

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

CRM-A-2518-2019 (O&M)
Date of decision : 26.02.2020

State of Haryana

... Applicant/ appellant

Versus

Sucha Singh

... Respondent

**CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN
HON'BLE MRS. JUSTICE ARCHANA PURI**

Present: Mr. Sukhdeep Parmar, DAG, Haryana
for the applicant/Appellant.

JITENDRA CHAUHAN, J.

CRM-34285-2019

For the reasons mentioned in the application which is duly supported by an affidavit, the delay of 69 days in filing the appeal is condoned. The application is allowed.

Main case:

The present application under Section 378(3) of the Code of Criminal Procedure for grant of leave to appeal has been filed against the judgment dated 27.05.2019, passed by learned Judge, Special Court, Fatehabad, whereby, respondent Sucha Singh was acquitted of the charge framed under Sections 363 and 366-A of the Indian Penal Code and Section 6 of Protection from Sexual Offences Act, 2012 in First Information Report No.16 dated 12.2.2018 registered at Police Station Women, Fatehabad.

2. The facts necessary for adjudication of the matter as narrated in para 2 of the impugned judgment are as under:-

“2. On 12.02.2018, an application was moved by 'D' against Anshul, Seema Devi, Umesh and others that they enticed her daughter 'V'. It was stated therein that she has four children and her eldest daughter is married. Both her sons had gone for their work. Her elder daughter and younger daughter 'V' were present at the house. At 5:50 pm, her elder daughter had gone to the shop to buy some eatable for her daughter. On finding a chance, accused came to her house and took her daughter 'V' by enticing her. She prayed that legal action be taken. On this, case was registered under Sections 363, 366-A read with Section 34 of IPC. Special report was sent to learned Area Magistrate and higher police officers. Birth certificate of 'V' was obtained. Investigation was verified by DSP Ravinder Singh Tomar. Allegations against Anshul, Seema Devi, Umesh were not found to be true., Section 34 of IPC was deleted. 'V' was recovered from accused Sucha Singh and her statement was recorded. Section 6 of POCSO was added. 'V' was got medico-legally examined. Place of occurrence was inspected on the demarcation of 'V' and site plan was prepared. Statements of witnesses were recorded. Accused Sucha Singh was arrested on 11.03.2018. Counselling of prosecutrix 'V' was got done from CWC and her statement under Section 164 Cr.P.C. was got recorded. Disclosure statement of accused was recorded in pursuance of which place of occurrence was demarcated. On 12.03.2018, ultrasound of accused was got conducted from MAMC Agroha and report was obtained. Scaled site plan of place of occurrence was got prepared on 23.03.2018.”

3. After completion of investigation, final report under Section 173 Cr.P.C. was presented in the Court. The charge was framed against the accused under Sections 363 and 366-A of IPC and Section 5(1) punishable under Section 6 of Protection of Children from Sexual Offences Act, to which he did not plead guilty and claimed trial.

4. In order to substantiate its case, the prosecution examined MHC Suman as PW1, L/Const. Kiranjeet Kaur as PW2, L/Const. Saroj as PW3, Sanjay Maggo as PW4, Balwant Singh, Draftsman as PW5, ASI Geeta as PW6, Inspector Bimla Devi as PW7, Prosecutrix 'V' as PW8, 'D' mother of the prosecutrix as PW9, Dr. Manav Sethi as PW10, Dr. Renu Bala as PW11 and Dr. Priya Chaudhary as PW12. HC Surender, CWC, Criminal Ahlmad, Dr. Girish and L/C. Sharda were given up being unnecessary. DNA report (Ex.PX) was tendered in evidence and closed the prosecution evidence.

5. When examined under Section 313 Cr.P.C., the accused denied all the incriminating evidence appearing against him and pleaded false implication. No defence evidence was led by him.

6. After hearing the learned Public Prosecutor for the State; the learned defence counsel and examining the evidence on record, learned trial Court acquitted the accused-respondent of the charges framed against him.

7. Being dissatisfied, the present application seeking leave to appeal against the judgment dated 27.05.2019 passed by the trial Court, has been filed before this Court by State of Haryana.

8. It is contended by learned State counsel that the learned trial

who had categorically stated before the Court that respondent-Sucha Singh had come in their locality for construction of a house of her uncle and did work for about 10-15 days. During this period, the respondent started talking with her and one day, when she was alone, the respondent came to her house and committed rape upon her forcibly. He further contends that the prosecutrix as well as the respondent were medically examined and their medical reports have been proved by Dr. Manav Sethi (PW-10) and Dr. Renu Bala (PW-11) respectively. Therefore, the learned trial Court by completely ignoring the above said facts, acquitted the accused on the basis of conjectures and surmises.

9. Heard.

10. In **Sunil Kumar Sambhudayal Gupta and others vs. State of Maharashtra 2011 (1) RCR (Criminal) 57** Hon'ble the apex Court framed the guidelines for appellate court as to how to deal with in the matter of “appeal against acquittal”, which are as under:-

“Appeal against Acquittal:

22. It is a well-established principle of law, consistently re-iterated and followed by this Court is that while dealing with a judgment of acquittal, an appellate court must consider the entire evidence on record, so as to arrive at a finding as to whether the views of the trial Court were perverse or otherwise unsustainable. Even though the appellate court is entitled to consider, whether in arriving at a finding of fact, the trial Court had placed the burden of proof incorrectly or failed to take into consideration any admissible evidence and/or had taken into consideration evidence brought on record contrary to law; the appellate court should not

ordinarily set aside a judgment of acquittal in a case where two views are possible, though the view of the appellate court may be the more probable one. The trial court which has the benefit of watching the demeanor of the witnesses is the best judge of the credibility of the witnesses.

