

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

CRM-A 544 of 2020 (O&M)

Date of decision :- September 8th, 2022

Union Territory, Chandigarh

.....Applicant

Versus

Maina

.....Respondent

**CORAM :- HON'BLE JUSTICE MS. RITU BAHRI
HON'BLE JUSTICE MS. NIDHI GUPTA**

Present :- Mr. J.S.Toor, Additional Public Prosecutor for the
Applicant.

NIDHI GUPTA, J.

CRM-10165 of 2020

Since there is delay of 175 days in filing the application seeking leave to appeal, an application bearing No. 10165/2020 under Section 5 of the Limitation Act, seeking condonation of delay in filing the application, has been filed.

CRM-A-544 of 2020.

The instant application under Section 378(5) Cr.P.C., seeking leave to appeal has been filed by Union Territory, Chandigarh against the judgment of acquittal dated 20.5.2019 passed by Additional Sessions Judge-cum-Judge Special Court, Chandigarh in case FIR No.379 dated 19.9.2018 registered under Sections 376AB, 511 IPC and Section 18 of the POCSO Act, at Police Station Sector 39, Chandigarh.

Brief facts of the case are that the Complainant (mother of the victim) in her complaint stated as follows: that she has four sons and three daughters, she is working as Maid; that on the day of the incident while she was at her home, at about 3.00/4.00 p.m. her daughter (the victim), aged about 11 years, left home to go to the toilet, and that when she was returning home the accused namely Maina, who is resident of jhuggi in Adarsh Colony, Sector 54, Chandigarh, forcibly took the victim in his jhuggi, and removed her pant. When her daughter refused, he slapped her, and when the victim raised hue and cry people gathered at the spot and accused Maina was apprehended at the spot. According to the complainant her daughter had narrated the whole incident to her and therefore she prayed that action be taken against the accused as per law.

On the basis of the said complaint, present case under Sections 376AB, 511 IPC and Section 18 of the POCSO Act was registered and investigation conducted and on 19.9.2018 the accused was arrested. Victim was produced before the Magistrate and her statement was recorded under Section 164 Cr.P.C. Medical of the victim was also conducted at G.M.S.H., Sector 16, Chandigarh on 19.9.2018 itself. During investigation the victim's date of birth was verified as 18.2.2007. Statements of witnesses were recorded and on completion of investigation challan was presented against the accused before the Special Court dealing with offences under the POCSO Act, 2012. As required under Section 207 Cr.P.C, the accused was supplied a copy of the challan, free of cost. On finding a prima facie case, Accused was charged under Sections 376AB, 511 IPC and Section 18 of the POCSO Act, to which he pleaded not guilty and

claimed trial. Thereafter, the parties led evidence and statement of accused under Section 313 Cr.P.C. was recorded where he again pleaded his innocence and claimed that he had been falsely implicated in the case.

Prosecution in their arguments stated that case against accused stood established as per testimony of the prosecutrix which was corroborated by medical and documentary evidence. It was prayed that the accused be charged and convicted accordingly.

On the other hand, Counsel for the accused vehemently contended that the respondent had been falsely implicated in the case because whatever money he used to earn he used to give it to the parents of the victim and it is only when he started asking parents of the victim to return his money that they cooked up this story against him.

Learned counsel further contended that there were several serious discrepancies in the version put forth by the prosecution. It was pointed out that the complainant in her statement Ex. P1 has stated that accused forcibly took her victim-daughter in his jhuggi and also gave slaps to her. However, in her statement before the Court, complainant had stated that her daughter had beaten the accused and she was molested when she was returning to her house. Then the victim has narrated an entirely different sequence of events stating that she was beaten with sticks and taken to jungle by the accused, where a lady came to rescue her. However, name of the said lady is not divulged anywhere not even in the statement under Section 164 Cr.P.C.

Another discrepancy is that that the mother of the victim has stated that she did not know the accused, whereas the victim had admitted that accused used to come to their house. In her cross examination she has further admitted that whenever the accused would ask her parents to return his money there used to be a fight between them. Counsel for the accused also pointed out that PW7 had been added later on, who claimed that he had called the police, whereas the complainant has stated that she had called the police. As such, there were sufficient contradictions in the case set up by the prosecution.

The learned Court below framed the following issues for determination: -

1. Whether prosecution has led plausible evidence to bring home the guilt of the present accused?
2. Whether offence under Section 376 AB r/w Section 511 of IPC and Section 8 of POCSO Act is made out against the accused?

On the basis of the facts and evidence, and the arguments advanced by the counsel for the parties, the Id. Trial Court passed the order impugned herein, acquitting the respondent.

We have heard learned counsel for the applicant-State, and perused the paperbook, and we find no infirmity in the order passed by the Id. Trial Court. Undoubtedly, there are several contradictions in the statements/ evidence led by the PWs at different times, laying credence to the consistent and uncontradictory defense put up by the accused.

