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

**CRM-A-491-2020 (O&M)**  
Date of decision:- 13.07.2023

**State of Haryana**

.... Applicant

VS

**Sunil @ Rajiv @ Jaidev and another**

...Respondents

**CORAM: HON'BLE MS. JUSTICE RITU BAHRI  
HON'BLE MRS. JUSTICE MANISHA BATRA**

Present: Ms. Mamta Singla Talwar, DAG, Haryana.

**Manisha Batra, J.**

1. The instant application under Section 378(3) of Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') has been moved by applicant-State of Haryana with a prayer for grant of leave to file appeal against judgment of acquittal dated 11.09.2019 passed by learned Additional Sessions Judge, Bhiwani in Sessions case No.143 of 2017 titled as ***State Vs. Sunil @ Rajiv @ Jaidev and another***, whereby the respondents had been acquitted of charges of offences punishable under Sections 323 and 377 read with 34 of IPC, Section 3 of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short 'SC and ST Act') and Section 6 of

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Protection of Children from Sexual Offences Act, 2012 (for short 'POCSO Act')

2. Brief facts of the case relevant for the purpose of disposal of this application are that on 07.03.2017, on receipt of an information regarding admission of one Ravi in civil Hospital, Bhiwani due to injuries sustained in some altercation, a police party headed by ASI Ramesh Kumar reached there and after obtaining opinion regarding condition of the injured and receiving his medico legal report, recorded his statement. The injured Ravi stated that he was working at the Sahil hotel owned by Mahabir. On 04.03.2017 at about 10 pm, accused Rajiv son of Mahabir Singh and Sunil Kumar resident of village Bairan, along with two more persons were having meals in the hotel. Rajiv asked the injured as to where the gas cylinder was lying. The injured expressed ignorance and then a verbal altercation took place between them. The accused gave fist blows and slaps to the complainant and thereafter took him towards an abandoned place where accused Sunil caught hold of his legs whereas accused Rajiv inserted a belan (rolling pin) in his anus while their two companions caught hold of his hands. Some time thereafter, they took out the rolling pin from his anus and threw it and took him towards the hotel. Accused Rajiv and Sunil then took him to village Bairan and from there the injured was taken back by his maternal uncle Pritam. He got himself admitted in the hospital on 07.03.2017. On the basis of his statement, a case under Sections 323 and 377 read with Section 34 of IPC and Section 4 of POCSO Act was registered. Investigation

proceedings were initiated. During investigation, the offence under Section 4 of POCSO Act was deleted as the injured was found to be more than 18 years old. Offence under Section 3 of SC & ST Act was added. Supplementary statement of the complainant was recorded on 15.03.2017 wherein he stated that the accused Rajiv son of Mahabir was also known by the name of Sunil and also disclosed the names of other assailants Bablu @ Virender, Anil son of Het Ram and Sunil son of Maan Singh. Accused Sunil @ Rajiv @ Jaidev was arrested on 03.04.2017. He was interrogated and suffered disclosure statement admitting his involvement in the crime and disclosed the names of their companions as Virender @ Babbal, Anil and Sunil son of Maan Singh. He disclosed that he had asked the complainant about a stolen gas cylinder but as he did not disclose anything, therefore, he had been assaulted. Accused Sunil son of Maan Singh, Virender and Anil could not be initially arrested and thereafter, challan under Section 173 of Cr.P.C. was presented in the Court against accused Sunil @ Jaidev. Subsequently, the accused Ravinder @ Bablu and Anil secured concession of anticipatory bail and joined investigation. Accused Sunil son of Maan Singh was found to be innocent during investigation. Accused Ravinder @ Bablu and Anil had also secured concession of anticipatory bail and joined investigation. Accused Anil died subsequently and supplementary challan against accused Ravinder @ Bablu was also filed on completion of investigation.

