

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

206

CRM-A-45-2020
Date of Decision: 18.04.2024

STATE OF HARYANA

...APPLICANT

VERSUS

DEEPAK

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: - Mr. Vikas Bhardwaj, AAG Haryana

HARPREET SINGH BRAR, J. (ORAL)

1. The present application is preferred under Section 378(3) of the Cr.P.C. against the judgment of acquittal dated 19.07.2019 passed by learned Additional Sessions Judge, Faridabad, in the case stemming from FIR, bearing no. 867 dated 29.11.2017 under Sections 363, 506 and 511 of the IPC and Sections 4 and 8 of The Protection of Children from Sexual Offences Act, 2012 ('POCSO' for short).
2. Briefly, the facts are that on 28.11.2017 at about 6:50 p.m., the victim, who was 10 years of age at the time, had gone to a nearby shop to fetch a packet of chips. The respondent-accused accosted the victim on the street, gagged her mouth, caught her hands by the back and dragged her to the nearby bushes. The respondent-accused allegedly threatened to kill her if she raised an alarm. He then proceeded to put his hands on her chest and attempted to disrobe her, however, the mother of the victim arrived just in time to rescue the victim from the clutches of the respondent-accused. The mother of the victim

tried to catch hold of the respondent-accused but he managed to flee from the spot. On the basis of this, FIR was registered against the respondent-accused.

3. Having heard the learned State counsel and after perusing the record of the case with his able assistance, it transpires that the family of the victim lives in the house which is immediately adjacent to the rented accommodation occupied by the accused. They are immediate neighbours yet the mother of the victim stated that she had never seen him prior to incident. Further, the victim testified that the accused gagged her mouth, tied her hands and dragged her to the nearby bushes. She could not raise an alarm as the respondent-accused had tightly gagged her mouth. On the other hand, the mother of the victim made no mention of the fact that the hands of her daughter were tied by the accused. Even if the version of the victim is to be accepted, the prosecution failed to show how the accused could gag the mouth of the victim so firmly that she was not able to raise an alarm and yet successfully manage to tie her hands and attempt to disrobe her.

4. Furthermore, no material in the form of medical evidence was brought on record. There is no evidence of struggle on the body of the victim, despite the fact that the victim alleged that she was dragged to the nearby bushes. Even the dress of the victim was not torn by the alleged attempt. As a result, the evidence of the prosecution failed to inspire confidence. Lastly, it seems that a quarrel between two immediate neighbours took an ugly turn whereby the victim's family wanted to teach an appropriate lesson to the respondent-accused.

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

18.04.2024
manisha

(HARPREET SINGH BRAR)
JUDGE

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