

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

CRM-A No.2255 of 2019 (O&M)

Date of Decision : 25th April, 2022

Naresh Kumar

....Appellant

Versus

State of Haryana and another

.....Respondents

**CORAM : HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA
HON'BLE MR. JUSTICE PANKAJ JAIN**

Present : Mr. D.S. Matya, Advocate
for the appellant.

PANKAJ JAIN, J.

CRM No.29863 of 2019

For the reasons mentioned in the application, the delay of 13 days in filing the application seeking leave to appeal is hereby condoned.

Application stands disposed off.

CRM No.29862 of 2019

Allowed as prayed for subject to all just exceptions.

CRM-A No.2255 of 2019

This is an application filed by the complainant under Section 378(4) of the Cr.P.C. seeking leave to appeal against judgment dated 23rd May, 2019 passed by Ld. Additional Sessions Judge, Palwal in case FIR No.80 dated 15th April, 2018 registered under Sections 120-B, 363/366/

120-B IPC and Section 6 of the POCSO Act, 2012, at Police Station Bahin, whereby respondent No.2-Manoj Kumar has been acquitted of the charges levelled against him.

2. As per the case of the prosecution the complainant approached Police Authorities informing that his minor sister suddenly went missing on 15th April, 2018 at about 4.00 am. After FIR No.80 dated 15th April, 2018 was registered for the offences punishable under Sections 120-B, 363/366/120-B IPC and Section 6 of the POCSO Act, 2012, at Police Station Bahin, accused Dharmender and Manoj Kumar (respondent in the present appeal) were put to trial. Ld. Court held accused Dharmender guilty, the respondent herein i.e. Manoj Kumar was acquitted by the Trial Court holding that –

“41. As far as the role of accused Manoj is concerned, he allegedly hatched a criminal conspiracy with accused Dharmender and Jogender for abduction/kidnapping of the prosecutrix and that in furtherance of that conspiracy, accused Dharmender committed aggravated penetrative sexual assault upon the victim. The victim has stated in the statement Ex.P1 recorded before police that accused Manoj had already made a planning on phone with accused Jogender. There is nothing more stated against accused Manoj in this statement. Further, in her statement Ex.P3 recorded u/s 164 of Cr.P.C. before learned Magistrate also, the victim did not utter a single word regarding accused Manoj. In the said statement, the victim did not even depose about any planning or conspiracy between accused Manoj and Jogender or with accused Dharmender. It is in the

statement of victim recorded in the Court as PW1 that she stated about the presence of accused Manoj at Khushi Vatika and as per her version, accused Manoj left Khushi Vatika and she was brought to Palwal by accused Dharmender and Jogender.

42. *The victim as PW1 was confronted with the statement Ex.P1, wherein, it is not recorded that accused Manoj was present at Khushi Vatika or that he had left Khushi Vatika, when accused Dharmender and Jogender took her from there. Further, the presence of accused Manoj at Khushi Vatika at the time of commission of rape upon her by accused Dharmender is also not recorded in the statement Ex.P1 and this part was confronted by learned defence counsel for accused Manoj with PW1.*

43. *The victim has though stated that accused Manoj had already hatched a criminal conspiracy with Jogender on phone but she has not explained as to what kind of conspiracy was hatched between accused Manoj and Jogender or as to how she came to know about the said conspiracy. The victim has not even stated about the presence of accused Manoj in her first version recorded in Ex.P1 and in the statement Ex.P3 recorded by learned Magistrate.*

44. *On a close scrutiny of the versions of victim, it emerges that the sequence of facts as narrated by the victim in her version regarding the alleged occurrence recorded at different stages, the involvement of accused Manoj is doubtful. The victim improved her version qua accused Manoj by appearing in the Court, whereas, she did not depose anything about the presence of accused Manoj at the time of her abduction/kidnapping or at the time of commission of rape upon her. She specifically alleged about the presence of two persons namely Dharmender and Jogender on bike, when she was taken to Khushi Vatika and the presence of accused*

Manoj is not even stated at Khushi Vatika.

45. *There is no direct or circumstantial evidence on record that there was any agreement between the accused to do an illegal act, which is the essence of criminal conspiracy. Though, it is a matter of common experience that direct evidence to prove conspiracy is rarely available, however, there are also no circumstances proved before, during and after the occurrence to establish the complicity of accused Manoj and to prove that accused Manoj joined the said criminal act with accused Dharmender and Jogender. Thus, the version of prosecutrix regarding the presence of accused Manoj at the time of commission of offence of aggravated penetrative sexual assault upon her or regarding his involvement is totally an improved version, which cannot be relied upon to base conviction of accused. Therefore, the involvement of accused Manoj in the alleged offence is not established.*

3. We have heard Ld. Counsel for the appellant and have carefully gone through the records of the case.

4. Ld. Counsel for the appellant has not been able to point out any infirmity in the findings recorded by the Trial Court. Needless to say, the prosecution is required to prove the case against the accused beyond reasonable doubt. Counsel for the appellant could not controvert the fact that in a Statement recorded before the Magistrate, under Section 164 Cr.P.C., victim did not utter a single word against respondent No.2. There is no evidence on record which could remotely suggest that there was any conspiracy or meeting of mind between the convict Jogender and

respondent No.2. It is only when the victim appeared in the trial that she named respondent-Manoj Kumar. Even in that deposition though she mentioned presence of the respondent but she did not attribute any act to the respondent. Thus, in the considered opinion of this Court no fault can be found with the findings recorded by the Trial Court.

5. Keeping in view the aforesaid discussion, the instant application seeking leave to appeal is found to be without merits and the same stands dismissed.

(TEJINDER SINGH DHINDSA)
JUDGE

(PANKAJ JAIN)
JUDGE

April 25, 2022

Dpr

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No