



CRM-A-3097-2019

1

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-A-3097-2019

Date of Decision: 29.08.2024

PARVEEN KUMAR

...Applicant-Appellant

Versus

STATE OF HARYANA AND ANOTHER

...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Keshav Pratap Singh, Advocate
For the applicant-appellant

Mr. Vikas Bhardwaj, AAG Punjab

HARPREET SINGH BRAR, J. (ORAL)

1. This instant application under Section 378(3) Cr.P.C. is preferred against the judgement of acquittal dated 10.09.2019 passed by learned Additional Sessions Judge, Kurukshetra in case arising out of FIR No. 543 dated 11.06.2017 under Sections 363, 366-A of IPC and Section 6 of POCSO Act at Police Station-Thanesar.

2. The facts, in brief, are that father of the prosecutrix (present applicant) lodged FIR (supra), wherein, it was alleged that his daughter, who was born on 13.10.2000 and studying in 12th Standard, went missing from her home on 10.06.2017. It was also alleged by the complainant that some unknown persons had taken away his daughter under threat or allurements. The complainant kept on searching for his daughter but his efforts did not bear any result. During investigation, the victim was found to be standing alone at Pipli bus stand and recovered upon being identified by her father. After following due procedure, the victim was produced before a Judicial Magistrate who recorded her statement



under Section 164 Cr.P.C. Thereafter, necessary procedural formalities were completed. On 16.06.2017, co-accused Dhirender was produced by his father and subsequently arrested by the concerned police. On 09.08.2017, the investigating officer moved an application to Registrar (Births & Deaths) for verifying the date of birth of the victim, who after verification, forwarded a report Ex. P8 that the date of birth of the victim was 13.10.2000 as per record. Thereafter, charges were framed against co-accused Dhirender for commission of offences punishable under Section 363 of IPC and Section 6 of POCSO Act, to which he pleaded not guilty and claimed trial. Subsequently, respondent no.2 was summoned as an additional accused to face trial by the learned trial Court vide order dated 30.05.2018 on the application filed by the prosecution under Section 319 Cr.P.C. After hearing both the accused on charge, a prima facie case punishable under Section 366 read with Section 120-B of IPC was found to be made against respondent no.2 whereas a prima facie case punishable under Sections 363, 366 read with Section 120-B of IPC and Section 5(1) of POCSO Act (punishable under Section 6 of POCSO Act) was found to be made against the co-accused Dhirender. Accordingly, vide order dated 13.09.2018, charges were framed against both the accused to which they pleaded not guilty and claimed trial. Trial ensued and subsequently, co-accused Dhirender was declared a proclaimed offender, whereas respondent no.2 was ultimately acquitted of the charges framed against him. Aggrieved by the same, the complainant has approached this Court by way of the present application/appeal.

3. I have heard the learned counsel for the applicant and carefully perused the record with his able assistance. It transpires that during investigation, respondent no.2-accused was exonerated by the concerned police on the basis of



detail records and location chart of the mobile phone, all of which showed him to be not present at the place of alleged occurrence. Later on, respondent no.2 was summoned as an additional accused to face trial along with co-accused Dhirender. Although, in her statement recorded under Section 164 Cr.P.C., the victim (PW6) has named respondent no.2 and stated that he was present along with co-accused Dhirender in the white Maruti car which picked her up while she was doing an evening walk, but no overt sexual act has been attributed to him therein. Further, the victim (PW6) has made a material improvement in her case by stating in her deposition before the learned trial Court that she was also taken by respondent no.2 to his village and kept in a secluded room. When confronted about the same during her cross-examination before the learned trial Court, the victim was unable to tell the exact time of arrival at the village of respondent no.2 from Chandigarh. Above all, the documentary evidence on record including the attendance record of respondent no.2 (Ex.D15 & D16) and his mobile phone records/tower location (Ex.D15/A, D16/A, D19) which was taken into possession by the investigating officer and produced before the learned trial Court from proper custody, reveals that he was present at his place of work in Una, Himachal Pradesh on 10.06.2017 till late evening. The investigating officer (PW11) also deposed before the learned trial Court that she had recorded statement of witnesses during investigation wherein the presence of respondent no.2 at his place of work in Una on 10.06.2017 was confirmed. Moreover, the prosecution has remained unable to establish that respondent no.2 was present at the place of alleged occurrence at Kurukshetra, Haryana on 10.06.2017 and that he hatched a criminal conspiracy with co-accused Dhirender for doing the alleged unlawful act. In light of the aforesaid facts, this Court is of the considered opinion that the learned trial Court has correctly passed the judgement of acquittal qua respondent no.2.



CRM-A-3097-2019

4

4. 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.

5. In view of the facts and circumstances of the case, this Court finds that learned counsel for the applicant-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 application and hence, the leave to appeal is denied.

(HARPREET SINGH BRAR)
JUDGE

29.08.2024

Ajay Goswami

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