

2024 : PHHC : 011044

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-A-423-2019 (O&M)
DATE OF DECISION: 25.01.2024

STATE OF HARYANA

... APPELLANT

V/S

KAMAL

... RESPONDENT

CORAM: HON'BLE MS. JUSTICE HARPREET KAUR JEEWAN

Present: Mr. K.S.Thakur, AAG Haryana.

* * *

HARPREET KAUR JEEWAN, J.

CRM-4517-2019

1. Prayer in the application is for condonation of delay of 215 days in filing the appeal.

2. Learned counsel appearing on behalf of the State of Haryana contends that after obtaining the copy of the judgment dated 26.03.2018, the District Attorney, Panipat sent the comments to the Superintendent of Police regarding fitness of the case for filing an appeal. Thereafter, the case was sent to the District Magistrate by the office of Senior Superintendent of Police, vide letter dated 23.04.2018. The District Magistrate after considering the opinion of the District Attorney, forwarded the matter to Advocate General, Haryana through endorsement dated 26.04.2018 and thereafter, the case was sent to the Legal Remembrancer Haryana, as the Advocate General was of the opinion that it is not a fit case for filing the

appeal. Even the Legal Remembrancer Haryana gave the opinion that it is

not a fit case for filing an appeal. The file was sent to the Additional Chief Secretary. As such, the delay of 215 days occurred in filing the present appeal.

3. Keeping in view the aforesaid facts, the delay occurred primarily on account of official formalities. The application is duly supported with the affidavit filed by Satish Kumar Gautam, HPS, Deputy Superintendent of Police, City Panipat, as such, I am of the considered opinion that the delay is liable to be condoned. Accordingly, the present application is allowed and delay of 215 days in filing the application for leave to appeal is condoned.

Main case

4. Applicant/petitioner has filed the present application under Section 378(3) of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'Code') seeking leave to appeal to challenge the judgment of acquittal dated 26.03.2018 passed by the Addl. Sessions Judge, Panipat.

(i) As per the prosecution case, the prosecutrix is about 16 years old and she used to work as a Helper in the house of Vikas Malik, resident of Ansal City, Panipat. On 05.05.2016, she was going to throw garbage in the dustbin and some unknown person came there and teased her. The said person dragged her and threatened to kill her to accompany him. The alarm raised by the prosecutrix attracted a neighbour Mr. Saluja who was present outside his house. As Mr. Saluja came forward, the said unknown person ran away from the spot. On the basis of a written complaint moved by the prosecutrix on 06.05.2016, an FIR under Section 8 the of Protection of Children

from Sexual Offences Act, 2012 was registered. During the investigation, the statement of the prosecutrix was recorded under Section 164 Cr.P.C. On 06.05.2016, the respondent-accused was arrested and after completion of the investigation, final report under Section 173 Cr.P.C. was filed before the Area Magistrate, Panipat.

(ii) On appearance of the respondent-accused, the compliance of the provisions of Section 207 of the Code was done and case was committed to the Court of Sessions. The Addl. Sessions Judge issued the charge sheet under Section 354/506 IPC and under Section 8 of Protection of Children from Sexual Offences Act. The respondent-accused opted to contest and did not plead guilty.

(iii) The prosecution examined 7 witnesses including the prosecutrix as PW7, Vikas Malik in whose house the victim alleged that she was working as a helper as PW1 and Kirti Bhushan Saluja, the eye-witness as PW2. Apart from this, Kuldeep Singh, Constable PW3, ASI Balkar Singh, Investigating Officer, PW4 Ms. Vaneeta ASI, another Investigating Officer appeared as PW5 and area Magistrate, Panipat Shri Girraj Singh PW6 were examined. After completion of the prosecution evidence, statement of respondent-accused was recorded under Section 313 Cr.P.C., whereby the incriminating evidence was put to him and he denied the same and pleaded false implication.

(iv) The Addl. Sessions Judge recorded a finding of acquittal as per the judgment dated 26.03.2018.

