

**213 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRA-AS-37-2021 (O&M)
Date of decision: 15.07.2024

Mohinder SinghAppellant

Versus

Parshotam Kumar and another ...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Atul Gaur, Legal Aid Counsel
for the appellant.

HARPREET SINGH BRAR, J.

CRM-38562-2021

This is an application under Section 5 of the Limitation Act, 1963 seeking condonation of delay of 47 days in filing the accompanying appeal.

For the reasons mentioned in the application seeking condonation of delay, the same is allowed and the delay of 47 days is condoned.

CRA-AS-37-2021

1. This appeal has been preferred against the judgement of acquittal dated 02.11.2019 passed by learned Additional Sessions Judge, Hoshiarpur, in Sessions case No. SC/272/2018 arising out of FIR No.59 dated 19.06.2018 registered under Sections 366, 376, 506 of IPC and Section 4 of the POCSO Act at Police Station- Mahilpur, Hoshiarpur.

2. The facts, in brief, are that on 19.06.2018, the appellant met the police party and got his statement recorded. It was alleged by the appellant that his youngest daughter-prosecutrix, whose date of birth is 01.04.2002 and is a student of class 10 in the Government High School, became friends with respondent no.1-accused in January 2018 and they started talking to each other



on phone. On 25.04.2018, when the appellant and his wife had gone away to attend a wedding, respondent no.1 met the prosecutrix at 7:30 am when she was on her way to school, threatened her and took her away on his scooter to the house of his paternal aunt in Purhiran. There, respondent no.1 gave prosecutrix a drink spiked with some intoxicant. When the prosecutrix fell unconscious, respondent no.1 committed rape upon her. After she regained consciousness, the prosecutrix found herself to be in a naked state. Thereafter, respondent no.1 left the prosecutrix at her village but threatened to kill her in case she disclosed about the said incident to anyone. One day, the prosecutrix got fed up and disclosed the entire incident to the appellant-complainant and consequently, the complaint was made before the concerned police. Upon the statement of the complainant, the FIR (supra) was registered. After conducting investigation and after completing necessary formalities, challan against respondent no.1 was presented in the Court. Subsequently, on finding a prima facie case against him, respondent no.1 was charged for the offences punishable under Sections 366, 376, 506 of IPC and Section 4 of the POCSO Act, to which he pleaded not guilty and claimed trial. Respondent no.1 faced trial but was, ultimately, acquitted by the learned trial Court of the charges framed against him. Aggrieved, the appellant has approached this Court by way of the present petition.

3. Learned counsel for the appellant vociferously contends that the learned trial Court erred by ignoring the opinion of the concerned doctor given in the MLR to the effect that possibility of sexual intercourse could not be ruled out. He further argues that sole testimony of the prosecutrix is sufficient to bring home the guilt of respondent no.1 as the prosecution case was fully supported by statement of the prosecutrix made under Section 164 of Cr.P.C



(Ex.PC). He submits that presumption of guilt as per Section 29 of POCSO Act operated against respondent no.1 which he failed to discharge and therefore, the impugned judgment deserves to be set aside.

4. Having heard the learned counsel for the appellant and after perusing the record with his able assistance, it transpires that there is an inexplicable delay of 55 days in lodging the FIR (supra) and no cogent justification was put forth by the prosecution in order to explain the same. While dealing with the issue of delay in lodging of FIR in cases involving serious offences like murder or rape, a two Judge Bench of the Hon'ble Supreme Court in **Maharaj Singh vs. State of Uttar Pradesh, 1994(5) SCC 188**, speaking through Justice Dr. A.S. Anand has observed the following: -

"12. FIR in a criminal case and particularly in a murder case is a vital and valuable piece of evidence for the purpose of appreciating the evidence led at the trial. The object of insisting upon prompt lodging of the FIR is to obtain the earliest information regarding the circumstance in which the crime was committed, including the names of the actual culprits and the parts played by them, the weapons, if any, used, as also the names of the eye witnesses, if any. Delay in lodging the FIR often results in embellishment, which is a creature of an after-thought. On account of delay, the FIR not only gets benefit of the advantage of spontaneity, danger also creeps in of the introduction of a coloured version or exaggerated story."