23. Every accused is presumed to be innocent unless his guilt is proved. The presumption of innocence is a human right. Subject to the statutory exceptions, the said principle forms the basis of criminal jurisprudence in India. The nature of the offence, its seriousness and gravity has to be taken into consideration.

The appellate court should bear in mind the presumption of innocence of the accused, and further, that the trial court's acquittal bolsters the presumption of his innocence. Interference with the decision of the Trial Court in a casual or cavalier manner where the other view is possible should be avoided, unless there are good reasons for such interference.

*24. In exceptional cases where there are compelling circumstances, and the judgment under appeal is found to be perverse, the appellate court can interfere with the order of acquittal. The findings of fact recorded by a court can be held to be perverse if the findings have been arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant/inadmissible material. A finding may also be said to be perverse if it is 'against the weight of evidence', or if the finding so outrageously defies logic as to suffer from the vice of irrationality. (See: **Balak Ram & Anr. v. State of U.P.**, AIR 1974 SC 2165; **Shailendra Pratap & Anr. v. State of U.P.**, AIR 2003 SC*

1104; Budh Singh & Ors. v. State of U.P., AIR 2006 SC 2500; S. Rama Krishna v. S. Rami Reddy (D) by his LRs. & Ors., AIR 2008 SC 2066; Arulvelu & Anr. v. State, (2009) 10 SCC 206; Ram Singh alias Chhaju v. State of Himachal Pradesh, (2010) 2 SCC 445; and Babu v. State of Kerala, (2010) 9 SCC 189).”

11. In the present case, the learned trial Court while acquitting the respondent, has observed as under:-

“24. In the present case, the prosecutrix as well as accused were medically examined and parcels were sent for FSL examination. As per report of FSL placed on file as Ex.PX, human semen was detected on exhibit 1 i.e. Salwar pertaining to the prosecutrix and exhibit 3 i.e. underwear pertaining to accused and semen could not be detected on rest of the exhibits. Parcel No.1 and VI were sent further for DNA examination and as per DNA report “the DNA profile of seminal stains on source of item No.1 (salwar) is matching with the DNA profile of Sucha Singh (source of item No.6).” According to the prosecutrix, she remained with accused from 09.02.2018 till 09.03.2018 till she was recovered. She had stated that she was taken to Bathinda, Bombay and she again brought back to Bathinda and surprisingly, she did not raise any hue and cry while accompanying the accused and during the period she stayed with him when she had every occasion to do so. Her conduct leaves no doubt that she had accompanied the accused of her will and her being with the accused was not without her consent. Thus, from the statement of prosecutrix

made under Section 164 Cr.P.C., her evidence before the Court and above facts and circumstances, the case of prosecution that accused kidnapped her and committed rape upon her is not proved.”

12. We have gone through the case file carefully and find that the judgment of acquittal has been passed by the trial Court on correct appreciation of the facts as the prosecutrix remained with the accused (respondent) from 09.02.2018 till 09.03.2018 till she was recovered. She had stated that she was taken to Bathinda, Bombay and she again brought back to Bathinda. During this period, she did not raise any hue and cry, and she remained roaming with the accused at her own free will and consent. The conduct of the prosecutrix conclusively establishes that she remained in the company of the accused with her own free will. There was no force or enticement at all. Moreover, as per the birth certificate Ex. P2, the age of the prosecutrix was 17 years at the time of alleged occurrence. It is an evidence of the prosecution that she had accompanied the accused out of her own sweet will and the respondent had not taken away and merely allowed her to accompany him. She was of the age of discretion. Hon'ble the Supreme Court in ***S. Varadarajan versus State of Madras 1965 AIR (SC) 942*** case in the similar circumstances had observed as under:

“ It must, however, be borne in mind that there is a distinction between “taking” and allowing a minor to accompany a person. The two expressions are not synonymous though we would like to guard ourselves from laying down that in no conceivable circumstances can the two be regarded as meaning the same thing for the purposes of Section 361 of the

Indian Penal Code. We would limit ourselves to a case like the present where the minor alleged to have been taken by the accused person left her father's protection knowing and having capacity to know the full import of what she was doing voluntarily joins the accused person. In such a case we do not think that the accused can be said to have taken her away from the keeping her lawful guardian. Something more has to be shown in a case of this kind and that is some kind of inducement held out by the accused person or an active participation by him in the formation of the intention of the minor to leave the house of the guardian. ”

In the instant case too, the respondent can not be said to have kidnapped the prosecutrix or ravished her. Thus, the prosecution had failed to prove on record that the accused (respondent) kidnapped the prosecutrix and committed rape upon her.

13. It is a settled law as has been held in ***C. Antony Vs. K.G. Raghavan Nair***, 2002(4) RCR (Criminal) 750 that even if a second view on appreciation of evidence is possible, the Court will not interfere in the acquittal of the accused unless the judgment suffers from any perversity. In the cases of acquittal, there is double presumption in his favour; first the presumption of innocence, and secondly the accused having secured an acquittal, the Court will not interfere until it is shown conclusively that the inference of guilt is irresistible.

14. In the instant case, there is no reason to differ from the view taken by the learned trial Court. The judgment of acquittal does not suffer

from any perversity or illegality calling for interference by this Court,
therefore, the present application for leave to appeal is declined.

[JITENDRA CHAUHAN]
JUDGE

[ARCHANA PURI]
JUDGE

26.02.2020
anju/sunita

Whether speaking / reasoned?
Whether reportable?

Yes / No
Yes / No