

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

CRM-A-1308-MA of 2017.
Decided on:- January 23, 2020.

Naresh Kumar.

.....Applicant.

Versus

State of Haryana and another

.....Respondents.

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA.

Present:- Mr. Ravi Sharma, Advocate
for the applicant.

HARI PAL VERMA, J.

Applicant Naresh Kumar (hereinafter referred to as the 'complainant') has filed the present application under Section 378(4) of the Code of Criminal Procedure for grant of leave to appeal against the judgment dated 23.02.2017 passed by learned Additional Sessions Judge, Yamuna Nagar at Jagadhri, whereby respondent No.2 Anand Swaroop (hereinafter referred to as the 'accused') was acquitted of the charge levelled against him in case bearing FIR No.280 dated 11.12.2014 under Sections 354, 354-A and 506 IPC and Section 12 of the Protection of Children from Sexual Offences Act, 2012 (for short, the POCSO Act) registered at Police Station Sadar Yamuna Nagar.

Briefly stated, the aforesaid FIR was registered against the accused on the basis of a statement made by the complainant. As per the FIR, on 11.12.2014, the complainant, who is father of the victim came to the Police Station and presented a complaint that his daughter i.e. the victim is 6 years of

age. She was frightened for the last few days and on repeated asking of her mother, she disclosed that Pandit will kill her. On further asking, she disclosed that a few days ago, when they had gone to the village, she went to the temple for playing, where the priest/pandit of the village called her inside the room and tried to lay her on the bed and started kissing her. She also disclosed that the priest/pandit asked her to show her 'shame shame' and she showed her 'shame shame' to the priest/pandit. Meanwhile, her uncle called from the outside and the accused freed her and she came out and went to her house with her uncle. All these things were narrated by the victim to her mother on 30.11.2014 in the evening at 07.00 P.M.

After completion of investigation, Challan was presented in the Court. Copies of Challan were supplied to the accused free of cost as envisaged under Section 207 Cr.P.C. and the case was committed to the Court of Session.

On finding a *prima facie* case punishable under Sections 354-A(1)(i) and 506 IPC as well as Sections 7 (punishable under Section 8), 9 (punishable under Section 10) and 11(ii) (punishable under Section 12) of the POCSO Act, the accused was charged accordingly to which he did not plead guilty and claimed trial.

In order to prove its case, the prosecution examined as many as 7 witnesses including the complainant as PW2, victim as PW1, mother of the victim as PW3, Ramakant, Clerk, Municipal Corporation, Haridwar (Uttarakhand) as PW4, uncle of the victim as PW5, SI Sachin as PW6 and ASI Ram Phal as PW7. Thereafter, the Public Prosecutor tendered certain documents and closed the prosecution evidence.

After closure of prosecution evidence, statement of accused under Section 313 Cr.PC was recorded so as to enable him to know about the incriminating evidence appearing against him, but he denied all the allegations of the prosecution and pleaded that he has falsely been implicated in the present case. In his defence evidence, the accused had examined Naresh Pal as DW1 and Nagender alias Bittu as DW2 and thereafter, closed his defence evidence.

After considering the evidence produced on behalf of both the sides and hearing their respective arguments, learned trial Court acquitted the accused of the charges framed against him vide impugned judgment dated 23.02.2017.

Aggrieved against the aforesaid judgment, the complainant has filed the present application under Section 378(4) Cr.P.C. for grant of leave to appeal.

Learned counsel for the complainant has argued that the findings recorded by the trial Court vide impugned judgment dated 23.02.2017 are based on surmises and conjectures. The trial Court has not appreciated the entire evidence on record, rather, arrived at a wrong conclusion and erroneously acquitted the accused on the basis of minor discrepancies in the statements of prosecution witnesses.

He has further argued that learned trial Court has failed to appreciate the evidence of the victim, who is about 6 years of age and duly narrated the incident not only to the investigating officer but also in the statement recorded under Section 164 Cr.PC before the Judicial Magistrate 1st Class and thereafter, before the trial Court. The family of the victim has no

previous grouse against the accused. The trial Court has failed to appreciate that the delay in reporting such matters to the police is of no consequence, where not only the honour of the family of the victim, but also of the future of the female child is involved and that too in small village. The learned trial Court has erred in giving the benefit of doubt to the accused and consequently acquitting him. Therefore, the impugned judgment dated 23.02.2017 passed by the trial Court is liable to be set aside and the accused be punished in accordance with law.

