

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

Crl. Misc. A 2604 of 2019 (O&M)
Date of decision: 14.1.2020

State of Haryana

...Appellant

Versus

Rahul

...Respondent

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Tanuj Sharma, AAG, Haryana.

JAISHREE THAKUR, J. (Oral)

Crl. Misc. No. 34392 of 2019

For the reasons mentioned in the criminal miscellaneous application, which is supported by an affidavit, the delay of 108 days in filing the Criminal Appeal along with application seeking leave to file appeal is condoned.

Crl. Misc. A 2604 of 2019

This appeal has been preferred by the State seeking to challenge the judgment dated 18.4.2019 passed by the Additional Sessions Judge, Jhajjar, whereby the respondent has been acquitted of the offences under Section 506 IPC and Section 8 of the POCSO Act registered at Police Station Sadar Bahadurgarh.

In brief, the case of the prosecution as set up is that on 29th March, 2017, the complainant filed a complaint before the Incharge Police

Post Badli, alleging that on the intervening night of 28/29th March, 2017, he

was sleeping in the room at the terrace of his house and his children were sleeping outside. At about 11.30 p.m., he heard the noise of his daughter and found her missing from the bed. On hearing the cry of his daughter coming from the house of his uncle, he along with his brother rushed inside the house, where he noticed that his daughter aged 12 years, had been gagged by Rahul son of Bharat Singh (hereinafter called as an accused). It was alleged that after seeing them, the accused ran away from the spot. The complaint was filed seeking legal action to be taken against the accused.

On registration of the complaint, a formal FIR under Section 506 IPC and Section 8 of the POCSO Act was registered and investigation was commenced. Statement of the victim under Section 164 of the Code of Criminal Procedure was recorded by the Magistrate and the minor victim also got medico legally examined. The Investigating Officer visited the place of occurrence and prepared a rough site plan Ex. PW12/C and thereafter on presentation of the challan, charges were framed against the accused. In support of the case, the prosecution examined Victim (PW1), Mother of victim (PW-2), SI Jai Bhawan No. 237/JJR (PW-3), Vikram Singh, Criminal Ahlmad (PW-4), Constable Rakesh No. 1461/JJR (PW-5), Paternal uncle of victim (PW-6), Complainant/father of victim (PW-7), Dr. Neeraj Kumar, M.O. C.H.C. Kosli (PW-8), Naveen Kumar, Lecturer (PW-9), Sneh Lata, Member, CWC Jhajjar (PW-10), Inspector Jasbir Singh (PW-11), Si Neelam No. 899/JJR (PW-12), ASI Narender No. 420/JJR (PW-13) and EHC Parveen Kumar No. 598/JJR (PW-14). On conclusion of prosecution evidence, statement of the accused was recorded under Section 313 of the

Code, wherein he denied all the allegations levelled against him. He pleaded that he was innocent and has been falsely implicated in the present case and preferred to lead evidence, but closed the same without doing so.

After hearing learned counsel for the parties as well as going through the record, the trial court acquitted the accused-respondent of all the charges. Aggrieved against the said acquittal, the State has preferred the instant appeal.

Learned counsel for the applicant/appellant submits that the complainant's witnesses have duly supported the averments made in the complaint and the charges as framed against the respondent stand proved on record. It is submitted that from the evidence brought on record it is clear that the respondent committed the alleged offence on the intervening night of 28th/29th March, 2017, while further arguing that the victim herself had deposed that the accused—Rahul used to live in her neighbourhood, who gagged her mouth and took her away to the adjoining house on the date of occurrence when she was sleeping in the roof of her house. It is further argued that the trial court has also erred in acquitting the accused on the ground that there was non compliance of Section 164-A of the Code which pertains to the medical examination of a victim in cases pertaining to sexual abuse which acquittal was not warranted, in view of the fact that the victim had given her statement in support of the case set up by the prosecution.

I have heard learned counsel for the appellant and did not find any merit in the well reasoned judgment as rendered by the trial court.

As per the events set up in the FIR, the complainant was

sleeping on the roof of the house, while her parents were sleeping inside the house. It has also come on the record that the victim, who was 12 years, was sleeping besides her brother and did not raise any hue and cry when she was allegedly taken by the respondent-accused. The statement of both the victim and her father seem highly improbable considering the fact that under any circumstances a person who is being taken away would not have made hue and cry and made an attempt to rouse her brother, who was sleeping in the cot besides her. Interestingly enough, the prosecution did not array the brother of the victim as one of the witnesses, who would have further substantiated the plea as set up by the prosecution. The trial court, while acquitting the accused, has also taken note of the following discrepancies in the statement of the prosecution witness, wherein it has been noticed that the complainant had made improvement:-

“...Again, the matter does not rest here, the complainant has improved his version and stated that accused had gagged the mouth of the victim and had committed wrong act with her. Suffice to say, that it is not the case of the prosecution that accused had committed wrong act with the victim and it is simply stated that accused lifted the victim and he gagged her mouth when he was witnessed by the complainant and PW6 paternal uncle of victim. Hence, in view of the material contradictions appearing in the testimony of the complainant as well as victim the case of the prosecution appears to be shrouded the suspension and accused is entitled for benefit of doubt only on this count.”

Thus, the findings recorded by the trial court cannot be held to be perverse or against law. Nothing has been pointed out as to which

material evidence has been misread or as to which material evidence has not been considered by the trial court. Rather, perusal of the judgment shows that the findings are correct and the evidence brought on record has been considered in its correct perspective. The accused has been rightly acquitted by the trial court.

For the reasons stated above, I do not find any ground to grant leave to file appeal. Therefore, finding no merit in the application filed under Section 378 (3) of the Code seeking leave to appeal is dismissed.

14.1.2020
prem

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	No