

2024:PHHC:122029-DB



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

CRM-A-1756-2023 (O&M)
Date of decision: 11.09.2024

STATE OF HARYANA

.....Applicant

Versus

AMIT @ SUMIT

.....Respondent

**CORAM: HON'BLE MR. JUSTICE SUDHIR SINGH
HON'BLE MR. JUSTICE JASJIT SINGH BEDI**

Present: Mr. Ashok S. Chaudhary, AAG, Haryana.

SUDHIR SINGH, J.

CRM-52510-2023

For the reasons given in the application, the same is allowed and delay of 115 days in filing the application seeking leave to appeal is condoned, subject to all just exceptions.

CRM-A-1756-2023

The instant application seeking leave to appeal is preferred against the judgment dated 17.05.2023 passed by the learned Additional Sessions Judge/Fast Track Special Court (POCSO), Karnal, whereby the accused-respondent, has been acquitted of the charges framed against him.

2. The case of the prosecution is that on 02.10.2020, the complainant filed a complaint with the police to the effect that her daughter (hereinafter referred to as 'the victim'), had been enticed and taken away by the accused on the pretext of marriage and a prayer was

made for tracing out her daughter. On the basis of the aforesaid complaint, an FIR was registered under Sections 363, 366-A IPC. The matter was investigated. On 02.10.2020, the victim was produced by her mother and on 04.10.2020, statement of victim under Section 164 Cr.P.C. was recorded; she was medically examined and the offence under Section 4 of the Protection of Children from Sexual Offences Act, 2012 was added in the FIR and accused was arrested on 12.10.2020. He was got identified by the victim and was medically examined. His disclosure statement was recorded. Motorcycle No. HR-05BC-1228 used in commission of crime was recovered. Sealed parcels relating to the victim and accused handed over by the Doctor, were sent to the FSL for analysis.

3. Finding a *prima facie* case against the accused, charges under Sections 363, 366-A IPC and Section 6 of the POCSO Act (in alternative under Section 376(3) IPC) were framed against the accused, to which he pleaded not guilty and claimed trial.

4. The prosecution examined as many as 16 witnesses. Thereafter, the statement of the accused under Section 313 Cr.P.C. was recorded and all the incriminating material was put to him, which he denied and claimed that he had falsely been implicated in the case. However, no evidence was led by the defence.

5. The learned trial Court, after taking into consideration the evidence on record, acquitted the accused-respondent of the charges framed against him vide the impugned judgment, as noticed above.

6. While acquitting the accused, the learned trial Court has recorded as under:-

1. The victim who appeared as PW-1 testified that the accused did not commit any wrong act with her.
2. The victim was declared hostile. She had admitted her signature on the statement Ex.P-4 recorded under Section 164 Cr.P.C. before the Magistrate, but stated that the same was made under the Police pressure.
3. PW-5 biological mother and PW-8 adoptive mother of the victim did also not support the prosecution case and nothing incriminating was stated by them against the accused and further they specifically stated that the accused had not committed any wrong act their daughter (victim).
4. As per FSL report Ex.PY human semen was detected on the slides and jeans worn by the victim. This report further shows that the DNA of the accused matched only with the sample of semen taken from the clothes/jeans of the victim. However, the victim in her testimony had denied that the jeans Ex.MO/3 belonged to her.
5. The testimony of PW-10 SI Jasvinder Kaur does not link the accused with the alleged crime.
7. The learned State counsel has vehemently argued that once the FSL report had proved on record establishing that the DNA of the accused-respondent had matched with the sample semen taken from the jeans/clothes of the victim, there was sufficient evidence on record to

return a finding of guilt against the accused-respondent. It is further submitted that merely because the victim had turned hostile is no ground to hold that the prosecution has failed to prove its case beyond the shadow of reasonable doubt. It is further argued that though in the cases of sexual violence, the testimony of victim is vital, yet when the scientific evidence proves that the offence has been committed by the accused, the Court can proceed to hold the accused guilty of the offence.

8. We have heard learned counsel for the applicant-State and have also gone through the record of the case.

9. In the instant case, as would clear from the judgment of acquittal passed by the learned trial Court, all the material witnesses i.e. victim; her biological mother and her adoptive mother, did not support the case of prosecution. Rather, they all deposed that the accused had not committed any wrong act with the victim. The victim was declared hostile and she had deposed that her signatures on the statement recorded under Section 164 Cr.P.C. were taken under the Police pressure. The learned trial Court found that though the DNA of the accused had matched with the sample of the semen taken from the clothes/jeans of the victim, yet the victim had denied the fact that the said clothes/jeans belonged to her.

10. Even otherwise, the victim in her statement under Section 164 Cr.P.C. recorded before the Magistrate did not name the accused and simply had stated that one boy had called her to step out of her house and when she went out of the house, the said boy, who had come on the motorcycle, took her away. However, on the same day, her statement Ex.P2, was recorded in the presence of the Legal Aid Counsel, wherein

she had stated that accused lived in Vasant Bihar and he used to talk with her on phone. It was further stated by her that on 02.10.2020 at about 01.00 AM, accused came in their street, called her and took her on his bike to a house which was situated in Karnal and that thereafter, he had committed wrong acts with her. Still further it was stated by her that thereafter the accused took her to Ambala, where they had stayed during night and again the accused had committed rape upon her. However, as noticed above, when she was examined in the Court, she did not support the case of the prosecution and was declared hostile.

11. Neither the victim nor other material witnesses i.e. her biological mother and adoptive mother had supported the prosecution case. Thus, we do not find any illegality or perversity in the findings recorded by the trial Court.

12. No other point has been urged.

13. In view of the above, finding no merit in the present application the same is dismissed and leave to appeal is declined.

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

[SUDHIR SINGH]
JUDGE

[JASJIT SINGH BEDI]
JUDGE

11.09.2024
Himanshu

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