



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

CRA-AS-134-2023

Date of decision: 29.04.2024

Raju

....Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Naveen Dahiya, Advocate for
Mr. Shalender Mohan, Advocate
for the appellant.

Mr. Vikas Bhardwaj, AAG Haryana

HARPREET SINGH BRAR, J.

1. The present appeal is preferred against judgment of acquittal dated 18.11.2022 passed by learned Additional Sessions Judge, Fast Track Special Court, Hisar in FIR, bearing no. 23 dated 13.06.2020 registered under Sections 354-A(1), 452, 506, 34 of the IPC and Section 10 of The Protection of Children from Sexual Offences Act, 2012 ('POCSO Act' for short), registered at Police Station Women, Hansi, District Bhiwani.

2. Briefly, the facts are that the complainant is the father of the 13 year old victim. The allegations are that the complainant, on the morning of 03.06.2020 had left his home for work. When he returned, he found his wife (co-accused) and the accused engaging in sexual intercourse. When the complainant confronted the accused, he threatened to kill him. The complainant further disclosed that his minor daughter-victim had revealed to him that the accused used to kiss her and touch her body with a sexual intent and when she told her mother (co-accused) about the same, she beat the victim and



pressurized her to not divulge such occurrence to anyone otherwise, she would be killed and thrown in a canal. As a result, a prayer to take appropriate legal action against the accused was made.

3. On the aforesaid complaint, FIR was registered against the respondents-accused. After completion of the investigation, *challan* was presented against the respondents-accused. Subsequently, they were charged for offences punishable under Section 452 IPC, Section 10 of POCSO Act or in the alternative Section 354-A IPC, Section 17 POCSO Act and Section 506 IPC, to which they pleaded not guilty and claimed trial.

4. The prosecution examined as many as 07 witnesses to prove its case. Subsequently, the statement of the accused under Section 313 of the Code of Criminal Procedure were recorded, wherein the respondents-accused pleaded false implication, however, no witness was examined in order to prove the innocence of respondents-accused.

5. After taking into account all the material on record, respondents-accused were acquitted by the learned trial Court vide judgment dated 18.11.2022.

6. Learned counsel for the appellant assails the judgment of acquittal on the ground that the learned trial Court mechanically decided the case without due application of mind and not recording any reasoned and concrete observations. The judgement is based on surmises and conjectures without properly appreciating the evidence on record. No link evidence is missing in the present case and the prosecution led ample evidence to prove the guilt of the respondents-accused. The statement of the victim under Section 164 Cr.P.C. is consistent with her initial statement. In fact, the learned trial Court recorded a



statement to this effect yet, the respondents-accused were acquitted. Additionally, there is no unexplained delay of 10 days in reporting the matter to the police as the incident was narrated by the victim only on 13.06.2020 and the matter was recorded by the police on the very same day. Moreover, there is no reason to falsely implicate the accused in the present case. The learned trial Court below completely disregarded the fact that the charges of offences punishable under Section 452 IPC, Section 10 of POCSO Act or in the alternative Section 354-A IPC, Section 10 POCSO Act and Section 506 IPC, have been clearly and unimpeachably proved, thus leading to material irregularity and perversity.

7. Having heard the learned counsel for the appellant and after perusing the record of the case with his able assistance, it appears that there is nothing in the judgement of the learned trial Court to indicate perversity or misreading of evidence in its judgement. As per the cross-examination of the victim, who was examined as PW1, on 03.06.2020, her mother had left the house of the complainant i.e. the father of the victim, with co-accused, Deepak, whom she referred to as '*bhaiya*' and thereafter the co-accused never came to the house of the victim. Moreover, the victim in her testimony has nowhere mentioned about the alleged sexual relationship between the co-accused and her mother. Further, the victim admitted that her mother was not residing with them since 03.06.2020 and that her father moved the complaint when she left with the co-accused. As such, the statement of the complainant does not inspire confidence.

8. Furthermore, the complainant has acknowledged the fact that the relationship between him and his wife were strained and that multiple



proceedings have been initiated by both of them against each other. While the co-accused-wife had instituted a complaint under the Domestic Violence Act, the complainant-husband filed a petition seeking divorce. On top of that, the complainant, as per his own testimony, has already filed two other complaints against the co-accused, Deepak on the allegations of theft and subsequently withdrew them. Such conduct on the part of the complainant is a relevant consideration as it erodes the credibility of his complaint. This coupled with the fact that there was a delay of 10 days in filing of the complaint for which no justifiable reason was cited by the complainant, makes the prosecution case suspicious and thus it cannot be concluded that the prosecution successfully managed to prove the guilt of the respondents-accused beyond the shadow of reasonable doubt.

9. The power of the Appellate Court to unsettle the order of acquittal on the basis of re-appreciation of the evidence is subject to the settled law that where two views are possible and out of the two, one points towards the innocence of the accused, the view which favours the accused should prevail over the other pointing towards his guilt. (**See H.D. Sundara and others Vs. State of Karnataka, Criminal Appeal No.247 of 2011 decided on 26.09.2023; Kali Ram v. State of H.P., 1973 (2) SCC 808 and Chandrappa and others v. State of Karnataka, (2007) 4 SCC 415**). A Division bench of this Court in the judgment passed in **State of Haryana Vs. Ankit and others** passed CRM-A No.3 of 2022 decided on 06.07.2023 has held that presumption of innocence further gets entrenched on the acquittal of accused by the trial Court.

10. In view of the facts and circumstances of the case, this Court finds

that learned counsel for the appellant has failed to point out any perversity or illegality in findings recorded by the learned trial Court which warrants interference by this Court. As such, there is no merit in the present appeal and the same is dismissed.

(HARPREET SINGH BRAR)
JUDGE

29.04.2024
Neha

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