



CRM-A-1287-MA-2017 (O&M)

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

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**CRM-50919-2024 &
CRM-19379-2017 in/&
CRM-A-1287-MA-2017 (O&M)**

Date of decision: 07.01.2025

Navjot Rani

...Applicant

V/s

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Mr. Deepak Arora, Advocate for the applicant.

SUMEET GOEL, J. (Oral)

CRM-50919-2024

The present application has been filed seeking recalling of the order dated 12.12.2024 whereby the application under Section 378(4) of Cr.P.C., 1973 seeking grant of leave to appeal was dismissed for non-prosecution.

In view of the submission made by learned counsel for the applicant as also the reasons mentioned in the application, the same is allowed. The application in hand is restored to its original position and number.

With the consent of learned counsel for the applicant, the main case is taken on Board today itself.

CRM-19379-2017

In view of the submission made by the learned counsel for the applicant as also the reasons mentioned in the application, the same is



allowed. The condonation of delay of 33 days in filing the application under Section 378(4) of Cr.P.C., 1973 seeking grant of leave to appeal is condoned.

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1. Present application has been filed under Section 378(4) of Code of Criminal Procedure seeking leave to file an appeal against order dated 20.01.2017 passed by learned Additional Sessions Judge, Gurdaspur whereby respondent No.2 (herein) was acquitted from the charges levelled against him under Sections 354, 354-B of Indian Penal Code, 1860 (hereinafter to be referred as 'IPC') and Section 8 of Protection of Children from Sexual Offences Act, 2012 (hereinafter to be referred as 'POCSO') in case FIR No.70 dated 01.10.2015 registered at Police Station Sadar, District Gurdaspur.

2. For clarity and simplicity, the complainant-applicant, who has filed the complaint in question, will be referred to as the 'complainant' while respondent No.2, the accused in the complaint in question, will be referred to as the 'accused' throughout this judgment.

3. The pertinent facts for adjudication, in the instant application, are that an FIR *ibid* was registered against the accused-respondent No.2, resident of village Bhopar Saidan, Police Station Sadar, District Gurdaspur, based on the statement (Ex.PW-1/A) of complainant namely Navjot Rani, aged 17 years, daughter of Ram Chand, resident of village Bhopar Saidan, District Gurdaspur. During investigation, statements of witnesses were recorded, site plan was prepared and accused Nishan Singh was arrested on 03.06.2016. After completion of investigation and other formalities, report



under Section 173 of Cr.P.C., 1973 was presented in the competent Court of jurisdiction. The learned Additional Sessions Judge, Gurdaspur concluded the same vide its judgment dated 20.01.2017; acquitting the accused (respondent No.2 herein) of all the charges. The Court below held that the prosecution has miserably failed to prove its case beyond the shadow of reasonable doubt & hence the accused ought to be acquitted by giving them the benefit of doubt.

4. The applicant-complainant, aggrieved by the findings of the Court below, has now invoked the jurisdiction of this Court, seeking re-examination of the findings as the same are based on alleged misappreciation of evidence and procedural irregularities. However, it is well-settled law that the scope in appeal against acquittal is limited and does not entail a re-appreciation of evidence unless there is a manifest illegality or a serious miscarriage of justice.

5. In brief, the case of the prosecution, as detailed in the FIR, is that complainant namely Navjot Rani (applicant herein) alleged that she is a student of B.A. first year and her father had expired around three years ago. Her mother runs a rented shop of 'Maniari' in the village, and after college hours, she also used to help her mother in the shop. She further alleged that on 27.09.2015, at about 11:30 A.M., while she was at the shop, accused Nishan Singh, approached her with a proposal for friendship. When she refused, he allegedly assaulted her and tore her clothes. Complainant further claimed that her cries for help drew the attention of a woman named Pinky, who informed her mother over the phone. Her mother arrived at the scene, but by then, accused Satnam Singh, who is Nishan Singh's brother, had also



arrived. Both the brothers allegedly assaulted the complainant and her mother and tore their clothes. Complainant further stated that Nishan Singh had previously harassed her on her way to college and she had informed her mother about it. Her mother had even visited Nishan Singh's house to complain about his behaviour. On the basis of statement made by the complainant, FIR in question was registered against the accused Nishan Singh.

