

CRM-A-2134-MA-2017
Reserved on: 05.04.2024
Pronounced on: 09.04.2024

...Applicant/Appellant

State of Punjab and another

...Respondents

Present: Mr. Bhanu Pratap Singh, Advocate
for the applicant-appellant.

Mr. Subhash Godara, Addl. AG, Punjab.

HARPREET SINGH BRAR, J.(ORAL)

1. The present application is preferred under Section 378(4) Cr.P.C. against judgment of acquittal dated 29.07.2017 passed by learned Additional Sessions Judge, Hoshiarpur in FIR No. 105 dated 09.10.2014 registered under Sections 323, 354 of the IPC and Section 8 and 10 of the Protection of Children from Sexual Offences Act, 2012 (hereinafter 'POCSO Act') at Police Station Mehtiana, Hoshiarpur.
2. Briefly, the facts are that on 07.10.2014, the prosecutrix was returning home from her tuition class when respondent no.2-accused, who was inebriated, grabbed her with lecherous intentions and tore her clothes and fondled her breasts. Thereafter, he dragged his daughter inside the gate when the applicant-appellant came to the spot to rescue her. Respondent no. 2 gave a fist blow to the applicant-appellant which landed upon his left eye, neck and mouth. Both the applicant-appellant and the prosecutrix raised alarm causing one Dhian Singh to arrive at the spot and respondent no. 2 to flee.

3. Learned counsel for the applicant-appellant-complainant contends that the learned trial Court has failed to appreciate that the respondent no. 2 was under the influence of alcohol when he molested prosecutrix. The statement of the applicant-appellant-complainant clearly states that respondent no. 2 dealt a fist blow on his left eye, neck and mouth, which has been reiterated by the prosecutrix in her statement. PW3-Dr. Gurbaksh Singh conducted the medico-legal examination of the applicant-appellant and PW7-Dr. Hardeep Singh conducted his X-ray examination, which further corroborate the stance of the applicant-appellant. Furthermore, the torn clothes of the prosecutrix were also recovered as deposed by PW6-ASI Gurkirpal Singh, Investigating Officer. Learned counsel further contends that respondent no. 2 was in a property dispute with the applicant-appellant causing him to nurse a grudge which motivated him to harass the prosecutrix and injure the applicant-appellant. Lastly, the case of the prosecution has also stands corroborated by the statement of PW5-Dhian Singh, eye witness.

4. Having heard the learned State counsel and perusing the record of the record with his able assistance, it transpires that the applicant-appellant and respondent no. 2 are in fact cousins. The applicant-appellant married one Kulwinder Kaur in 1989, moved to the United States of America and returned in 2013. Kulwinder Kaur remained in India, with his parents. The father of the applicant-appellant transferred 11 kanal 10 marla of land in favour of Kulwinder Kaur regarding which a civil suit was filed by the applicant-appellant in 2009. Currently, she is residing with respondent no. 2, which has caused the applicant-appellant to hold a grudge. Moreover, a civil dispute is also pending qua property among other matters. Admittedly, PW5-Dhian Singh, eye witness is a stock witness, deposing in favour of the applicant-appellant in all litigation pending between the parties.

5. Further, there are material inconsistencies qua the prosecution case, for instance, the applicant-appellant stated that he had received fist blows from respondent no. 2 while the prosecutrix, in her statement, claims that a rod like object was used by respondent no. 2 to inflict said injuries on the person of her father. The prosecutrix had stated that she went to the police station to get her statement recorded and the police did not co-operate. However, PW6- ASI Gurkirpal Singh has deposed that the applicant appellant came alone and if the prosecutrix had accompanied him, her statement could have been recorded on the same day. The applicant-appellant claimed to have filed a written complaint dated 07.10.2014 to get his statement recorded by the police, however the same has not been produced on the record. Repondent no. 2 had moved an application dated 04.07.2014 before the SHO stating that the applicant-appellant has threatened to implicate him in false cases if he did not desist from helping Kulwinder Kaur.

6. The incident took place in front of the house of one Harbhajan Singh, near houses of Harmail Singh, Hardeep Singh. However, the statements of the aforementioned persons were not recorded by the police. In fact, DW1- Paramjit Singh, Sarpanch stated that on inquiry by the Panchayat, it was found that no such incident had occurred.

7. 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.

8. In view of the facts and circumstances of the case, this Court finds that learned counsel for the applicant-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 present application and leave to appeal is denied.

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

(HARPREET SINGH BRAR)
JUDGE

09.04.2024
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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No