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CRA-AS-520-2023

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

CRA-AS-520-2023

Date of Decision: 03.09.2024

STATE OF HARYANA

...Appellant

Versus

AMAN

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Vikas Bhardwaj, AAG Haryana
For the appellant-State.

None for the respondent (despite service)

HARPREET SINGH BRAR, J. (ORAL)

1. The present appeal has been preferred against the judgement of acquittal dated 27.03.2019, passed by learned Additional Sessions Judge, Kaithal in FIR No. 443 dated 28.12.2017 registered under Sections 354, 452, 506 of IPC and Section 12 of Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as POCSO Act) at Police Station- Pundri.

2. The facts, in brief, are that on 28.12.2017, complainant presented an application before the concerned police, wherein, it was alleged that on 26.12.2017, she along with her husband went to the house of her nephew. When they returned to their house, daughter of the complainant disclosed that when she was alone at home, the son of their neighbour (respondent) came to their house and molested her. It was also disclosed by the victim that the respondent gagged her mouth and forced her to the ground and then proceeded to molest her. One Usha Rani (grandmother of the victim) came at the spot and upon seeing her, the respondent threatened to kill the victim and fled away from the scene. The aforesaid application culminated into the FIR (supra). After completion of

necessary procedural formalities, trial ensued against the respondent who was ultimately acquitted of the charges framed against him under Sections 452, 354,



506 of IPC and Section 12 of POCSO Act. Aggrieved by the acquittal of the respondent in the present case, the appellant has approached this Court by way of the instant appeal.

3. Learned State counsel for the appellant vociferously contends that the prosecution case was duly supported by the complainant when she appeared in the witness box as PW1. Even the testimony of the child victim was duly corroborated by the complainant. He further submits that delay in lodging the FIR in the present case is well justified given the societal norms in our country and the learned trial Court erred in making it a ground for acquittal of the respondent. It is also argued that even if some evidence was inadmissible under Section 6 of the Indian Evidence Act, 1872, it was still admissible under Section 157 of the said Act as it was a corroborative piece of evidence. Further argued that non-examination of the investigating officer ASI Veena due to her absence is not enough to vitiate the prosecution case, especially when SI Shamsheer Singh (PW8) was examined with the permission of the learned trial Court and documents prepared by ASI Veena were exhibited without any objection from the defence counsel. It is contended that learned trial Court erred in acquitting the respondent despite presence of unimpeachable evidence on record.

4. I have heard the learned counsel for the appellant and carefully perused the record with his able assistance. It transpires that there is an inexplicable delay of 2 days in lodging FIR in the present case. Further, as per the defence raised by respondent/accused, he was falsely implicated in the present case due to a scuffle that took place between him and the brothers of the victim, namely Deepak and Rahul, on 28.12.2017 as Deepak was teasing the sister (DW-1) of the accused. The aforesaid defence was corroborated by Usha (PW-7) who is the grandmother of the victim and the only eye-witness as per the prosecution case. Furthermore, Usha (PW-7) did not support the prosecution case at all and



categorically stated before the learned trial Court that she did not know anything about the present case. Generally, sole testimony of the victim is sufficient to bring home the guilt of the accused in such cases but in the case at hand, the sole eye-witness (grandmother of the victim) to the alleged occurrence has failed to support the prosecution case and has rather corroborated the defence version. This completely vitiates the case of prosecution. The aforesaid facts, when clubbed together, are sufficient for this Court to opine that the learned trial Court has correctly passed the judgement of acquittal in the present case.

5. 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.

6. A two Judge Bench of Hon'ble Supreme Court in case of **Chandrappa (supra)** has laid down the parameters with regard to the power of appellate Court while dealing with an appeal against an order of acquittal.

Speaking through Justice C.K. Thakker, the following was held:

"42. From the above decisions, in our considered view, the following general principles regarding powers of appellate Court while dealing with an appeal against an order of acquittal emerge;

- (1) An appellate Court has full power to review, re-appreciate and reconsider the evidence upon which the order of acquittal is founded;
- (2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate Court on the evidence before it may reach its own conclusion, both on questions of fact and of law;
- (3) Various expressions, such as, 'substantial and compelling reasons', 'good and sufficient grounds', 'very strong circumstances', 'distorted conclusions', 'glaring mistakes', etc. are not intended to curtail extensive powers of an appellate Court in an appeal against acquittal. Such phraseologies are more in the nature of 'flourishes of language' to emphasise the reluctance of an appellate Court to interfere with acquittal than to curtail the power of the Court to review the evidence and to come to its own conclusion.
- (4) An appellate Court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.
- (5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court."

7. 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.

8. As such, there is no merit in the present appeal and hence, the same stands dismissed.

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

(HARPREET SINGH BRAR)
JUDGE

03.09.2024
Ajay Goswami

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