6. Learned counsel for the applicant-complainant has iterated that the Court below has erred in acquitting the accused-respondent No.2 and the impugned order is contrary to the law, facts and evidence on record. According to the learned counsel, the Court below has gravely erred in not appreciating the evidence led by the prosecution and acquitted the accused on untenable grounds. Learned counsel has further iterated that the complainant has provided consistent and uniform statements throughout the proceedings. Furthermore, the testimony of the complainant remains conclusive and credible, as it has not been demolished by the defence during cross-examination. Learned counsel asserts that the accused has molested the complainant with the intention of outraging her modesty and instilling fear in her family. Learned counsel has further canvassed that the Court below has wrongly acquitted the accused, despite there being sufficient evidence on record to establish his guilt and hence his acquittal is not justified in light of the evidence presented.

7. I have heard learned counsel for the applicant-complainant and perused the available record.



8. At the outset, it is pertinent to mention herein that in adjudicating an appeal against an order of acquittal, the appellate Court operates within a narrowly circumscribed framework. It is a settled legal principle that acquittal by a trial court carries a presumption of innocence, further strengthened by the trial court's findings. The appellate Court is precluded from engaging in a wholesome reappreciation or assessment of evidence unless the conclusions drawn by the trial Court are patently perverse, unreasonable, or unsupported. The principles governing the scope of interference by the High Court in an appeal against the judgment of acquittal, have been laid down by the Hon'ble Supreme Court in the judgment passed in the case titled as ***Babu Sahebagouda Rudragoudar and others versus State of Karnataka, 2024 INSC 320 = 2024(2) Law Herald (SC) 928*** held as under:

“39. Thus, it is beyond the pale of doubt that the scope of interference by an Appellate Court for reversing the judgment of acquittal recorded by the trial Court in favour of the accused has to be exercised within the four corners of the following principles:-

- (a) That the judgment of acquittal suffers from patent perversity;*
- (b) That the same is based on a misreading/omission to consider material evidence on record;*
- (c) That no two reasonable views are possible and only the view consistent with the guilt of the accused is possible from the evidence available on record.”*

Thus, the present application seeking leave to appeal must be examined in context and after drawing guidance from the aforementioned principles.

9. While going through the records of the case, it appears that the complainant has failed to satisfactorily discharge the burden of proof by



presenting credible and reliable evidence or witnesses. It is a well-settled principle of law that the burden rests upon the prosecution to establish the guilt of the accused through cogent and convincing evidence, and any failure to do so entitles the accused to the benefit of doubt. The case put forth by the prosecution is riddled with material discrepancies, as discussed below, that substantially undermine its credibility and foundational strength.

10. At the outset it will be apposite to consider the main thrust of the prosecution case as revealed from the evidence on record for deciding the culpability of the accused in the incident in question. As per the case put forth by the complainant, it is alleged that on 27.09.2015 at about 11:30 A.M. while she was sitting in the shop run by her mother, the accused Nishan Singh used criminal force against her with an intention to outrage and disrobe her modesty. In order to substantiate the allegations, the prosecution has examined the complainant (PW-1) who had fully supported the case of the prosecution. The complainant, Navjot Rani (petitioner herein), alleged that on 27.09.2015, while she was at her shop, accused Nishan Singh approached her, proposed friendship and assaulted her when she refused and tore her clothes. Her cries attracted a woman namely Pinky, who called her mother. Accused Satnam Singh, who is Nishan Singh's brother, also arrived at the scene of occurrence and both the brothers allegedly assaulted the complainant and her mother and tore off their clothes. The complainant further alleged that accused Nishan Singh had previously harassed her on her way to college. The prosecution has supported the aforesaid allegations with the testimonies from PW-8 (Raj Rani, mother of the complainant), PW-3 (Baljit Singh, MPHWCum-Clerk, Civil Hospital,