3. Copies of challan were supplied to the accused free of costs.

On finding a prima facie case for commission of offences punishable

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under Sections 323 read with Section 34 of IPC, Section 6 of POCSO Act, 2012 and Section 3 of SC & ST Act, both the respondents-accused had been chargesheeted accordingly. They pleaded not guilty to the charges and claimed trial.

4. To prove its case, the prosecution examined as many as 15 witnesses besides placing reliance upon documentary evidence. **PW1-** Satbir Singh, SHO deposed about preparing challan report against accused Ravinder @ Bablu after completion of investigation. **PW-2** Ravi complainant deposed about the manner in which the incident had taken place. As he did not wholly support the prosecution version therefore, he was declared hostile and was allowed to be cross-examined by learned Public Prosecutor and was cross-examined as such. **PW-3** Inspector Prem Singh, deposed about preparing challan report as against accused Sunil @ Jaidev. **PW-4** ASI Dharambir Singh deposed about registering formal FIR and about depositing the case property. **PW-5** Pritam, deposed that on 04.03.2017 at about 12 am the accused Sunil along with Sunil son of Maan Singh had brought the victim to his house in a vehicle and had disclosed that he had stolen a gas cylinder. He deposed that on disclosing by the victim that the accused had assaulted him, he had taken the victim to the hospital. **PW-6** Constable Rajesh Kumar was a formal witness. **PW7-** Sunil Kumar, Patwari, deposed about preparing scaled site plan of the place of occurrence. **PW-8** Rajbala, Sarpanch deposed about issuing caste certificate of the victim. **PW-9** Constable Neeraj Kumar, deposed about depositing the case property with the FSL Sunaria. **PW-10**

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Vijay Kumar, Head Master of the Government Middle School, Village Raidaska proved certificate regarding date of birth of the victim. **PW-11**, DSP Kuldeep Singh, deposed about conducting part investigation proceedings. **PW-12** ASI Ramesh Kumar deposed about conducting part investigation and then about joining the investigation and supported the prosecution case. **PW-13** ASI Rajbir Singh, proved death certificate of accused Anil Kumar son of Rameshwar. **PW-14** HC Manish Kumar deposed about joining investigation on 03.04.2017 and about attesting memo of demarcation place of occurrence by the accused Sunil.

5. Statements of accused were recorded under Section 313 of Cr.P.C. wherein they pleaded false implication and claimed themselves to be innocent. However, no evidence has been adduced by him in defence.

6. After appraising the evidence produced on record and hearing the contentions raised by both the sides, the learned trial Court acquitted the respondents-accused of the charges as framed against them vide judgment dated 11.09.2019.

7. Feeling aggrieved from the same, the applicant-State has filed the instant application seeking leave to file appeal against the impugned judgment dated 11.09.2019. It is submitted in the application and it was argued by learned Deputy Advocate General, that the impugned judgment of acquittal was liable to be set aside as the findings as given by learned trial Court were not sustainable in the eyes of law, the same being suffering from conjectures and surmises.

The learned trial Court did not apply its judicious mind. The overwhelming evidence produced on record by the prosecution had not been properly appreciated. There was sufficient evidence on record to prove that the respondents in furtherance of their common intention had open an assault upon the complainant Ravi and had voluntarily caused injuries to him, had inserted a rolling pin (belan) inside his anus and had thereby committed an offence punishable under Section 377 of IPC. She further argued that the complainant was proved to be belonging to scheduled caste and since he had been sexually assaulted by the respondents, who knew him to be belonging to scheduled caste, therefore, the charges under Section 3 of the SC & ST Act, and Section 6 of POCSO Act also stood proved. It was therefore, argued that the application filed by the applicant for grant of leave to file appeal against the judgment of acquittal deserved to be allowed.

