

**Sr. No.222**

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

**CRM-A-3090-2019 (O&M)  
Date of Decision: 04.02.2020**

State of Haryana

... Applicant/Appellant

Versus

Sahiba and others

... Respondents

**CORAM:- HON'BLE MR. JUSTICE JITENDRA CHAUHAN  
CORAM:- HON'BLE MR. JUSTICE ARUN MONGA**

Present:- Mr. Sukhdeep Parmar, DAG, Haryana.  
for the applicant-State.

**JITENDRA CHAUHAN, J.**

**CRM No.41056 of 2019**

For the reasons mentioned in the application, which is supported by an affidavit, delay of 116 days in filing the appeal is condoned.

Application stands allowed.

**Main case**

This is an application for leave to appeal against the judgment dated 21.05.2019 passed by Additional Sessions Judge, (Exclusive Court for Heinous Crimes against Women and Children) Yamuna Nagar at Jagadhri, vide which the accused/respondents were acquitted of the charge in case FIR No.105 dated 21.09.2017 registered under Sections 4 and 17 of POCSO Act, 2012 and Section 506 IPC registered at Police Station

Buria, District Yamuna Nagar.

The brief facts of the case as noticed in the judgment passed by the trial Court in paragraph No.2 are reproduced as under:-

*“Briefly, the case set up by the prosecution is that, on 21.09.2017 complainant 'S', who is mother of the victim/prosecutrix (name of complainant as well as prosecutrix withheld to hide their identities in terms of explanation attached to Section 33(7) of the Protection of Children from sexual offences Act, 2012) moved a complaint alleging that she has seven children. On 10.09.2017 at around 3.00 A.M, her eldest daughter Sahiba in connivance with Akhtar Ali has called accused Ashik son of Saleem at their house. Thereafter, Ashik committed rape upon victim-prosecutrix aged 14 years and threatened her with dire consequences, if she disclosed about this incident to anybody. Today, her daughter told her about this fact. On the basis of this complaint, FIR under Sections 120-B and 506 of IPC and 4 of the POCSO Act, 2012 was registered. Investigation began. During investigation, site plan of the place of occurrence was prepared. Statements of witnesses were got recorded. The medical examination of victim/prosecutrix was got conducted. Her statement under Section 164 Cr.P.C. was got recorded in which she has reiterated the allegations levelled in the complaint. Later on, on 22.09.2017, Section 120-B of IPC was deleted and Section 17 of the POCSO Act, 2012 was added. On 1.10.2017, accused Akhtar son of Jabir, and Sahiba were arrested, who suffered their respective disclosure statement and got the place of occurrence demarcated. After completion of necessary investigation, proceedings and usual formalities, challan under Section 173 Cr.P.C*

*was presented in the Court for trial of accused Akhtar and Sahiba.”*

After completion of investigation, Challan was presented in the Court of Illaqa Magistrate. The case was committed to the Court of Session.

Charges under Sections 16 and 17 of the POCSO Act were framed against accused Sahiba and Akhtar Ali whereas charges under Section 3 read with Section 4 of the Act and Section 506 IPC were framed against accused Ashik to which the accused did not plead guilty and claimed trial.

In order to prove its case, the prosecution had examined victim/prosecutrix as PW1, 'S' mother of complainant as PW2, Mulak Raj, Draftsman as PW3, LHC Suman Devi as PW4, Dr. Nisha Gurawa as PW5, SI Mehma Singh as PW6, ASI Parveen Kumar as PW7, HC Sanjeev Kumar as PW8, Raj Kumar as PW9, Dr. Narender Kumar Chabra as PW10 and L/ASI Poonam as PW11 and closed the evidence.

The statements of accused under Section 313 Cr.P.C. were recorded in which all the incriminating circumstances appearing in the prosecution evidence were put to the accused to which the accused denied and pleaded false implication.

No evidence was led in the defence.

After appraisal of the evidence, the learned trial Court vide impugned judgment dated 21.05.2019, acquitted accused/respondents of the charges framed against them.

Feeling dissatisfied with the impugned judgment, the

present appeal has been filed by the State of Haryana.

It is contended by the learned State counsel that learned trial Court has committed a grave error in acquitting the accused/respondents. The prosecutrix had specifically proved her case while appearing in the Court as PW-1. The version of the prosecutrix stood corroborated by the testimony of PW-2, mother of the prosecutrix. Not only that, she had corroborated her earlier testimony recorded under Section 164 Cr.P.C. Further there is testimony of PW-5 Dr. Nisha Gurawa on record, which proves that the possibility of sexual assault upon the victim cannot be ruled out. As per the school record, the age of the prosecutrix was 14 years, thus even if there was a consent that vitiates in the eyes of law inasmuch as it was a statutory rape. There being plethora of evidence on record, the view taken by the trial Court is fallacious.

We have heard the learned State counsel and have gone through the case file very carefully.

