

207 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-AS-434-2023 (O&M)
Date of decision: 18.04.2024

BXXXXXX

.....Appellant

Versus

State of Haryana and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Joginder Siwach, Advocate
for the appellant.

Mr. Vikas Bhardwaj, AAG Harynana

HARPREET SINGH BRAR, J. (ORAL)

CRM-39460-2023

The present application is filed under Section 5 of the Limitation Act, 1963, seeking condonation of delay of 6 days in filing of the present appeal. For the reasons mentioned in the application, the same is allowed and the delay 6 days is condoned.

CRA-AS-434-2023

1. The present appeal is preferred against judgment of acquittal dated 03.03.2023 passed by learned Additional Sessions Judge – cum – Judge, Fast Track Special Court, Bhiwani in FIR, bearing no. 382 dated 19.10.2021 registered under Sections 354-A(2), 341 and 506 of the IPC, Section 12 of The Protection of Children from Sexual Offences Act, 2012 (‘POCSO Act’ for short) and Section 3(2)(va) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 (‘SC/ST Act’ for short), registered at Police Station Bawani-Khera, District Bhiwani.

2. Briefly, the facts are that the complainant is the father of the two victims, who belong to Scheduled Caste and reside in Bawani Khera, Bhiwani. As per the complainant the victims were 18 years and 16 years of age at the time of the alleged occurrence. The allegations are that the accused, who used to consume liquor in heavy quantity, used to sexually harass the victims on a regular basis. As a result, the daughters of the complainant used to constantly remain under fear. On 18.10.2021, the accused, who was in an inebriated state allegedly sexually harassed the elder daughter of the victim while she was was going to a medical store to buy medicines. When the victim slapped the accused in retaliation, he extended threats to the victim's life and the lives of her family members. Later in the day, when the younger daughter had gone to a temple, the accused allegedly molested her as well. Subsequently, at around 9:00 p.m., the accused called the complainant and uttered casteist slurs to the complainant. As a result, a prayer to take appropriate legal action against the accused was made.

3. On the aforesaid complaint, FIR was registered against respondent no. 2-accused. After completion of the investigation, challan was presented against respondent no. 2-accused. Subsequently, respondent no. 2-accused was charged for offences punishable under Sections 341, 506 Part II of the IPC, Section 12 of POCSO Act and in alternative under Section 354-A of the IPC as well as under Section 3(2)(va) of the SC/ST Act, to which he pleaded not guilty and claimed trial.

4. The prosecution examined as many as 15 witnesses to prove its case. Subsequently, the statement of the accused under Section 313 of the Code of Criminal Procedure were recorded, wherein respondent no. 2-accused pleaded false implication, and 1 witness was examined in order to prove the innocence of respondent no. 2-accused.

accused was acquitted by the learned trial Court vide judgment dated 03.03.2023.

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 respondent no.2-accused. The statements of the victims are consistent which have been further corroborated by their father. 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 Sections 354-A, 341, 506 Part II of the IPC, Section 12 of POCSO Act and Section 3(2)(va) of the SC/ST Act 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. While it is true that the accused can be convicted solely on the evidence of the victims, however, in such a case they need to be sterling witnesses and their testimonies should inspire confidence. The consistency of the statements should be preserved right from the time of recording of initial statements till the time of examination before the Court. In the instant case, however, there are glaring contradictions in the depositions of the prosecution witnesses and therefore they cannot be said to be unassailable accounts. As per the deposition of the older victim (PW-9) in July 2022, she averred that the accused harassed her on her way to school about 1-1½ years ago. During

investigation, when her statement was recorded under Section 164 of Cr.P.C. on 21.10.2021, she had made a similar allegation i.e. the accused harassed her 1-1.5 years ago. Further, no specific date, month or place has been mentioned with regard to the allegations of harassment prior to the present incident.

8. Furthermore, as per the testimony of the younger sister (PW-8), she was harassed on her way to the temple at about 5:00/6:00 p.m. but as per the statement of the older victim, she was molested at around the same time when she was going to Bawani-khera to purchase medicines. The prosecution failed to explain that when both the sisters were together that evening and that they returned home on the motorcycle of some unknown person, how did the accused get the opportunity to sexually harass both the victims at two different places i.e. the elder sister at Bawani-khera and the younger sister at Village Pur, on her way to the temple. Moreover, the younger victim in her statement mentioned that prior to 18.10.2021, the accused had called her father on the telephone about a few months back. The father (PW10) on the other hand, in his cross examination has categorically stated that prior to the day of the alleged occurrence, the accused had never contacted him. Lastly, as per the prosecution case, the younger victim was sexually harassed in front of the shop of one Krishan yet, no effort has been made by the prosecution to join the shopkeeper as a witness and examine him to prove the guilt of the respondent-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

18.04.2024
Ajay Goswami

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