

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-A-48-2021 (O&M)

Date of Reserved: 06.05.2026.

Date of Pronouncement: 22.05.2026.

State of Haryana

....Applicant.

Versus

Vinay

...Respondent.

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA
HON'BLE MRS. JUSTICE SUKHVINDER KAUR

.....

Argued by: Mr. Karan Sharma, DAG, Haryana.

Mr. B.S. Mamli, Advocate
for the respondent.

Sukhvinder Kaur, J.

1. Applicant-State has preferred the instant application under Section 378(3) Cr.P.C. seeking leave to appeal against judgment dated 03.04.2019, passed by learned Judge, Special Court, Fatehabad, vide which respondent has been acquitted of offences punishable under Sections 450, 452, 506, 376 of IPC and Section 6 of the Protection of Children from Sexual Offences Act, 2012.

2. Brief facts of the prosecution case are that on 21.03.2018, complainant (father of the prosecutrix) gave an application to the police for taking action against Vinay, Baji, Gurpyar, Arjun, Abhishek and Geeta, with the allegations that being a labourer, he often remained out of the house and his wife used to bring grass from the fields. Vinay cousin brother of Arjun

and Abhishek used to come to his house at village Palsar. One day, on finding a chance, accused Vinay committed rape upon his daughter 'G' aged around 17 years and had physical relations with her. She cried in pain. On asking, she disclosed that accused had gagged her mouth and had threatened her that in case she would tell about this to anyone, he would kidnap her and would kill her father. She remained in fear. Thereafter, accused repeatedly raped his daughter while threatening his daughter and used to come to their house on getting a chance. Geeta Devi also threatened the prosecutrix that they would not spare the prosecutrix and it would bring bad name to her family. Due to which she remained silent. On 20.03.2018, accused came to their house and tried to kidnap the prosecutrix and on raising alarm by the complainant, several people gathered there. Accused Vinay called other persons, who sided with him and tried to kidnap his daughter, but on raising alarm, several persons from the village gathered and accused ran away while threatening that they would kidnap his daughter and kill the family members. On the basis of the said complaint, FIR was registered. Place of occurrence was inspected. Prosecutrix was got medico-legally examined and her statement under Section 164 Cr.P.C. was got recorded. Scaled site plan of the place of occurrence was got prepared. Accused Vinay was arrested and in pursuance of his disclosure statement, place of occurrence was demarcated. Medical examination of accused was conducted. Statements of witnesses were recorded. During investigation no evidence qua involvement of Arjun, Baji, Gurpyar, Abhishek and Geeta was found. After completion of investigation, challan against accused Vinay was presented in the court, for trial.

3. After finding a prima facie case against the accused, he was charge-sheeted for the offence punishable under Sections 450, 452, 506, 376 of IPC and Section 6 of the Protection of Children from Sexual Offences Act, 2012, to which he pleaded not guilty and claimed trial.

4. In order to prove its case, the prosecution examined as many as 14 witnesses.

PW1 L/MHC Suman, tendered in evidence her affidavit Ex.PW1/A and deposed that Constable Sonu handed over to her receipt of parcels deposited in FSL Madhuban and till the parcels remained in her possession, no one had tampered with the same.

PW2 EASI Vinod Kumar, deposed that three envelopes of special reports were handed over to him by Inspector Bimla and he had delivered these without any delay to learned Magistrate and higher police officers.

PW3 L/Constable Sonu, tendered in evidence her affidavit Ex.PW3/A stating that on 30.03.2018, one parcel of wearing apparel of prosecutrix 'G' sealed with four seals of 'M' of doctor, one container (dibbi) parcel containing two smear slides, two vaginal swabs of prosecutrix sealed with four seal 'M' of doctor, one envelop of documents relating to prosecutrix bearing four seals 'M' of doctor, one parcel of wearing apparel of accused sealed with four seals 'M' of doctor, one glass vial containing pubic hair of accused sealed with one seal 'M' of doctor, one glass vial parcel containing semen swab slide of accused sealed with one seal 'M' of accused, one vacuum tube containing blood sample of accused sealed with one seal 'M' of doctor and one envelope containing documents relating to accused sealed with four seals 'M' of doctor, were handed over by MHC

Suman Kumari for depositing in FSL, Madhuban. On the same day, he deposited the abovesaid parcels in FSL, Madhuban and handed over the receipt to MHC. Till the parcels remained in his possession, no one tampered with the same.

