

205 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-S-3825-SB-2015
Date of decision: 23.04.2024

Rajender Singh

Versus

State of Haryana and another ...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: None for the appellant.

Ms. Geeta Sharma, DAG Haryana

HARPREET SINGH BRAR, J.

1. This appeal is preferred against the judgment of acquittal dated 17.09.2014 passed by Learned Judge, Special Court, Kaithal in the case stemming from FIR, bearing no. 246 dated 17.09.2014, registered at Police Station Pundri, Kaithal, under Sections 354-C, 451, 509, 506 of the IPC and Section 12 of the Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as 'the POCSO Act' for short).

2. The facts of the prosecution case, tersely put, are that on 17.09.2014, a written complaint was moved before the police by the child victim, wherein she stated that she studied in the 9th standard at the time and her neighbour, who is the accused in the present case, used to pass filthy comments upon her when she used to go to school. On 16.09.2014 at about 2 p.m., the victim was alone at her house and went near the main door to take a bath, since there was no wash room in the house. After she had taken off her clothes, she heard a noise from the roof. After promptly putting on her clothes, climbed the

stairs to the roof and saw the accused sitting on the stairs. The accused refused to leave and threatened to kill the victim if she disclosed this fact to her parents. As such, due to fear, she did not disclose this fact to anyone that day. However, the next day i.e. on 17.09 2014, she disclosed the occurrence to her mother, who further disclose the same to her father. She prayed that appropriate legal action be taken against the accused.

3. On the basis of this complaint, an FIR are was registered. On completing the investigation, challan was presented against the accused. On finding a *prima facie* case against the appellant, charges under Sections 451, 506, 509 of the IPC and Section 12 of the POCSO Act were framed against him to which he pleaded not guilty and claimed trial.

4. In order to prove its case, prosecution examined as many as nine witnesses. Statement of the appellant under Section 313 Cr.P.C. was recorded whereby all the incriminating evidence was put to him wherein he pleaded false implication. However, the appellant did not lead any evidence in his defence.

5. Learned trial Court, on minutely scrutinizing the evidence led by the prosecution and going through the record of the case, held the appellant not guilty and acquitted him.

6. Having heard the learned State counsel and having perused the paper-book with her able assistance, it transpires that there are material contradictions in the statements of the prosecution witnesses as well as constant improvements in the version of the prosecution and as a result the inference that the child victim was tutored by her parents cannot be ruled out. It is the admitted case of the prosecution that there is no washroom in the house of the complainant–victim and as a result even the ladies of the household took a bath

in the open, however, as per the version of the father of the victim (PW3), the ladies of the household used to take a bath in the kitchen. Further, it was averred by the victim and her mother that since examinations were going on at the relevant time, the victim did not go to school on 16.09.2014, when the alleged occurrence took place. However, this story has been duly proved false as the attendance register of the school duly shows that the attendance of the students of her class has been marked for whole of the month in both the sessions. Moreover, the investigating officer HC Sudesh Kumari (PW6) did not carry out the investigation in a proper manner as she failed to verify the fact whether the child victim was in fact appearing for some examination during that time or not. She believed that the examinations for going on solely on the basis of the statements of the child victim and her family members.

7. Furthermore, the factum of previous enmity between the families of the accused and the child victim was successfully established. The victim admitted that earlier her mother had moved a complaint concerning attempting to outrage her modesty against a relative of the accused. However, this fact was denied by the mother of the victim when she appeared in the witness box as PW-2. This is another glaring inconsistency which strikes at the root of the prosecution case. Lastly, as per the investigating officer there were some other persons who were also present at the spot when the alleged incident took place yet, they neither joined the investigation nor were they examined as independent witnesses and as such, an adverse inference can be drawn against the case of the prosecution.

8. 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. Furthermore, the trial Court has the additional advantage of closely observing the prosecution witnesses and their demeanour, while deciding about the reliability of the version of prosecution witnesses. (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.

9. In view of the facts and circumstances of the case, this Court finds that learned State counsel 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 hence, it is denied.

10. Pending miscellaneous application(s), if any, shall also stand disposed of.

(HARPREET SINGH BRAR)
JUDGE

23.04.2024
Neha

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