



CRM-A-2532-2019

-1-

211 IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-A-2532-2019
Date of Decision: 07.05.2024

State of Haryana

...Applicant

Versus

Saikul

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: - Mr. Vikas Bhardwaj, AAG Haryana.

Harpreet Singh Brar, J. (Oral)

CRM-34305-2019

The present application is filed under Section 5 of the Limitation Act, 1963, seeking condonation of delay of 542 days in filing of the present application under Section 378(4) of Cr.P.C. For the reasons mentioned in the application, the same is allowed and the delay of 542 days in filing the said application is condoned.

CRM-A-2532-2019

1. The present application is preferred under Section 378(3) of the Cr.P.C. against the judgment of acquittal dated 19.09.2017 passed by learned Additional Sessions Judge (Children Court) Nuh, in the case stemming from FIR, bearing no. 52, dated 18.05.2016 under Section 506 of IPC and Section 8 of The Protection of Children from Sexual Offences Act, 2012 ('POCSO' for short).

2. Briefly, the facts are that on 18.05.2016, the complainant moved a complaint before the police wherein it was alleged that on 17.05.2016, his 13

year old daughter-victim had gone to the fields to fetch animal fodder, where

**CRM-A-2532-2019****-2-**

she was accosted by the respondent-accused, who was on a motorbike, bearing registration No. HR-28B-8560. As per the complaint, the accused caught hold of the victim and after taking off his pants, tried to rape her. The victim raised hue and cry and one Sehruna, who is the bhabhi of the victim came to the spot and started hurling abuses at him. The accused responded by dishing out threats to kill her and told her to leave. Subsequently, Sehruna started throwing stones at the accused and both the victim and Sehruna raised an alarm upon which the accused fled from the spot, leaving his pants, slippers, and the motorbike at the spot of the occurrence.

3. Having heard the learned State counsel and after perusing the record of the case with his able assistance, it transpires that nowhere in the testimonies of the victim and Sehruna, the factum of of the accused leaving his pants, slippers and the motorcycle has been mentioned. Admittedly, the aforesaid articles were not recovered by the Investigating Officer from the spot but in fact, were handed over by the complainant to the Investigating Officer on 01.06.2016 i.e. after 13 days of the alleged incident. No explanation has been put forth by the prosecution as to why there was a delay by the complainant to hand over the said incriminating articles to the police. Further, the pants and the slippers even when they were handed over to the police, no efforts were made by Investigating Officer to either seal the articles or attach a case number or an identification mark to connect the property to the accused.

4. Furthermore, a perusal of the trial records shows that the statement of the victim, under Section 164 of Cr.P.C., was recorded after a period of 9 days after the registration of the FIR. In the statement before the Magistrate, the victim improved her earlier version and deposed that the accused after taking



CRM-A-2532-2019

-3-

off his pants also removed her salwar. However, no such elaborate allegations were levelled by the victim when she appeared before the trial Court. Lastly, no medico-legal examination has been conducted to corroborate the version of the prosecution, despite serious allegations of sexual assault. As such, the prosecution failed to prove the guilt of the respondent-accused beyond the shadow of reasonable doubt.

5. 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.

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



CRM-A-2532-2019

-4-

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

(HARPREET SINGH BRAR)
JUDGE

07.05.2024
Ajay Goswami

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>