5. While acquitting the respondent-accused, the trial Court

recorded the following reasons:

- a) PW1, Vikas Malik stated that prosecutrix was working as a helper in his house but he has categorically stated that no occurrence took place in his presence on 05.05.2016 and he did not support the prosecutrix.
- b) PW2, Kirti Bhushan Saluja stated that nothing happened with the prosecutrix in his presence and he did not even identify the accused.
- c) The prosecutrix neither named the accused in the FIR nor in her statement recorded under Section 164 of the Code. She only disclosed the name of the neighbour as 'Saluja' and stated that he slapped the accused but the investigating officer did not examine any 'Saluja' a witness. Rather, the investigating officer has examined Kirti Bhushan Saluja, PW2 who stated that nothing happened with the prosecutrix in his presence. The prosecutrix for the first time disclosed the name of the accused, when she appeared as PW7 during the trial and before that no identification parade was conducted. As such, the identity of the accused was held to be doubtful.
- (d) The testimony of the prosecutrix about her age as 16 years was found doubtful. Trial Court observed that the prosecutrix did not produce her birth certificate. In her cross-examination, she stated that as per her Aadhar card, the year of her birth is 1996. Since the occurrence took place in the year 2016, as such, her age would be 20 years, and not 16 years.
- (e) The trial Court further observed that the deposition of the

prosecutrix in the Court was found contrary to her statement (Exhibit P-11) which was recorded under Section 164 Cr.P.C.

By recording aforesaid reasons, the trial Court observed that respondent-accused is entitled for benefit of doubt and the accused was acquitted.

6. Learned State counsel contends that the trial Court did not properly appreciate the statement of the prosecutrix, PW7. She had identified the accused during the trial and even prior to that she made a statement before the Magistrate, under Section 164 Cr.P.C. In her complaint given to the Police which is the basis of the FIR, she has categorically stated that she can identify the assailant. In such circumstances, the trial Court has wrongly ignored the statement of the prosecutrix regarding identity of the accused. Even if PW1, Vikas Malik and PW2 Kirti Bhushan Saluja have not supported the prosecution case, since the prosecutrix was a minor, her age was 16 years at the time of occurrence, the trial Court should have accepted the statement. Her statement cannot be ignored merely on the ground of non-corroboration by other witnesses i.e. PW1 and PW2.

7. I have considered the aforesaid contentions, in order to sustain the charges under Section 8 of Protection of Children from Sexual Offences Act, 2012 (in short 'the Act') the first ingredient has to be proved that the victim is a 'child' i.e. less than 18 years of age as defined in Section 2(d) of the Act. In the complaint given to the Police, though the prosecutrix has alleged that her age is 16 years but there is nothing on record to show that during the investigation, any document was

collected to prove the date of birth of the prosecutrix. The verbal statement of the prosecutrix that she was 16 years of age was found doubtful. In view of her admission made in the cross-examination which has been noticed by the trial Court that she admitted that as per her Aadhar card, her birth year is 1996. Since the occurrence took place in the year 2016, as such, she was above the age of 18 years at the time of alleged occurrence. The trial Court has observed that an admission is the best evidence in the absence of a documentary evidence.

8. No doubt, testimony of a witness does not require corroboration. However, the statement of the witness should inspire confidence. As per the testimony of the prosecutrix, when she raised alarm, her neighbour came there and in the meantime, the accused fled away from the spot. The prosecution has examined PW2 Kirti Bhushan Saluja who has though stated that the prosecutrix was working as a helper in the house of his neighbour Vikas Malik but he has categorically stated that nothing had happened with the prosecutrix in his presence. He has further testified that he does not know the accused who was present in the Court. The witness was declared hostile and he was confronted with his statement recorded under Section 161 Cr.P.C. He was cross-examined at length by the public Prosecutor despite that he did not support the prosecution case.

9. PW1 Vikas Malik has though admitted that the prosecutrix was working as a helper in his house but categorically stated that no occurrence took place on 05.05.2016 in his presence. He has also stated that he does not know the accused who was present in the Court. Despite the fact that the witness was declared hostile and Public Prosecutor had cross-examined

the witness at length, even then the said witness has not supported the version of the prosecutrix.

