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216 IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARHCRM-A-880-2019 (O&M)
Date of Decision: 23.09.2024

STATE OF HARYANA

...Applicant

Versus

PARDEEP AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Vikas Bhardwaj, AAG Haryana.

Mr. Kuldeep, Advocate for
Mr. Rahul Parashar, Advocate respondents No. 1 to 4.

Harpreet Singh Brar, J. (Oral)CRM-15855-2019

This is an application under Section 5 of the Limitation Act read with Section 482 of Cr.P.C. for condonation of delay of 172 days in filing the application seeking leave to appeal.

For the reasons mentioned in the application, same is allowed and delay of 172 days in filing the application seeking leave to appeal is condoned.

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1. The present application is preferred under Section 378(3) of the Cr.P.C. against the judgment of acquittal dated 24.07.2018 passed by learned Additional Sessions Judge, Hisar in FIR No. 322 dated 04.08.2016 registered under Sections 342, 506 and 34 of Indian Penal Code and Section 8 of Protection of Children from Sexual Offences Act, 2012 at Police Station Sadar Hisar.

2. It is the case of the prosecution that on 04.08.2016, prosecutrix and her uncle Kuldeep came to the police station and apprised the police about the

incident. Thereafter, the statement of prosecutrix was recorded, in which she

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alleged that she is aged thirteen years and is studying in 9th standard in Government school. On 04.08.2016 at about 01:00 pm, she was going to home from school. Kuldeep son of Ishwar, Pardeep son of Kartar, Jaswant son of Prem and Pardeep resident of Dharodi came there. They caught hold hand of prosecutrix and outraged her modesty. They stated that prosecutrix and her family members had encroached upon their wall and they will teach her a lesson today. In the meantime, Pardeep tried to kiss the prosecutrix. Suddenly, her friend Pushpa daughter of Rajbir went from there and told the incident to Pankaj and Seema both the teachers. They came there and save the prosecutrix from the clutches of accused-respondents. Prosecutrix-stated that there was a dispute of wall between the family members of prosecutrix and accused and they had given a complaint in police station in this regard.

3. Having heard the learned counsel for the applicant and after perusing the record of the case with his able assistance, it transpires that learned Court below has opined that it is the case of the prosecution that the accused, in furtherance of common intention, tried to outrage the modesty of prosecutrix by making physical contacts towards her and committed sexual assault upon her and when she tried to object, she was criminally intimidated that she will be killed. However, it was recorded in the findings by learned trial Court that the allegations levelled by the prosecution against the accused are not proved against them beyond reasonable doubt. When the said statement is compared with the testimony of prosecutrix, who appeared in the witness box as PW-3, it is revealed that she made huge improvements in her deposition so as to implicate the, accused in the incident. As per version of the prosecutrix, the incident was witnessed by her friends namely Pushpa and Preeti and they narrated the incident



to their teachers namely Seema, Pankaj, Kamlesh and Satish. However, the eye-witnesses of the alleged incident namely Preeti and Pushpa were neither joined in the investigation nor examined in the Court. There is no explanation rendered by the prosecution as to why these two material witnesses were left during the investigation and why they were not examined when they had allegedly witnessed the alleged incident. Even, the teachers who appeared in the witness box, clearly shattered the case of the prosecution as well as the prosecutrix. Ms. Pankaj Bala, Lecturer appeared in the witness box as PW-1 and stated that when they inquired the matter from prosecutrix, she stated that she does not know any of the boys. Likewise, Ms. Seema Rani also stated that prosecutrix told them that she does not know any of the boys. She also disclosed that nothing had happened with her. PW-7 Satish Kumar, Teacher only produced the school record regarding the birth certificate of prosecutrix. Neither he disclosed about the incident nor he stated that he gave slaps to Pardeep as alleged by PW-3, prosecutrix. As such the testimony of PW-3 prosecutrix is not corroborated by any evidence, whatsoever, and does not inspire confidence. As far as the testimony of PW-4 Raju father of the prosecutrix and PW-11 Kuldeep Singh, uncle of prosecutrix is concerned, the deposition of both these witnesses does not carry any value in the eyes of law because admittedly there evidence is hearsay evidence and they were not present at the place of occurrence.

4. 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.

5. 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 application and hence, the leave to appeal is denied.

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

(HARPREET SINGH BRAR)
JUDGE

23.09.2024
Ajay Goswami

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No