I have heard learned counsel for the complainant.

Perusal of the impugned judgment dated 23.02.2017 reveals that learned trial Court has observed that in the present case, FIR was registered on the basis of application/complaint Ex.PB moved by the complainant, who is father of the victim child, to the police. In his complaint, the complainant has alleged that the victim was frightened for the last few days and on repeated asking of her mother, she disclosed that Pandit will kill her. On further asking, she disclosed that a few days ago, when they had gone to the village, she went to the temple for playing, where the priest/pandit of the village called her inside the room and tried to lay her on the bed and started kissing her. She also disclosed that the priest/pandit asked her to show her 'shame shame' and she showed her 'shame shame' to the priest/pandit. Meanwhile, her uncle called from the outside and the accused freed her and she came out and went to her house with her uncle. The incident was told by the victim to her mother on 30.11.2014. However, in her statement recorded under Section 164 Cr.PC, the victim has stated that she had gone to the house of her grandparents at Dhorang, where a temple is situated near her house. In

the said temple, Pandit Ji (accused) touched her 'shame shame' and also got touched her hand with his 'shame shame' and kissed her, laid her on bed and also asked her not to disclose the same to anyone, otherwise he would kill her. The accused also swore her and she does not know his name, but she can identify him. She further stated that her uncle came there and took her and after few days, she disclosed the incident to her parents. Thereafter, while appearing in the witness box as PW1, the victim had deposed that she had gone to village Dhorang at her grandparents' house. She had gone to the temple with her sisters to play. Pandit Ji called her for taking Prasad and he then took her in a room. He showed her his 'shame shame' and also asked her to show her 'shame shame'. He was kissing her again and again on her face and made her lie on the bed. He also threatened her (victim) that if she will disclose the incident to anybody, he would kill her. At that time, her Chachu (uncle) came there and Pandit stepped back. She did not disclose the incident to her mother on the same day, but disclosed the same after few days. Thus, there are variations in the versions of the victim, which are material in nature and go to the root of the case. Her deposition did not inspire the requisite confidence of the Court. However, the testimony of her father, mother and uncle are hearsay and do not carry much value.

Learned trial Court has further observed that the uncle of the victim while appearing in the witness box as PW5 has stated in his cross-examination that on seeing his niece perplexed, he did not ask the accused the reason for the same. This witness even could not tell the exact date of the incident. Thus, the act of the witness is unnatural as he being the real uncle of the victim, finding her coming out of the room of the accused in perplexed

(Sehmi Hui/frightened) condition, was expected to enquire the matter from the victim and the accused, but he did not do so for the reasons best known to him.

It was further observed by learned trial Court that there is unexplained delay in lodging the FIR. As per the complainant, the victim disclosed the entire incident to her mother on 30.11.2014 at about 07.00 P.M., who in turn, told the same to the complainant. However, the present FIR was lodged on 11.12.2014 i.e. 11 days after coming to know about the incident by the parents of the victim. Though the prosecution has tried to explain the delay on the plea that during this period, the complainant had been visiting to the temple committee, so as to take action against the accused and when the temple committee refused to take any action against the accused, the complainant approached the police. The acts and conduct of the complainant renders his testimony not worthy of credence, as neither he had gone to the temple to enquire about the incident from the Pujari nor he made complaint to the Sarpanch or Numberdar of the village. Even he did not take the members of the temple committee to the accused. On the contrary, the accused has examined Naresh Pal as DW1 and Nagender alias Bittu as DW2, who are President and Member respectively of the temple committee. Both these witnesses have categorically deposed that they used to go to the temple daily in the morning as well as in evening. No such complaint was made against the accused regarding the character of priest/pandit by any villager including the complainant to the committee.

In these circumstances, learned trial Court has determined that the prosecution has miserably failed to prove its case against the accused

beyond shadow of reasonable doubt and while giving benefit of doubt, acquitted the accused of the charges framed against him.

This Court finds that the complainant has failed to show any misreading of evidence by learned trial Court and has not been able to point out any legal error in the judgment under challenge which may warrant interference by this Court. When there is no evidence available on record to connect the accused with the alleged crime, no case is made out for interference in the impugned judgment dated 23.02.2017 passed by learned Additional Sessions Judge, Yamuna Nagar at Jagadhri.

Accordingly, the present application, being devoid of any merit, is dismissed. Leave to appeal is declined.

January 23, 2020
Yag Dutt

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: No