Gurdaspur, who verified the age of the complainant as 17½ years making her a minor under the POCSO Act) and PW-2 and PW-5 (Police officials involved in the investigation). The Court below found that despite examining 08 witnesses and presenting the evidence, the prosecution had failed to prove the guilt of accused Nishan Singh beyond a reasonable doubt. Furthermore, the Court below held that the arguments of the defence were found more credible and the case of the prosecution lacked substance. Moreover, the evidence presented by the complainant was contradictory and unsubstantiated and rendering her allegations inconsistent and hence the benefit of the same be given in favour of the accused. In the considered opinion of this Court, these inconsistencies and contradictions cast serious doubt on the credibility of the version of the complainant.

11. The case pertains to allegations against Nishan Singh under Sections 354 and 354-B of IPC and Section 8 of the POCSO Act. The complainant claimed that on 27.09.2015, accused Nishan Singh proposed friendship, assaulted her and when she refused, the accused tore her clothes. However, her statement (Ex.PW-1/A) did not indicate any intention to outrage or disrobe her modesty which is a key requirement under these Sections. Furthermore, from the perusal of the testimonies of the complainant and that of her mother (PW-8), it is not clear whether the clothes of the complainant were torn or only of her mother. Additionally, the prosecution witness namely Pinky (who stepped into the witness box as PW-6), who allegedly informed the mother of the complainant about the alleged incident denied witnessing the incident or making any such call to the mother of the complainant which weakens the case of the prosecution.



12. Another glaring discrepancy which creates a dent in the prosecution case is the failure of the attempt of the prosecution to prove that the complainant is a minor under the POCSO Act. Documents presented by PW-3 namely Baljit Singh, MHPW-cum-Clerk from the office of Civil Hospital, Gurdaspur to establish the age of the complainant were inconsistent, unverified and lacked corroboration. The prosecution has miserably failed to prove before the Court below that the complainant was a minor or a child within the definition of Section 2(d) of the POCSO Act and as such this lapse weakens the evidentiary value of the case, particularly when the witnesses could have corroborated or contradicted the version presented. In criminal jurisprudence, the failure to secure independent testimony, when available, is a glaring procedural lacuna that erodes the foundation of a fair trial.

13. Another shortcoming which cast a dent on the narrative of the prosecution story is the testimony of PW-8 namely Raj Rani, who is the mother of the complainant. Her testimony contradicts with that of her daughter (PW-1-complainant) and she is admittedly not an eyewitness to the incident in question. Moreover, the prosecution had failed to present any independent or eyewitnesses, despite the presence of multiple individuals, such as Pritam Singh, Balkar, Anju, Mangal and Jodha, who reportedly gathered at the scene of occurrence. The record also indicates that the key prosecution witness namely Pinky, who was present at the alleged incident, did not support the case of the prosecution. She contradicts her earlier police statement (Mark-A), stating that she did not witness any occurrence and did not see the accused Nishan Singh outraging the modesty of the complainant.



She had also narrated that she had never called the mother of the complainant regarding the incident in question. Furthermore, when the said witness was declared hostile, the prosecution had cross-examined her at length but failed to extract anything to support their case. Thus, the statement of the Pinky undermined the claim of the prosecution that she had informed PW-8 Raj Rani i.e. mother of the complainant about the incident and cast a significant doubt about the presence of Raj Rani i.e. mother of the complainant at the scene of occurrence. The failure to examine the independent witnesses and the contradictions in testimonies significantly weakened the case of the prosecution. The witness namely Pinky complete disavowal of the alleged events further weakens the prosecution narrative. Consequently, the reliance of the prosecution on the testimony of PW-8 (mother of the complainant) and the alleged phone call from the Pinky is not credible and the evidence does not support the charges against the accused. The aforesaid factors weaken the case of the prosecution, casting significant doubt on the credibility of the allegations of the complainant.

14. Despite the allegations made by the complainant, which are supported by her mother namely Raj Rani about outraging her modesty, no specific evidence was produced/provided to support these claims to inspire confidence. There is no medical evidence on record to substantiate any claims of physical assault or beating by the accused.

