

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

CRM-A-2971-2019 (O&M)

Date of Decision: 20.02.2020.

State of Haryana

.....Applicant/Appellant

VS.

Sandeep @ Kala

.....Respondent

**CORAM : Hon'ble Mr. Justice Jitendra Chauhan and
Hon'ble Mr. Justice Jasgurpreet Singh Puri.**

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

JITENDRA CHAUHAN.J.

CRM No. 40924 of 2019

For the reasons mentioned in the application which is duly supported by an affidavit, the delay of 53 days in filing the appeal is condoned and the application is allowed as prayed for.

Main case

This is an application for leave to appeal against the judgment dated 23.07.2019 passed by Additional Sessions Judge, Hisar, vide which the accused/respondent was acquitted of the charge in FIR No.60 dated 19.11.2018 registered under Sections 450, 354(A)(i), 376(i) and 506 IPC and Section 4 of Protection of Children from Sexual Offences Act, at Police Station Women, Hansi, District Hisar.

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

“2. Brief facts of the case of prosecution are that on 19.11.2018, prosecutrix along with her mother Tara Devi came to police station and narrated about the incident. Upon which, Legal Aid Counsel, Ms. Vinita Parocha was called and statement of the prosecutrix was got recorded, in which she alleged that she is studying in 10th class in Government Girls Senior Secondary School, Sisai. On 17.11.2018 at about 12.00 O' clock in the day time, her mother went to the field for labour work and her brother also accompanied her mother. Her father went to Hansi and her younger sister went to the house of her uncle and she was alone at her home. Meanwhile, the accused Sandeep @ Kala came to her house and asked the prosecutrix to accompany him to his home. Prosecutrix refused to go to the house of accused, but accused forcibly took her to his house, which is situated adjacent to the house of the prosecutrix. At that time, there was no person in the house of accused. Accused took her in a room and committed rape upon her. Upon which, she shouted. Due to which, the accused fled away from the spot while threatening the prosecutrix to kill her in case she will disclose the incident to anybody. She further stated that when her mother came to house in the evening, she disclosed about the incident to her mother, who further disclosed to her father. They did not go to the police station for two days due to shame. She prayed for taking action against the accused.”

After completion of investigation, challan/report under Section 173 Cr.P.C was presented in the Court. As the offences under Section 376 IPC and Section 4 of Protection of Children from Sexual Offences Act were exclusively triable by Court of Session, the case was committed to the said Court.

Charges under Sections 450, 376(i) and 506 IPC and Section 4 of POCSO Act were framed against the accused to which the accused did not plead guilty and claimed trial.

In order to prove its case, the prosecution had examined PW-1 H.C. Asha, PW-2 Constable Dharambir, PW-3 Constable Baljeet, PW-4 Constable Arvind Kumar, PW-5 Draftsman Raju Walia,

PW-6 SI Kamlesh Rani, PW-7 ASI Manju, PW-8 Ashok Kumar, Teacher, PW-9 Victim, PW-10 ASI Sunita, PW-11 Lady Constable Neelam, PW-12 Lady Constable Babita, PW-13 Dr. Sunny Malhotra, PW-14 Amit Kumar, Criminal Ahlamd, PW-15 Tara Devi, PW-16 ASI Sushma, PW-17 Puneet Garg, PW-18 Rajesh Kumar, PW-19 Dr. Meenu Dhingra, PW-20 Anil Kumar Yadav, JMIC, Karnal, PW-21 Dr. M.K. Malik, Senior Scientific Officer, PW-22 Dr. Rajeev Kawatra, Senior Scientific Officer, PW-23 Ms. Vinita Parocha, Legal Aid Counsel and closed the evidence.

The statement of accused Sandeep @ Kala under Section 313 Cr.P.C was 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 in defence was led by the accused.

After appraisal of evidence, the learned trial court vide impugned judgment dated 23.07.2019, acquitted accused/respondent of the charges framed against him.

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 the learned trial Court had acquitted the accused merely on the ground that the prosecutrix did not support the prosecution case but the learned trial Court has failed to consider the scientific evidence available on record which was sufficient to hold the accused guilty for commission of rape

upon the prosecutrix who was a minor girl. As per FSL report Ex.P-37 semen was detected on Ex.1a (Vaginal swab) of the prosecutrix. Learned trial Court has failed to consider the DNA report Ex.P-39 which clearly indicates that DNA profile obtained in item 1a (lady's shirt) is matching with that of item No.10 (Sandeep) hence, it has been proved that they are of same biological origin.

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

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

- 1. PW-9 the prosecutrix had deposed that accused Sandeep @ Kala neither committed rape upon her nor threatened her to kill. PW-15 Tara Devi, mother of the prosecutrix had also not supported the case of the prosecution.*
- 2. The vaginal swab of the prosecutrix did not match with the DNA profile of the accused.*
- 3. There are certain contradictions in the statement Ex.P-7 made in the presence of legal aid counsel and statement Ex.P-9 made before the Magistrate under Section 164 Cr.P.C.*
- 4. The prosecutrix was alone at her house and if there was any intention of accused to commit rape upon her, then why the accused asked her to accompany him to his house. She had ample opportunity to make noise in the way when accused dragged her to his house but the same was not done by her.*
- 5. Though prosecutrix had stated in her statement Ex.P-9 that accused dragged her from her house but there is no injury either on the private parts or on the body of the*

prosecutrix as deposed by PW-9 Dr. Meenu Dhingra.

We have gone through the case file carefully and find that the judgment of acquittal has been rightly passed in the given set of facts. The crucial witnesses i.e. PW-9 the prosecutrix and her mother PW-15 Tara Devi had not supported the case of the prosecution. They were declared hostile witnesses by the Court. Nothing beneficial to the case of the prosecution could be elicited during their lengthy cross-examination. There is no evidence either in the shape of medical evidence or otherwise except DNA report and in that report too, the DNA profile on the vaginal swab of the prosecutrix did not match with the DNA profile of the accused. The statement of the prosecutrix is replete with contradictions. There was no injury either on her private parts or on her body. The statement of the prosecutrix does not inspire the confidence of the Court as she did not raise any hue and cry while the accused was dragging her to his house from the house of the prosecutrix. There is no reason to differ from the view taken by the learned trial Court.

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.

In Anil Kumar Gupta vs. State of U.P. 2001(2) RCR

(Criminal) 292 SC it was held as under:-

“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".

(emphasis supplied)

11. 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".

In the instant case, the findings recorded by the learned

trial Court are based on correct appreciation of evidence and do not suffer from any infirmity and perversity much less illegality.

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

(JITENDRA CHAUHAN)
JUDGE

(JASGURPREET SINGH PURI)
JUDGE

20.02.2020.
SN

Whether speaking/reasoned :	Yes/No
Whether reportable :	Yes/No