercourse and the final opinion can be given after opinion from the FSL. She has further stated that she had advised the prosecution to obtain opinion of Surgeon but after opinion of Surgeon, her opinion was not sought.

Learned counsel for the applicant/appellant does not dispute that no opinion of Surgeon was obtained.

Still further, in the application Ex.P9, it has been stated that the accused had forcibly committed carnal intercourse with the victim. Mother-appellant has appeared as PW8. She had stated that the victim had told her that the accused has been teasing him for the last one year and use to commit carnal intercourse. However, when victim appeared in evidence as PW7, he has stated that the accused had committed carnal intercourse with him at 3:00 PM on 04.05.2016 and extended threat to him and thereafter accused again committed carnal intercourse with him on the same day when he raised noise and his mother came on the spot. However, on further cross-examination, he admitted that the accused never committed carnal

intercourse earlier on the day of occurrence.

Still further, prosecution has failed to prove that any application was moved to the Principal of the school which resulted in removal of the accused. No witness from the school or management side of the school has been examined to prove the stand.

In view of the aforesaid, this Court does not find it to be a fit case to grant leave to appeal. Hence, dismissed.

30.09.2019

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No