Similarly, a two Judge Bench of the Hon'ble Supreme Court in **Thulia Kali v. The State of T.N., 1973 AIR (Supreme Court) 501**, while speaking through Justice H.R. Khanna, made the following observation: -

"First information report in a criminal case is an extremely vital and valuable piece of evidence for the purpose of corroborating the oral evidence adduced at the trial. The importance of the above report can hardly be overestimated from the standpoint of the accused. The object of insisting upon prompt lodging of the report to the police in respect of commission of an offence is to obtain early information regarding the circumstances in which the crime was committed, the names of the actual culprits and the part played by them as well as the names of eye witnesses present at the scene of occurrence. Delay in lodging the first information report



quite often results in embellishment which is a creature of afterthought. On account of delay of the report not only gets bereft of the advantage of spontaneity danger creeps in of the introduction of coloured version, exaggerated account or concocted story as a result of deliberation and consultation. It is, therefore, essential that the delay in lodging of the first information report should be satisfactorily explained."

5. Further, it has been admitted by the prosecutrix in her cross-examination that she was on friendly terms with accused-respondent no.1 and they had telephonic conversations from January, 2018 onwards but she concealed the said fact from her parents. It was further stated by the prosecutrix in her cross-examination that she herself informed the accused three days prior that she would be alone at her house on 25.04.2018 and when she met the accused on the aforesaid date, they clicked a picture using mobile camera of the accused which belies the version put forth by her in her examination-in-chief. Moreover, there is a major discrepancy in the prosecution case as it has been admitted by PW-10 ASI Tejinder Kaur that she did not prepare a site plan of the house of aunt of the accused, i.e., the alleged place of occurrence but the same witness in her examination-in-chief stated the opposite that she visited the place of the occurrence and prepared a rough site plan (Ex.PW 10/D). Another material inconsistency that comes to the fore is that the prosecutrix (PW-2) stated that she was taken by police to the place of occurrence on 20.06.2018 but PW-10 ASI Tejinder Kaur stated that she did not take the prosecutrix to the said place. Such infirmities vitiate the prosecution case.

6. Another disconcerting fact qua the prosecution case is that it was admitted by the prosecutrix that after the fateful day on 25.04.2018 when she subjected to serious trauma of rape, not only did she regularly attend her school and meet her friends and family but also kept up her friendship telephonically

with the accused till the day on which FIR (supra) was lodged. Furthermore, it



stands admitted by the prosecutrix that she accompanied the accused on his bike for about three hours as they travelled from Saila to Purhiran via Mahilpur and also passed through a Toll Plaza on their way to Purhiran. However, no attempt to raise an alarm was made by the prosecutrix during the entire period of their travel.

7. As far as the medical evidence is concerned, the Medical Officer PW-11 who conducted the medical examination of the prosecutrix deposed in her cross-examination there were no signs of assault or injury on the body of the prosecutrix or on her private parts. Although, the Medical Officer has opined on the basis of the report of chemical examiner (Ex.PW10/K) that possibility of sexual intercourse cannot be ruled out but on the other hand she has admitted in her cross-examination that she never received the said report and saw it for first time in the Court. In light of the aforesaid discussion, the judgment under challenge in the present petition warrants no interference.

8. Furthermore, 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 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. After duly considering the facts and circumstances of the case at hand, 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 and thus, no interference is warranted by this Court. As such, the present appeal is hereby dismissed being devoid of any merit.

10. Pending miscellaneous applications, if any, shall stand disposed accordingly.

(HARPREET SINGH BRAR)
JUDGE

15.07.2024
Neha

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