



**CRM-19751-2023 in/and
CRM-A-606-2023 (O & M)**

allegations that on 30.7.2014, when complainant/petitioner and her sister Netimi had gone to ease out in the jungle area, accused Naseem, Saleem & Narem (respondent Nos.1 to 3 herein) committed sexual harassment and outraged modesty of complainant and her sister. Accused Naeem (respondent No.3) caught hold of complainant from her breast while other accused committed similar acts with sister of complainant. Accused Naseem (respondent No.1) tore the shirt worn by complainant and even held her breast. The other accused persons at the spot provoked the main accused to commit acts of sexual violence. Complainant and her sister managed to escape from the hands of accused persons and came back home. They narrated the entire incident to their mother Haseena and to father Malik when he came home. Malik and Haseena went to the house of accused to complain about the incident but accused persons got enraged and rushed to assault complainant's parents. Malik and Haseena somehow escaped and came back to their house. At about 10:15 pm, on the same day, accused came to the house of complainant all armed with lathis, rods & country made pistol. They forcefully committed criminal trespass into the house of complainant and caused grievous injuries to complainant and her family members. Haseena was pregnant with a 7 1/2 months old baby but even she was kicked in abdomen by accused Kasam, Noman, Salman, Tahir & other accused. All of them gave leg blows in abdomen & in her private parts. Accused Narem, Salim & Naeem sexually tortured complainant and her sister by using force and inflicting leg blows on the private parts of complainant and her sister. Injured were rescued by Mohd. Haseen Sio Mustaq & Madni S/o Hassan Mohd. Accused threatened that although they were saved today, but would be killed in future. On account of



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serious injuries received by Haseena, after treatment of one day, she was referred to Safdarjung Hospital, New Delhi where she remained admitted from 1.8.2014 to 14.8.2014. Malik also suffered injuries at the hands of accused and remained admitted in SHKM Hospital, Nalhar from 31.7.2014 to 3.8.2014. In regard to the incident, mother of complainant moved a complaint to police at PP Gohana on 31.7.2014 since the accused persons had wrongly confined complainant and her family members at their house, and had not allowed them to come out of their house. Complainant alleged that accused Habbul had even fired from a country made pistol in order to kill father of complainant but luckily he escaped. With this complaint moved by complainant, all 13 accused were summoned for commission of offences punishable under sections 148, 149, 323, 325, 326, 354, 452, 427, 392, 506 Indian Penal Code, 1860, Section 4 of Protection of Childeren from Sexual Offence, Act & Section 25 of Arms Act, 1959.

3. Having heard learned counsel for the applicant and after perusing the record with his able assistance, it is evident that there is an inordinate delay of 43 days in reporting the matter and in view of the facts admitted by doctors in their testimony, no bony injury was sustained by Haseena (mother of the complainant). The only other injury is mere complaint of watery discharge from vagina with complaint of pain in abdomen and no external mark of any injury was found and doctor referred her for a gynae opinion. No gynecologist has been examined by the complainant to prove any such injury and there is nothing to record to show that Haseena ever got herself examined from a gynecologist. Furthermore, Haseena delivered a baby within 02 months of the incident, even though she had been kicked in abdomen by no less than 13



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accused. The injuries suffered by Malik (father of the complainant) were also simple and superficial nor any fracture was suffered by Malik and neither any X-ray report pertaining to injuries was produced or prepared to show the factum of fracture injury suffered by Malik. As such, the complainant had failed to prove the guilt of the accused persons i.e. private respondents beyond the shadow of reasonable doubt and this application cannot be considered to be aiding the prosecution case in any manner.

4. Moreover, 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.

5. In view of the above discussion, this Court finds that learned counsel for the applicant/complainant has failed to point out any perversity or illegality in findings recorded by the learned Court below which warrants any interference. As such, there is no merit in the present application. Accordingly,



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leave to appeal is denied and the present application stands dismissed.

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

August 28, 2024
manisha

(HARPREET SINGH BRAR)
JUDGE

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|------|---------------------------|--------|
| (i) | Whether speaking/reasoned | Yes/No |
| (ii) | Whether reportable | Yes/No |