PW4 Mukesh Kumar, Head Teacher, Government School, Palsar, proved on record the copy of admission and withdrawal register as Ex.PW4/A and Ex.PW4/B. As per their original record, date of birth of 'G' was 15.07.2001 and had been entered in their register at serial No.71 dated 24.03.2013.

PW5 Raj Kumar, Reader, deposed that statement of prosecutrix was recorded under Section 164 Cr.P.C. by learned Magistrate and proved certificate Ex.P22/A and order Ex.P23 passed by him.

PW6 Balwant Singh, Draftsman, prepared the scaled site plan Ex.PW6/A.

PW7 SI Sheela, deposed that on 22.03.2018, after medico legal examination of the prosecutrix, three sealed parcels handed over by the doctor were taken into police possession. On 28.03.2018, after arrest of the accused, he was medico legally examined and five sealed parcels including one envelope handed over by doctor were taken into police possession. Place of occurrence was got demarcated. Case property was deposited with MHC. Statements of witnesses were recorded.

PW8 Prosecutrix 'G' deposed that on 20.03.2018, a boy with muffled face entered into their house and committed rape upon her forcibly and threatened that he would kill her family members in case the incident was disclosed to anyone. She further stated that accused Vinay present in the court was not the boy who had entered into their house on 20.03.2018

and had committed rape and had threatened her. She was declared hostile.

PW9 'S' father of the prosecutrix, deposed that on the day of incident his daughter disclosed him that a Sardar boy with muffled face had entered into their house and committed rape upon her by threatening to kill her family. When they went to police station, police obtained his signatures on some blank papers. He further deposed that accused Vinay was not the boy who entered into his house on 20.03.2018 and committed rape upon his daughter by threatening her. He was also declared hostile.

PW10 Inspector Bimla Devi, the investigating officer, deposed regarding various investigation proceedings conducted by her in the present case.

PW11 Dr. Shilpa, deposed that she medico legally examined prosecutrix 'G' and proved her medico-legal report Ex.PW11/A. She further stated that there was no external or internal injury on the body of the prosecutrix and she did not disclose the exact date of sexual assault.

PW12 Dr. Manav, proved the medico legal report of accused as Ex.PW12/B.

PW13 Dr. Priya Chaudhary, Senior Scientific Officer, Diatomology, prepared the report No.FSL(H)18/B-2006 dated 31.08.2018 Ex.PX.

PW14 Dr. Anshuman Rai, Senior Scientific Assistant, prepared the report No.FSL(H)18/B-2006, DNA-686/18 dated 28.02.2019 Ex.PY.

5. Statement of accused under Section 313 Cr.P.C. was recorded in which, all incriminating evidence was put to him, which he denied and pleaded innocence and false implication. However, no defence evidence was led by the accused.

6. After considering the evidence on record, learned trial Court found the same to be woefully insufficient to convict the accused who was accordingly acquitted of the offence for which he had been charge-sheeted, vide impugned judgment dated 03.04.2019.

7. Aggrieved of the said decision, present appeal has been filed by the applicant challenging acquittal of the accused/ respondent.

8. Learned counsel for the applicant-State vehemently contended that the learned trial Court has not properly appreciated the evidence on record in its true perspective and did not take into consideration the fact that the allegations against the accused were duly proved by the scientific evidence i.e. FSL as well as DNA report. It was clearly mentioned therein that semen was detected on salwar, slides, swab of prosecutrix and underwear of accused and DNA profile of seminal stains on source of salwar, cotton wool swabs of prosecutrix matched with DNA profile of accused Vinay and that evidence was sufficient to convict the accused. He further argued that the trial Court also fell into error in not believing the school certificate regarding Date of Birth of the prosecutrix in which her date of birth was mentioned as 15.07.2001 and it had also been entered in the admission and withdrawal register of the school and such entry Ex.PW4/B and the certificate Ex.PW4/A were duly proved by PW4 Mukesh Kumar, Head Teacher, Government School, Pulsar. If the municipal record was not verified regarding date of birth of the prosecutrix then it was a lacuna on the part of the investigating agency and benefit for the same could not be given to the accused. He thus prayed that this appeal be accepted, judgment dated 03.04.2019 be set aside and accused be convicted for the offences as charged with and be punished accordingly.