The version of the complainant, mother of the victim, as put up in her complaint Ex. P1, is that she was working as a maid and has four sons and three daughters. On 19.9.2018 at about 3 pm when she came back from her work, her minor daughter aged 11 years left for washroom and after sometime someone came to the house of the complainant and informed her that her daughter was molested. Thereafter the complainant immediately went to the spot where the accused, was apprehended by the public. She identified the accused before the Id. Trial Court. The accused was given beating by the public and the police was informed who arrived and took the victim and the accused to the Police Post where their statements were recorded and thumb marked by her. Then her daughter was taken for medical examination and also produced before the Magistrate where her statement was recorded. Thereafter, the learned Court below examined the prosecutrix as PW2, and her statement was recorded (in-camera proceedings). It was ensured that victim child was comfortable and her ability to answer and depose as a witness was ascertained. It is only after that her testimony was recorded. Prosecutrix in her testimony as PW2 categorically deposed that she was going to the washroom at about 5 pm when the accused, whom she identified on the LCD screen, caught hold of her and took her to jungle. She further stated that when she raised a hue and cry the accused beat her with sticks and threatened her. She bit his hand and he slapped her forcibly and then a lady came to the spot and rescued her from the accused whereafter she came home and disclosed the entire occurrence to her mother who informed the police.

The Head Mistress of the School where the victim studied was examined as PW4 who produced the original record of the victim's admission to the school and verified her date of birth as 18.2.2007.

Another witness examined by the prosecution is PW3 Dr Bhavna Gupta, medical officer, who deposed that on 19.9.2018 she medico-legally examined the victim at the request of the police. In her opinion, possibility of sexual intercourse could not be ruled out.

Another witness examined by the prosecution is PW7 Ashok Paswan, who deposed that he was labourer and on 19.9.2018 at about 4 p.m., he was sitting at a shop in B-Block at Adarsh Colony, Sector 54, Chandigarh. He stated that on hearing some noises he ran towards the jhuggi where he found the accused with the victim. He stated that clothes worn by the victim were torn whereafter he called the police to whom the accused was handed over. He also stated that he was President of the locality and therefore, he knew the victim, her mother, as well as the accused. Various other prosecution witnesses were examined by the prosecution in support of their case.

A perusal of above sequence of events reveals that there are numerous fundamental discrepancies in the case set forth by the prosecution.

Firstly, the complainant mother in her complaint Ex. P1, had first stated that the incident was reported to her by her victim daughter after she had come back home. However, in her deposition before the Court she has stated that sometime after the incident someone had come to her house and informed her that her daughter was molested while she was returning home, whereupon she immediately rushed to the spot, where her daughter disclosed to her that the accused took her to a

Jhuggi where her pant was removed by the accused and when she resisted, he had slapped her. And when she raised alarm, the public was attracted and apprehended the accused. Therefore, the first contradiction is between the different versions (in the statement Ex. P1, and the deposition) of the complainant herself.

Secondly, another major discrepancy in the version of the prosecution is that the complainant-mother of the victim in her statement Ex. P1 as well as in her testimony, has stated that the accused took the victim to his jhuggi; whereas the victim in her examination-in-chief stated that accused took her into the jungle where he gave her beatings and molested her. This also belies the claim of the mother – complainant that the incident was narrated to her by the victim.

Thirdly, according to the victim, a lady came to rescue her from the jungle. However, name of the said lady is not divulged anywhere not even in the statement under Section 164 Cr.P.C. Whereas, the mother has stated that the public came to rescue her daughter when she raised hue and cry. Yet another irreconcilable lacuna.

Fourthly, another discrepancy in statement of the complainant is that she claims that she did not know the accused at all; whereas the victim has stated that the accused used to come to their house frequently. The complainant stated that she did not know the accused nor his name nor where he lived whereas the victim in her cross examination stated that the accused used to come to their house frequently and belonged to Bihar. Victim has also stated that whenever the accused used to ask her parents to return his money there used to be a fight between them.

Fifthly, in her cross examination the complainant has stated that her husband was the only earning member of the family; whilst earlier she had said that she was working as a maid. She then stated that her husband was not doing any work due to fracture on his leg.

Even further, PW-7, besides the fact that he was added later, has an altogether unheard of addition to the whole story, who stated that clothes of the victim were torn; whereas neither the complainant nor the victim have stated anything in this regard at any stage. PW7 also explained during cross examination that on the day of incident he was present in the colony as he had not gone to work as he had had a surgery. However, no details were given regarding this purported surgery i.e. what kind of surgery was performed, nor any medical document has been produced in support.

A sum total of the various versions makes it clear that there are fatal discrepancies in the case of the prosecution. In view of the above discussion, we see no reason to interfere in the findings recorded by the learned trial Court and as such this application is dismissed and leave to appeal declined. The application seeking condonation of delay in filing the application seeking leave to appeal also stands dismissed.

(NIDHI GUPTA)
JUDGE

(RITU BAHRI)
JUDGE

September 8th, 2022
Joshi.

Whether speaking/reasoned
Whether reportable

yes/no
yes/no