

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CRA-S-2849-2023(O&M)

Date of decision: 06.10.2023

Singham

...Appellant(s)

Vs.

State of Haryana & Another

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present: - Dr. Pankaj Nanhera, Advocate
for the appellant.

NIDHI GUPTA, J.

CRM-42203-2023

This is an application under Section 5 of Limitation Act read with Section 482 Cr.P.C. seeking condonation of delay of 861 days in filing the appeal.

No cogent and convincing reason is given in the application for condoning such inordinate and extraordinary delay of 861 days in filing the appeal.

Present application accordingly stands dismissed.

CRM-42207-2023

This is an application under Section 389 Cr.P.C. seeking stay of recovery of fine awarded to the appellant by the Court of learned Additional Sessions Judge, Faridabad.

It is inter alia contended in the application that the appellant was the only bread earner of his family and is unable to pay fine imposed on him.

No cogent and convincing reason is given in the application for stay of recovery of fine awarded to the appellant by the Court of learned Additional Sessions Judge, Faridabad.

Present application accordingly stands dismissed.

MAIN CASE

Challenge in the present appeal is to the judgment and order dated 02.04.2019 and 03.04.2019 passed by learned Additional Sessions Judge-cum-Fast Track Court for Trial of Rape Cases, Faridabad whereby the petitioner has been convicted and sentenced in case FIR No.1482 dated 13.12.2017 under Sections 363, 366-A and 323 IPC and Section 6 of POCSO Act registered at Police Station City Ballabhgarh, District Faridabad.

2. Learned counsel for the appellant inter alia submits that FIR in the present case was registered on the basis of statement of mother of the prosecutrix with the allegations that on 12.12.2017, at about 5:30 pm, the appellant had come to her home and enticed her daughter (aged 5 years 6 months) and took her with him, and thereafter, left her back at her home at about 8:30/9:30 pm. Later on, she saw blood on clothes of her daughter. On her asking, her daughter told the complainant that the appellant had beaten her and committed wrong act with her and that the appellant had taken her to the railway line. It is submitted that on the basis of above said statement of the complainant, present FIR was registered.

3. Thereafter, investigation was conducted and challan under Section 173 Cr.P.C. was prepared and presented before the learned

trial Court, subsequent to which, the appellant was charge sheeted under Sections 363, 366A and 323 IPC and Section 6 of POCSO Act, and now the appellant has been convicted vide the impugned judgment.

4. Learned counsel for the appellant contends that although the date of occurrence is stated to be 12.12.2017 however, FIR has been registered after a delay of one day on 13.12.2017. It is stated that there is no explanation forthcoming from the prosecution side for this delay of one day.

5. It is further submitted that the conviction of the appellant is prima facie erroneous as there are material contradictions in the depositions of the prosecution witnesses. It is further submitted that there is material difference even in the statement of mother of victim recorded under Section 164 Cr.P.C. wherein it has been stated that the appellant asked father of the prosecutrix if he can take her to the shop for some food items; however, as per the complaint, the appellant is alleged to have taken away the prosecutrix by enticing her.

6. Learned counsel further submits that the entire prosecution story is not believable as, if the parents of the prosecutrix were present at home with the prosecutrix then how could the appellant have allured or enticed away their daughter in their presence. It is further submitted that the learned trial Court is in material error in ignoring the cross examination of the doctor as PW7 who medically examined the prosecutrix, and who has specifically stated that the possibility of injuries on private part, mentioned in the MLR being caused due to falling on a hard

surface, cannot be ruled out. It is accordingly submitted that the present appeal be admitted.

7. I have heard learned counsel for the appellant.

8. Perusal of record of the case shows that there is voluminous incriminating evidence against the appellant. As per the findings on record, the appellant was known to the family of the victim for the last 6-7 years and was on visiting terms with them. On the date of incident, he had taken the victim child with him on the pretext of offering her some eatable items outside. Being known to the family, the parents of the victim had permitted the victim to accompany the appellant, never imagining that he would do such a wrong acts with her.

9. Perusal of record further reveals that the victim in her statement under Section 164 Cr.P.C. as well as in her evidence as PW2 has supported the prosecution case. Even the mother of the victim as PW3 and father of the victim as PW4 have supported the prosecution case. In this regard, the deposition of the victim as PW2 is relevant and is reproduced hereinbelow:-

“She knows accused Singham because he used to visit their house from many days. One day he took her on railway track in the evening and put off her clothes and committed rape upon her. She cried and objected but nobody came there as there was darkness. Accused Singham left her at her home then she narrated the bad act committed by the accused with her to her mother on her asking. She was taken to hospital. Doctor checked her.”

10. The complainant/mother of victim child appeared as PW3 and she deposed as under:

“On 12.12.2017, around 5:30 PM accused Singham came in their house and he remained in their house till 7:30 PM. On that day, around 7:30 PM he enticed, allured and took her daughter (prosecutrix) with him. He left her daughter around 8:30/9:30 PM in their house and fled away from there. She noticed later on blood stain on the clothes of her daughter. On her asking she told her that Singham uncle gave beatings to her and pointed towards her vagina and told that Singham had committed wrong act/rape upon her. Her daughter further told her that accused Singham had taken her on the railway track.”

11. Furthermore, the oral evidence of the victim and that of the other prosecution witnesses is supported by overwhelming medical evidence on record. In this regard, findings of the learned trial Court are imperative. Relevant part of impugned judgment is as follows:-

“22. Evidence of victim child is further supported by medical evidence. Doctor appeared in the witness box as PW7. PW7 conducted medico legal examination on the person of victim child. MLR Ex.PG shows history of sexual assault with hymen torn. Opinion has been made by doctor PW7 that possibility of sexual intercourse cannot be ruled out. Doctor PW8, who medico-legally examined accused has also given opinion that nothing was suggested that accused was unable to do sexual intercourse.

23. Defence has been taken by the accused that injuries on the person of victim child were due to falling on stairs, but it is not accepted. FSL/DNA report has also come in favour of prosecution and against accused. Blood on the pyjama of victim child matches with blood of accused. So, the availability of accused, taking the victim child and leaving her in badly condition has come on the record. So, it was the accused, who has to explain from where this victim child was subjected to rape and from where she received blood on her clothes. However, there is no explanation in this respect by the accused. He did not chose to lead defence evidence. The investigating part by the prosecution is also complete and nothing has come out to have suspicion on the same”.

(Emphasis supplied)

12. Even before this Court, learned counsel for the appellant is unable to controvert or dispute the above said findings of the learned trial Court in any manner whatsoever. Accordingly, in view of the above uncontroverted evidence on record, as also the gravity and heinous nature of the offence committed, I find no ground is made out to interfere in the impugned judgment of conviction. Present appeal accordingly stands **dismissed** on merits, as also on grounds of delay.

13. Pending application(s) if any also stand(s) disposed of.

06.10.2023

Sunena

(Nidhi Gupta)

Judge

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No