9. After having heard learned counsel for the appellant at length and having perused the impugned judgment as well as other relevant record, we are of the considered opinion that prosecution in the instant matter was unable to prove its case against the accused beyond the reasonable doubt.

10. The FIR in the present case was registered on the basis of application Ex.PW9/A moved by 'S' father of the prosecutrix alleging therein that accused Vinay had forcibly committed rape upon her daughter 'G' aged about 17 years and had also threatened to kill her and her family. He used to visit her house whenever he got a chance and continued sexually exploiting his daughter while threatening her that she and her family members would be killed if she would disclose about it to anyone. On 20.03.2018, accused along with other persons tried to take away his daughter forcibly, but villagers gathered there on which they ran away from there while threatening the prosecutrix with dire consequences.

11. When complainant 'S' stepped into the witness box as PW9, he denied the contents of the aforesaid application Ex.PW9/A and stated that police had obtained his signatures on some blank papers. He did not identify the accused to be the person, who had entered into their house on 20.03.2018 and had committed rape upon his daughter without her consent and had threatened her. The prosecutrix 'G' while appearing as PW8 before the trial Court also categorically stated that accused Vinay was not the boy, who had committed rape upon her and had threatened her. She even disowned her statement under Section 164 Cr.P.C (Ex.P22), and stated that she had suffered the said statement only on the asking of co-villagers.

12. Thus, the complainant 'S', who is father of the prosecutrix and prosecutrix 'G' both did not support the prosecution story and were declared

hostile on the request of learned public prosecutor and were cross-examined by him, but nothing useful to the prosecution could be extracted even during their cross-examination, which has adversely effected the case of the prosecution.

13. We do not find any substance in this contention raised by learned counsel for the appellant/ State that case of the prosecution stands proved against the accused from the FSL report and DNA examination report.

14. Prosecutrix was medico legally examined by PW11 Dr. Shilpa, and accused was medico legally examined by PW12 Dr. Manav, who have proved the medico legal reports of the prosecutrix as well as the accused. They also deposed regarding taking of samples at the time of their medical examination and handing over the same to the police for sending it for FSL examination. PW13 Dr. Priya proved the FSL report as Ex.PX, wherein it was mentioned that “Human semen was detected on exhibit-1(salwar), exhibit-2a (slides), exhibit-2b (swab) pertaining to the prosecutrix and exhibit-3 (underwear) of the accused.” Said parcels were sent further to DNA Division. DNA report Ex.PY placed on file finds mention that “The Autosomal STR analysis indicates that DNA profile of seminal stains on source of item No.1(salwar) and source of item No.2B(Cotton wool Swabs) is matching with the DNA profile of Vinay (Source of item No.6).”

15. Now it is to be seen that whether only on the basis of FSL and DNA report the guilt of the accused is proved in the present case.

16. In this context, learned trial Court has rightly placed reliance upon the judgment in **Premjibhai Bachubai Khasiya Vs. State of Gujarat & Another** 2009 Criminal Law Journal 2888 wherein in para 14 it was

held that “It is thus clear that positive DNA report can be of great significance, where there is supporting evidence, depending of course on the strength and quality of that evidence. If the DNA report is the sole piece of evidence, even if it is positive, it cannot conclusively fix the identity of the miscreant, but if the report is negative, it would conclusively exonerate the accused from the involvement or charge.”

17. Trial Court has further rightly referred to judgment in *Ranjitsing Brahmajeetsing Sharma Vs. State of Maharashtra and Anr.* *2005(5) SCC 294* wherein it was held that “DNA evidence may have a great significance where there is supporting evidence, dependent, of course, on the strength of that evidence. In every case, one has to put the DNA evidence in the context of the rest of the evidence and decide whether taken as a whole it does amount to a prima-facie case.”