8. We have given due deliberations to the contentions as raised by learned Deputy Advocate General, for the applicant-State and have gone through the record. Before proceeding further, it would be relevant to mention that the well settled proposition of law is that while entertaining an application for grant of leave to file appeal against judgment of acquittal or for entertaining appeal against judgment of acquittal, the appellate Court is required to seek answer to the question whether the evidence of the trial Court were culpably wrong, manifestly erroneous and demonstrably unsustainable. The appellate Court should not ordinarily set aside the judgment of

acquittal wherein two views are possible, though the view of the appellate Court should interfere only where there exists perversity of facts and law. It has also been well settled that though the appellate Court has full power to review, appreciate and reconsider the evidence upon which the order of acquittal is founded but while doing so it must be bear in mind that in case of acquittal, there is double presumption in favour of the accused. Reference in this regard can be made upon the judgments **Sadhu Saran Singh v. State of U.P. and others**, 2016 (2) RCR (Criminal) 319 & **State of Maharashtra v. Fazal Rehman Abdul**, 2014 (7) SCC (Criminal) 01, wherein similar observations had been made.

9. On applying the above enunciated principles of law to the peculiar facts and circumstances of the present case and on perusing the material placed on record, we are of the considered opinion that the application does not deserve to be allowed. The learned trial Court had acquitted the respondents of the charges as framed against them by holding that the prosecution had not been able to bring home their guilt beyond doubt. Learned trial Court had considered the fact that there was unexplained delay of 3 days in reporting the matter to the police. The occurrence as alleged had taken place in the night of 04.03.2017 whereas the FIR was lodged on 07.03.2017. The applicant failed to explain this delay at all. It is well settled proposition of law that the FIR in a criminal case is a vital and valuable piece of evidence for the purpose of appreciating the evidence led at the trial. The object of insisting upon prompt lodging of the FIR is to obtain the earliest

information regarding the circumstances in which the crime was committed, including the names of the actual culprits and the parts played by them, the weapons, if any used as also the names of the eye-witnesses if known to the informant. Delay in lodging the FIR quite often results in embellishment which is a creature of afterthought. On account of delay, report not only gets bereft of the advantage of spontaneity, but danger also creeps in of the introduction of colour version, exaggerated account or concocted story as a result of deliberation and consultation (See: **Thulia Kali v. State of Tamil Nadu**, AIR 1973 SC 501; **Satpal Singh v. State of Haryana**, (2010) 8 SCC 714; **Kishan Singh v. Gurpal Singh**, (2010) 8 SCC 775; **Jai Parkash Singh v. State of Bihar**, (2012) 4 SCC 379 and **Manoj Kumar Sharma and others v. State of Chhattisgarh and another**, (2016) 9 SCC 1).

It is also well settled proposition of law that a delayed First Information Report gives rise to suspicion and puts the Court on guard to look for a plausible and acceptable explanation for the delay. The First Information Report is a document of considerable importance. This document is produced and proved in the criminal trial with the avowed object of obtaining the early information of the alleged criminal activity and to have a record of the circumstances before there was time for them to be embellished or forgotten. A quick information report is a towering circumstance that goes a long way to assure the veracity of the prosecution story as in such cases, there cannot be any time to create and deliberate a false case against the

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accused. Since no satisfactory explanation whatsoever could be rendered by the prosecution witnesses with regard to the delay in reporting the matter to the police, therefore, in our opinion also, a reasonable doubt had been created over the veracity of the prosecution story and the benefit of which certainly was to be given to the respondents.

10. It is also worthwhile to mention that the respondent Ravinder @ Virender @ Bablu had not been named as an accused by the complainant who was the star witness of the case, at the time of reporting the matter to the police. Though, he subsequently named him in his supplementary statement but while appearing as a witness, he totally exonerated him of the allegations as levelled against him and stated that Ravinder @ Virender @ Bablu had reached at the spot after the incident along with his brother-in-law and had even saved him from the clutches of the respondent-accused Rajiv and Sunil Tyre Puncturewala. As such, when this witness had himself not deposed anything as against the respondent-accused Ravinder, therefore, in our opinion, he had rightly been acquitted of the charges as framed against him and no ground has been made out for granting any permission to the applicant for filing appeal challenging the acquittal of the respondent-accused, Ravinder @ Virender @ Bablu.

