

272 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-29515-2019 in/and
CRM-A-2155-2019 (O&M)
Date of decision : 16.01.2020

State of Haryana Applicant
versus

Mahender Respondent

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI
HON'BLE MR.JUSTICE AVNEESH JHINGAN

Present : Mr. Vikrant Pamboo, DAG, Haryana.

AJAY TEWARI, J. (Oral)

CRM-29515-2019

1. For the reasons recorded, the application is allowed. Delay of 186 days in filing application for grant of leave to appeal is condoned.

CRM-A-2155-2019

2. This is an application for leave to appeal against the acquittal of the respondent under Sections 341/323/377 IPC and Section 6 of the Protection of Children from Sexual Offences Act, 2012 in FIR No.57 dated 02.03.2016 registered at P.S. Bhattu Kalan.

3. As per the allegations, the respondent had taken the minor to the burial ground and had subjected him to sexual intercourse. As per the complaint, his father had rescued him from the respondent. The trial Court, however, found that in the contemporaneous statement recorded under Section 164 Cr.P.C. the victim had given a totally different version and had mentioned that one un-known persons had taken him to the burial ground about one month ago and had raped him. At that time he had

stated that his uncle Ramesh had saved him. However, in his statement before the Court he changed track and alleged that he had been raped on the date of the claim and his uncle Kalu had saved him.

4. The trial Court noticed that neither Ramesh nor Kalu was produced in the testimony and did not believe the case of the father who had stated that he had saved the child.

5. Learned State counsel has argued that the scientific evidence matched because spermatozoa was detected on the underwear of the victim which matched with the DNA of the respondent. The trial Court had noticed this fact but has gone on to further state that no spermatozoa was detected from the swab which was taken from the anal region of the child and moreover relied upon *Premjibhai Bachubhai Khasiya Vs. State of Gujrat & another, 2009 (4) RCR (Criminal) 186 (Gujrat) (DB)* wherein it was held that a criminal prosecution could not succeed only on the basis of DNA report.

6. In the circumstances, we are not inclined to interfere with the judgment of the Court below.

7. Leave to appeal stands dismissed.

8. Since the main case has been decided, the pending criminal miscellaneous application, if any, also stands disposed of.

(AJAY TEWARI)
JUDGE

(AVNEESH JHINGAN)
JUDGE

16.01.2020

pooja sharma-I

Whether speaking/reasoned

Yes/No

Whether Reportable :

Yes/No