IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-A-131-2021
Decided on 06.12.2022.

State of Haryana

...Petitioner

Versus

Child in Conflict with Law Rohit

.... Respondent

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH
HON'BLE MR. JUSTICE VIKRAM AGGARWAL

Present: Ms. Rajni Gupta, AAG, Haryana
for the petitioner.

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VIKRAM AGGARWAL, J.

This judgment shall dispose of an application filed by the State of Haryana under Section 378(3) Cr.P.C., seeking leave to appeal against judgment dated 20.12.2019 passed by the learned Additional Sessions Judge, Special Judge, Children's Court, Kurukshetra, vide which the child in conflict with law was acquitted.

On 27.04.2018, a 14 years old girl (the victim) went missing from her house at about 7.00 P.M. The matter was reported to the police by her uncle. He gave her description to the police and stated that the child in conflict with law Rohit had enticed the victim away on the pretext of marriage and, therefore, action be taken and the victim be searched. The victim was found sitting at Chandigarh Railway Station on 30.04.2018 from where she was recovered. Statement under Section 164 Cr.P.C., was recorded. On 05.05.2018, the child in conflict with law was apprehended.

The other accused who were tried separately were also apprehended subsequently. The child in conflict with law was tried by the Children's Court and by way of judgment dated 20.12.2019, he was acquitted.

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Aggrieved against the said judgment, the present application for leave to

file appeal has been preferred.

We have heard the learned State counsel and with her assistance, have gone through the case file.

It has been submitted by the learned State counsel that the Children's Court erred in law in acquitting the child in conflict with law. The findings returned by the learned Court have been referred to and it has been contended that the view taken by the Court is not sustainable. Learned counsel has submitted that offences under the POCSO Act are serious offences and need to be dealt with sternly so that they can act as an eye opener for other potential offenders. Learned counsel has submitted that the child in conflict with law has been let of without considering the matter in the right perspective.

Having heard learned counsel for the State and having perused the the case file, we are of the considered opinion that no interference is called for in the well reasoned judgment passed by the Children's Court.

Before referring to the merits of the case, it would be appropriate to discuss the legal position in so far appeals against judgments of acquittal are concerned.

It is no longer *res integra* that Courts have to be extremely careful while hearing appeals against acquittal and the judgments of acquittal should not be interfered with lightly. In the case of ***Sadhu Saran Singh Vs. State of U.P. and others, 2016 (2) RCR (Criminal) 319,*** the Hon'ble Apex Court reiterated that generally an appeal against acquittal has always been altogether on a different pedestal from that of an appeal against the conviction. It was held that in an appeal against acquittal, where the presumption of innocence in favour of the accused is re-enforced, the Appellate Court would interfere with the order of acquittal only when there was perversity of fact and law. A word of "caution" was also added by the Hon'ble Apex Court that the paramount consideration of the Court was to do

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substantial justice and avoid miscarriage of justice, which could arise by acquitting the accused, who is guilty of an offence. Though, in this case the Hon'ble Apex Court reversed a judgment of acquittal but the principles carved out would definitely be binding and would be applicable as per the facts of each case. As stated above, in the present case, there is no perversity on facts or law. Still further, in the case of ***State of Maharashtra Vs. Fazal Rehman Abdul, 2014(7) SCC (Criminal) 01***, the Hon'ble Apex Court laid few parameters to be kept in mind while entertaining appeals against judgments of acquittal. It was held that the Appellate Court should not ordinarily set aside a judgment of acquittal in a CRM-A-353-2021 4 case where two views are possible, though the view of the Appellate Court may be the more probable one. It was held that while dealing with a judgment of acquittal, the Appellate Court has to consider the entire evidence on record so as to arrive at a finding as to whether the view of the trial Court was perverse or otherwise unsustainable. It was also held that the Appellate Court should bear in mind the presumption of innocence of the accused and further that the trial Court's acquittal bolsters presumption of his innocence. The part of the Judgment dealing with this issue is reproduced here-in-below:

> "9. This Court has laid down parameters for interference against the order of acquittal time and again. 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. While dealing with a judgment of acquittal, the appellate court has to 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. The appellate court is entitled to consider whether in arriving at a finding of fact, the trial court had failed to take into consideration admissible evidence and/or had taken into consideration the evidence brought on record contrary to law. Similarly, wrong placing of burden of proof may also be a subject-matter of scrutiny by the appellate court. 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 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

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> innocence. Interference in a routine manner where the other view is possible should be avoided, unless there are good reasons for interference. 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. The 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."

This view was also taken by the Hon'ble Apex Court in CRM-A-353-2021 5 a case ***State of Rajasthan Vs. Madan alias Madaniya, 2019 Crl.L.R. (S.C.) 09.*** It was held by the Hon'ble Apex Court that in an appeal against acquittal, the Appellate Court would only interfere where there exists perversity of facts and law. While arriving at these conclusions, the Hon'ble Apex Court relied upon the Judgment in the case of ***Rabindra Kumar Pal alias Dara Singh Vs. Republic of India, 2011(2) SCC 490.***

The matter shall now be examined in light of the principles enumerated in the aforementioned judgments. The prosecution examined 12 witnesses in support of its case and also produced 42 documents in evidence. The allegation was that the child in conflict with law had enticed/kidnapped the victim with a promise to marry her and from 27.04.2018 to 30.04.2018, she was enticed with a view to establish physical relations with her in the house of the co-accused. The co-accused are the mother, maternal aunt and maternal uncle of the child in conflict with law. It was alleged that the victim had been first taken to the house of the maternal aunt of the child in conflict with law where he committed penetrative sexual assault upon the victim where after she was taken to Chandigarh with the help of co-accused-Sandeep and Salma, where she was kept in a hospital for being sent to Kolkata by train but before she could be sent, she was recovered. The victim, while deposing as PW-9, stated that she wanted to go to Chandigarh and, therefore, on 27.04.2018, she left without informing anyone and at Chandigarh the police apprehended her. She did not state anything against the child in conflict

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with law either with regard to enticing or the act having been committed with her. She refused medical examination also. In the statement recorded under Section 164 Cr.P.C., she stated that she had gone with the child in conflict with law on his asking but in the same breath stated that she already knew him and he was her friend. She stated that it was she who had suggested that they should run away. She then deposed as to where all they had gone and even the co-accused had permitted them to stay in her house on their asking only. She did not, therefore, level any allegation of enticing, kidnapping or any wrongful act having been committed with her. It was in fact her second statement under Section 164 Cr.P.C. in which she had leveled certain allegations. The Children's Court found that the victim had made many improvements in her statements while appearing in the Court, and, therefore, did not find her statement to be truthful. She leveled certain allegations in the examination-in-chief but denied the same in the cross-examination. She refused to get her medical examination done. The presence of semen on the jeans of the child in conflict with law was also found to be irrelevant as nothing was found on the belongings or clothes of the victim. The CCTV footage was also not relied upon as it had not been proved in accordance with law. Even the age of the victim was not proved by the prosecution. The Children's Court rightly held that even if the age was considered to be below 18 years, there was no cogent or trustworthy evidence on record to prove that the offence had been committed. The child in conflict with law was therefore rightly acquitted.

We find that it is not even a case where two views are possible and even if a second view was possible, the one favouring the accused would have to be taken in view of the authoritative pronouncements of law discussed in the preceding paragraphs.

In view of the aforementioned facts and circumstances, we do not find any merit in the present application and, therefore, decline to grant leave to file

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appeal and accordingly reject the application.

(AUGUSTINE GEORGE MASIH)
JUDGE

(VIKRAM AGGARWAL)
JUDGE

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

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