10. The testimony of the prosecutrix has been firstly found doubtful even regarding her age. Her testimony is further found doubtful that even the neighbour cited as an eye-witness has not supported her version. The person in whose house she was working as a helper has also not supported the version of the prosecutrix.

11. Apart from this, the identity of the accused-respondent is highly doubtful. The accused is not named in the FIR. No identification parade has been conducted. Identifying the accused for the first time during the trial under the circumstances that none of the witnesses has corroborated the version of the prosecutrix becomes highly doubtful.

12. In view of the above circumstances, I am of the considered opinion that the testimony of the prosecutrix is surrounded by suspicious circumstances. The respondent-accused was not named in the FIR. His identity has not been proved by the eye-witness or by any other witness. The complainant has identified the accused for the first time in the Court. No identification parade was conducted. There is no medical evidence on record. In such circumstances, the uncorroborated statement of the prosecutrix becomes highly doubtful where her version for her age has also been found doubtful by the Trial Court. Keeping in view the above circumstances, the findings arrived by the trial Court are based on appreciation of the evidence and facts on record.

13. It is well settled that while dealing with an appeal against acquittal, by invoking Section 378(3) of the Cr.P.C., the appellate Court has

to consider whether the trial Court's view can be termed as a possible one particularly when evidence on record has been analysed. The scope of enquiry by the appellate Court while dealing with an appeal against acquittal under Section 378(3) Cr.P.C. has been dealt with by the Hon'ble Apex Court in ***Mohan @ Srinivas @ Seena @ Tailor Seena Vs. State of Karnataka 2022(1) RCR Criminal, 493*** wherein it has been held that when the trial Court renders its decision by acquitting the accused, the presumption of innocence gathers strength before the appellate Court. As a consequence, the onus on the prosecution becomes more burdensome as there is a double presumption of the innocence. The Hon'ble Apex Court further observed that when two views are possible, the one taken by the trial Court in a case of acquittal has to be followed on the touchstone of liberty along with the advantage of having seen the witnesses. It was further observed that the appellate Court shall remind itself of the role required to play, while dealing with a case of an acquittal. The observations by the Hon'ble Apex Court are as under:

“20. Section 378 Cr.PC, 1973 enables the State to prefer an appeal against an order of acquittal. Section 384 Cr.PC, 1973 speaks of the powers that can be exercised by the Appellate Court. When the trial court renders its decision by acquitting the accused, presumption of innocence gathers strength before the Appellate Court. As a consequence, the onus on the prosecution becomes more burdensome as there is a double presumption of innocence. Certainly, the court of first instance has its own advantages in delivering its verdict, which is to see the witnesses in person while they depose. The Appellate Court is expected to involve itself in a deeper, studied scrutiny of not only the evidence before it, but is duty bound to satisfy itself whether the decision of the trial court is both possible and plausible view. When two views are possible, the one taken by the trial court in a case of acquittal is to be followed on the touchstone of liberty along with the advantage of having seen the witnesses. Article 21 of the Constitution of India also aids the accused after acquittal in a certain way, though not absolute. Suffice it is to state that the Appellate Court shall remind itself of the role required to play, while dealing with a case of an acquittal.”

14. It is a cardinal principle of criminal jurisprudence that the prosecution has to prove the case against the accused beyond all shadows of doubts. Having found the testimony of the victim shrouded with suspicion, I am of the considered opinion that trial Court has rightly disbelieved the version of the victim who cannot be treated as a person of sterling quality while acquitting the respondent.

15. In the ratio of the aforesaid decision, while appreciating the reasons recorded by trial Court, I am of the considered opinion that the findings of the facts recorded by the Court are not to be reversed. No material evidence has been ignored. The entire evidence has been properly appreciated. There are no grounds to form a different opinion. The opinion formed by the trial Court is well-reasoned. As such, there is no ground for interference and to set aside the view taken by the trial Court.

16. There is no merit in the present matter. Consequently, present application is dismissed. The grant of leave to appeal against the order of acquittal dated 26.03.2018 passed by the Addl. Sessions Judge, Panipat is declined.

17. Application stands dismissed.

25.01.2024

Janki

(HARPREET KAUR JEEWAN)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No