11. Then so far as the respondent-accused Sunil @ Rajiv @ Jaidev is concerned, learned trial court had observed that the prosecution had failed to connect this accused-respondent also with the allegations as levelled against him. It may be mentioned at this

juncture that the respondent-accused Sunil @ Rajiv @ Jaidev had been chargesheeted under Section 377 of IPC. The gist of this offence is indulgence of an accused in act of carnal intercourse against the order of nature. Section 377 of the IPC is mainly confined to act of sodomy whereas it is not at all the case of the prosecution that either this accused or the accused Ravinder had committed any act of carnal intercourse against the order of nature with the complainant. Therefore, in our considered opinion, no ground for interfering the findings of acquittal as recorded by learned trial Court qua offence punishable under Section 377 of IPC had been made out.

12. It may also be mentioned further that though the respondent-accused had also been chargesheeted for commission of offence punishable under Section 6 of POCSO Act, 2012 but in our considered opinion, he had rightly been acquitted of the charge under that provision as it was well proved on record that the victim Ravi was more than 18 years old on the date of the alleged occurrence and he not being a juvenile, the provision of POCSO Act, 2012 were not at all attracted. Therefore, no fault can be found with the findings of the acquittal as recorded by learned trial Court on this point.

13. Further with regard to the offence punishable under Section 3 of SC & ST Act, it may be stated that though the victim was proved to be belonging to scheduled caste community as a certificate Ex.PW8/A as issued by PW-8 had been produced in evidence, however, there is nothing on record to suggest that the alleged offences had been committed by the respondents-accused upon him,

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while knowing himself to be of that caste or by reason of his belonging to such caste. Therefore, no error can be stated to have been committed by learned trial Court by acquitting the respondents of charge under Section 3 of the SC & ST Act. It is also worthwhile mentioning here that though in his sworn deposition the applicant-complainant had deposed that the respondent Rajiv had inserted a rolling pin in his anus and had assaulted him but his testimony to this effect has not been corroborated by any oral evidence. The medical evidence produced on record is also not convincing. Though PW-15 Dr. Jai Parkash proved Ex.PW15/C medico legal report prepared by him on 07.03.2017 as per which excoriation with lacerations was found present on external anal sphincter of the complainant Ravi with mild bleeding spots but it was admitted by him that the complainant had been examined by him on 06.03.2017 also and at that time he had prepared medico legal report Ex.PW15/A wherein no external injury whatsoever was found on the person of the complainant. He also stated that on 06.03.2017, the complainant had not made any complaint about sustaining any injury in his anal part and complaint was made with regard to other injuries as reflected in medico legal report Ex.PW15/A. The medico legal report Ex.PW15/C was prepared by him on moving an application by the police on 07.03.2017. The complainant did not make any complaint regarding having sustained any injury in his anal portion and no external injury was found on that part of his body while conducting his medical examination on 06.03.2017. Therefore, a doubt has been created that he had not

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sustained any injury as complained by him on his anus till 06.03.2017 and this fact has also created a dent in the story as narrated by the complainant due to which it could not be relied upon beyond doubt. The sworn deposition of the complainant even otherwise cannot be stated to be reliable as he is shown to have made material improvements in the same by saying that the respondent Sunil had given shocks with electricity current to him and he along with one Sunil Tyre Puncturewala had inserted a rolling pin in his anus whereas there was no allegation in the complaint that he was given any electricity shock and further that no person named as Sunil Tyre Puncturewala was arrested or challenged. The learned trial Court after considering all these circumstances had held that the prosecution had not been able to prove its case against the respondents in view of the discussion as made above and the facts and circumstances noticed above, we do not find any merit in the present application and therefore, no leave can be granted to the applicant to file appeal against the judgment of acquittal of the respondents.

14. Accordingly, the application is dismissed.

( RITU BAHRI )      ( MANISHA BATRA )  
JUDGE                      JUDGE

13.07.2023  
pooja saini

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