18. So, keeping in view the proposition of law laid down in the cases supra, the case of the prosecution not stand proved against the accused only on the basis of FSL and DNA reports when nothing incriminating had been deposed against the accused by the prosecutrix and her father. From the evidence on record, it emerges that the prosecutrix did not say anything regarding any act of rape committed upon her by the accused and she did not identify him. As such, there is no corroborative evidence available on record to the FSL and DNA report and solely these are not sufficient to prove the case against the accused.

19. As per the prosecution version, the prosecutrix was a minor on the date of occurrence and to prove her date of birth, prosecution has examined PW4 Mukesh, Head Teacher, who proved the certificate Ex.PW4/A and copy of admission and withdrawal register Ex.PW4/B. As

per certificate Ex.PW4/A, entry was mentioned in their record at serial No.71 dated 24.03.2013 and date of birth of prosecutrix was 15.07.2001. In his cross-examination PW4, stated that the said entry was not made by him. He also failed to tell which documents were submitted regarding her date of birth at the time of her admission and rather stated that they had seen the previous record while making the entry of date of birth, but said previous record upon the basis of which the entry was made had also not been produced. Trial Court has rightly held that entry in the school record without proving its source cannot be sufficient to conclude that the prosecutrix was a minor on the date of occurrence. No Municipal record pertaining to date of birth of the prosecutrix has been produced.

20. Trial Court has rightly placed reliance upon the judgment in **Birad Mal Singhvi Vs. Anand Purohit, 1988 (supp) SCC 604** where Hon'ble Apex Court has held that "the date of birth mentioned in the scholars' register has no evidentiary value unless the person who made the entry or who gave the date of birth is examined. The Court further held that the truth or otherwise of the factum of date of birth as mentioned in the documents could be proved by admissible evidence i.e. by the evidence of those person who could vouchsafe for the truth of the facts in issue. It was held that in the circumstances the dates of birth as mentioned in the documents have no probative value in the absence of the admissible evidence and the same could not be accepted."

21. In the instant case, as already observed the basis of entry regarding date of birth of prosecutrix in the school record has not been proved. The prosecutrix when appeared in the witness box as PW8 stated her age to be 18 years. In these circumstances, trial Court has rightly held

that the prosecution has failed to prove that the prosecutrix was minor on the date of the alleged occurrence.

22. The trial Court has rightly reached at the conclusion that the entire evidence of the prosecution since does not hold strength and does not gain the trust of the Court, same is unworthy of credence and is insufficient to bring home the guilt of the accused.

23. Thus, the case set up by the prosecutrix is unreliable and unbelievable. Case of prosecution is full of inherent weaknesses. Owing to aforesaid chinks in the prosecution armour, the evidence on record is not sufficient to prove the allegations against the accused.

24. After analyzing the evidence on record the learned trial Court has rightly held that the prosecution has failed to prove its case against the accused beyond shadow of reasonable doubt.

25. It is well settled that judgment of acquittal should not be interfered with lightly. In the case of **Sadhu Saran Singh Vs. State of U.P. and others, 2016 (2) RCR (Criminal) 319**, the Hon'ble Supreme Court reiterated that generally an appeal against acquittal has always been altogether on a different pedestal from that of an appeal against the conviction. It was held that in an appeal against acquittal, where the presumption of innocence in favour of the accused is reinforced, the Appellate Court would interfere with the order of acquittal only when there was perversity of fact and law.

26. Learned counsel for the appellant was unable to point out any illegality, infirmity or perversity in the impugned decision dated 03.04.2019 which calls for interference.

27. In view of the above, no case is made out for grant of leave to

appeal against acquittal of accused/ respondent. The application without having any merits stands dismissed and the leave to appeal is declined.

28. Pending applications, if any, also stand disposed of.

(SUKHVINDER KAUR)
JUDGE

(ANOOP CHITKARA)
JUDGE

22.05.2026.

Komal

Whether speaking/reasoned? : Yes/ No
Whether reportable? : Yes/ No