The learned trial Court has acquitted the accused on the following grounds:-

- 1. The age of the prosecutrix was not proved from any evidence whatsoever.*
- 2. There was history of previous enmity between the accused Sahiba and Akhtar Ali on one side and the family of the complainant on the other side.*
- 3. The prosecutrix while appearing in the witness box did not support its case rather she had admitted that she was in love affair with accused Ashik.*
- 4. There was no hue and cry from the victim when alleged rape was committed by accused Ashik at her home in the presence of her mother, sister and bhabhi.*

We have gone through the case file carefully and find that the judgment of acquittal has been passed on correct appreciation of evidence on record. From the record, it emanates that there is no proof with regard to the age of the prosecutrix and the prosecution has failed to prove her to be minor as it is claimed by it. Further the testimony of the prosecutrix/victim was found to be suffering from inherent weaknesses and did not inspire confidence of the Court. She changed her stance materially and made material improvements while appearing in the Court as PW-1. Though the rape is alleged to have committed at the house of the complainant but it is unbelievable that when the mother, sister and bhabhi of the victim were present, the accused could have committed rape. Matter does not rest here. The accused had proved on record photographs Marked D1 to D6 in which the victim/prosecutrix and the accused Ashik are shown in close proximity with each other, which does not suggest that she was made to sit forcibly with the accused rather it proves that the victim was a consenting party. Not only that, victim had proved on record her affidavit Ex.D-1 in which she had stated that no such incident had ever taken place with her. Further there is delay of 10 days in lodging the FIR. This Court is not oblivious of the fact that in sexual assault cases, where all the family is involved and the delay in lodging the FIR does not make its veracity doubtful though it is claimed by the complainant that the factum of rape was told by her daughter to her after a gap of 10 days but the record reveals that at the time of incident, mother of the prosecutrix was present

at her home. Meaning thereby, mother-complainant was very much aware about the said incident.

When all these factors are taken into consideration cumulatively, it leads this Court to the conclusion that the accused/respondents have been rightly acquitted by the trial Court.

Even otherwise, 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. 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.

Similarly, in '**Anil Kumar Gupta Vs. State of U.P., 2011 AIR(SC) (Criminal) 922**, Hon'ble the Supreme Court has held as under:-

*"8. Shri R.K. Shukla, learned senior counsel appearing for the appellant mainly contended that the High Court in the process of reappreciating the evidence, ignored the vital evidence on record which proves the innocence of the appellant. It was submitted that the approach of the High Court is completely contrary to the decision of this Court in 'Ramesh Babulal Doshi v. State of Gujarat, 1996(3) R.C.R.(Criminal) 188 : (1996) 9 SCC 225' which was followed by this Court in 'Dwarka Das &*

**Ors. v. State of Haryana, 2002(4)**

**R.C.R.(Criminal) 794 : (2003) 1 SCC 204'** The submission was that the High Court miserably failed to examine the reasons given by the trial Court for recording the order of acquittal.

9. Learned counsel for the State of U.P. supported the impugned judgment mainly relying on the circumstances that on that fateful night, the appellant alone was in the company of the deceased and it is one of the strong circumstances to hold that it is the appellant who administered poison to the deceased.

10. In *Ramesh Babulal Doshi*, this Court held that "the mere fact that a view other than the one taken by the trial Court can be legitimately arrived at by the appellate Court on reappraisal of the evidence, cannot constitute a valid and sufficient ground to interfere an order of acquittal unless it comes to the conclusion that the en approach of the trial Court in dealing with the evidence was patently illegal or the conclusions arrived at by it were wholly untenable. While sitting in judgment over an acquittal, the appellate Court is first required to seek an answer to the question whether the findings of the trial Court are pal ably wrote, manifestly erroneous or demonstrably unsustainable. If the appellate Court answers the above question in the negative, the order of acquittal is not to be disturbed. Conversely, if the appellate Court holds, for reasons to be recorded, that the order of acquittal cannot at all be sustained in view of any of the above infirmities it can then-and then only-reappraise the evidence to arrive at its own conclusions".

*11. In Dwarka Das, this Court following the decision in Ramesh Babulal Doshi, further observed that 'there cannot be any denial of the factum that the power and authority to appraise the evidence in an appeal, either against acquittal or conviction stands out to be very comprehensive and wide, but if two views are reasonably possible, on the state of evidence: one supporting the acquittal and the other indicating conviction, then and in that event, the High Court would not be justified in interfering with an order of acquittal, merely because it feels that it, sitting as a trial court, would have taken the other view. While reappreciating the evidence, the rule of prudence requires that the High Court should give proper weight and consideration to the views of the trial Judge. But if the judgment of the Sessions Judge was absolutely perverse, legally erroneous and based on a wrong appreciation of the evidence, then it would be just and proper for the High Court to reverse the judgment of acquittal, recorded by the Sessions Judge, as otherwise, there would be gross miscarriage of justice".*

*12. In Chandrappa & Ors. v. State of Karnataka, 2007(2) R.C.R.(Criminal) 92 : 2007(1) R.A.J. 841 : (2007) 4 SCC 415 this Court reappreciating the aforesaid principles, further observed that "in case of acquittal, there is a double presumption in favour of the accused. Firstly, the presumption of innocence available to him under the fundamental principle of criminal jurisprudence that every person should be presumed to be innocent unless he is proved to be guilty by a competent court of law. Secondly, the accused having secured an acquittal, the presumption of his innocence is*

*certainly not weakened but reinforced, reaffirmed and strengthened by the trial Court. Though the above principles are well established, a different note was struck in several decisions by various High Courts and even by this Court. It is, therefore, appropriate if we consider some of the leading decisions on the point". Having stated so, this Court also held that an appellate Court has full power to reappraise, review and reconsider the evidence upon which the order of acquittal is founded. But it is well established that if two views are possible on the basis of evidence on record and one favourable view to the accused has been taken by the trial Court, it ought not to be disturbed by the appellate 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.

Thus, the application seeking leave to appeal is hereby dismissed.

**(JITENDRA CHAUHAN)**  
**JUDGE**

**(ARUN MONGA)**  
**JUDGE**

**04.02.2020**

vandana

Whether speaking/reasoned  
Whether Reportable

Yes/No  
Yes/No