15. In the considered opinion of this Court, this lack of evidence and the absence of corroborative evidence raise serious doubts about the credibility of the allegations. The contradictions in the statements of the complainant, along with the absence of physical or documentary evidence,



suggest that the allegations raised against the accused are not as severe as have been portrayed by the complainant. The glaring inconsistency between the testimonies of the complainant and witnesses introduces a material contradiction, which directly impacts the credibility of the witnesses and the case of the complainant. Such discrepancies cannot be lightly overlooked as they strike at the very root of the complainant's narrative and reliability of the evidence presented. In criminal jurisprudence, where the burden of proof lies squarely on the complainant to establish the guilt beyond the reasonable doubt, the conflicting statements of star prosecution witness particularly the complainant significantly undermine the ability of the prosecution to prove the charges conclusively and potentially warranting an acquittal by giving the accused the benefit of doubt. Moreover, there is no reasonable explanation forthcoming either from the evidence produced by the complainant or records of the case or from the averments made in the present petition, on this aspect.

16. In the instant case, the lack of specific allegations and evidence renders it impossible to establish the elements necessary for prosecuting the accused under this provision. In the considered opinion of this Court, in the absence of credible material on record, the Court below has rightly concluded that the essential ingredients required to prove these offences were not satisfied, resulting in the dismissal of the charges. These material contradictions significantly undermine the case of the prosecution and it fails to meet the stand of proving the guilt beyond a reasonable doubt and casts a significant element of doubt regarding the alleged incident in question and potentially weakened the case of the prosecution.



17. It is a well-established principle in criminal jurisprudence that the burden of proof rests squarely upon the prosecution/complainant, which must establish the guilt of the accused beyond reasonable doubt. Any failure to meet this standard, particularly when key evidence is either missing or questionable, entitles the accused to the benefit of doubt. It has been consistently held that suspicion, however grave, cannot substitute for proof, and where there exists any reasonable doubt, the benefit of such doubt must be given to the accused and he must be acquitted in accordance with law. In light of the above discussed discrepancies and inconsistencies, it can be safely inferred that the case put forth by the prosecution is false and there is no evidence of the alleged incident as projected by the complainant/victim. Where the complainant herself has failed to substantiate her case beyond reasonable doubt, as has happened in the case in hand, the defence, if any, raised/pleaded by the accused recedes into the background and rather becomes immaterial. However, as has been noted by the learned Additional Sessions Judge, Gurdaspur, while passing the judgment of acquittal, in concluding paras of the judgment, the prosecution has to stand upon its own legs and cannot take the benefit of the weakness of the defence side and the prosecution has miserably failed to bring home the guilt of the accused beyond reasonable doubt for the alleged commission of offences. In the instant case, the prosecution has miserably failed to discharge its liability. The eagerness of the complainant/victim to implicate the accused through vague and general accusations further indicates a possible attempt to implicate him, regardless of his actual participation/involvement, in an effort to harass him.

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18. In the facts and circumstances of the entire case coupled with the presence of multiple inconsistencies in the case, the learned Court below, has rightly arrived at the conclusion that the story put forth by the prosecution was false and the allegations raised lack substance. The facts of the case clearly narrate that the complainant has tried to conceal the real genesis of the case. However, the Court below has meticulously and judiciously examined the matter, appreciating the facts and evidence in the proper context. The Court below has rightly discerned the attempt of the victim to distort the narrative and has delivered the findings based on through evaluation of the material on record.

19. A perusal of the impugned judgment of acquittal passed by the Court below shows that the entire evidence led by the prosecution has been gone through in detail and in a painstaking manner and has dealt with each and every aspect of the case in a pragmatic manner. The judgment of acquittal is based on sound reasoning; does not suffer from any illegality or perversity. As such, the judgment of acquittal dated 20.01.2017 passed by the Additional Sessions Judge, Gurdaspur, does not call for any interference. Resultantly, the present application seeking grant of special leave to file an appeal does not survive and the same is hereby dismissed.

20. Pending application(s), if any, shall also stand disposed off.

(SUMEET GOEL)
JUDGE

January 07, 2025

Ajay

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No