



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

CRM-A-1079-2023 (O&M)

Date of Decision: September 04, 2025

State of Haryana

.....Appellant (s)

Vs.

Bharat Bhushan and another

.....Respondent(s)

**CORAM: HON'BLE MS. JUSTICE MANJARI NEHRU KAUL
HON'BLE MRS. JUSTICE RAMESH KUMARI**

**Present: Mr. Yuvraj Shadilya, AAG, Haryana
for the appellant.**

RAMESH KUMARI J. (ORAL)

CRM-32701-2023

Application has been filed for condonation of delay of 177 days in filing the application for grant of leave to appeal.

Keeping in view the averments made in the application duly supported by affidavit of the concerned official, we are of the considered opinion that sufficient cause is made out to condone the delay as it is settled principle that each and every day's delay is not to be explained. Accordingly, delay of 177 days in filing the aforesaid application is hereby condoned.

CRM stands disposed of

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The present application has been filed under Section 378(3) Cr.P.C. (corresponding Section 419(3) of BNSS) by the State for grant of leave against the judgment of acquittal dated 28.10.2022 passed by the then learned



Additional Sessions Judge-cum-Judge, (Fast Track Special Court, under POCSO Act), Yamuna Nagar at Bhiwani, in FIR No.547, dated 10.07.2019 under Section 342, 363, 366-A, 376, 354-A (1) (I) 34 IPC, Sections 6 & 8 of Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as 'POCSO Act') at Police Station Sadar Bhiwani, whereby respondents/accused Bharat Bhushan and Deepak were acquitted of charges framed against them.

2. Learned State counsel has assailed the judgment of acquittal primarily on the ground the learned trial Court failed to appreciate the medical and forensic evidence and testimony of the several link witnesses while giving undue weightage to the hostility of victim (PW-4) and her parents (PWs 5 and 6).

3. The facts of the case of the prosecution, on the basis of which, FIR was registered, against both the respondents are that on 10.07.2019, PW-5 father of victim and PW-4 moved a complaint to police alleging that he was resident of village Nawa, District Bhiwani. On 16.07.2019, his daughter PW-4 had gone to her school but she did not return. Initially case under Section 346 IPC was registered.

4. On 14.07.2019, PW-5 and PW-6 i.e. parents of victim PW-4 produced her before the police. Memo of recovery was produced. Her birth certificate showing her date of birth as 28.08.2023 was taken into police possession. Statement under Section 164 Cr.P.C. (corresponding Section 183 of BNSS) of PW-4-victim was recorded. Offence under Sections 346 IPC was deleted and Sections 342, 363, 366-A, 376(3), 34 IPC and Section 6 of the POCSO Act were inserted.



5. Thereafter, PW-4 victim was got medico-legally examined at General Hospital, Bhiwani. Medical samples were taken into police possession and sent to FSL. Call details of mobile phone of PW-4 victim and accused were collected from Cyber Cell, Bhiwani.

6. Accused-Bharat Bhushan was arrested on 09.08.2019 and was got medico-legally examined at General Hospital. Accused-Deepak, his maternal uncle Kuldeep, his friend Anil and one Sahil were interrogated. One pen-drive was produced by Kuldeep, was taken into police possession. During the investigation, the accused-Deepak was not found involved under Sections 342 & 376 IPC. Accordingly, Section 354-A (1)(i) of IPC and Section 8 of POCSO Act were inserted.

7. On 30.09.2019, accused-Deepak was arrested under Sections 363, 366-A, 354 A1, 34 IPC and Section 8 of POCSO Act, 2012. He also got the sites of occurrence identified, scaled site plan was prepared and after completion of investigation, report under Section 173 Cr.P.C. (corresponding Section 193(1) of BNSS) was presented against respondents/accused (Bharat Bhushan/Deepak).

8. After being charged, the prosecution examined 24 witnesses against the accused including victim (PW-4), her father (PW-5) and mother (PW-6), investigating officers and medical/scientific experts. Despite the array of evidence, victim (PW-4), her father (PW-5) and mother (PW-6) are turned hostile and did not support the case of the prosecution. They categorically denied the allegations and dis-owned the submissions attributed to them. In the absence of support from these material witnesses, learned trial Court held that



prosecution could not stand on the strength of medical and forensic evidence alone and consequently rendered the judgment of acquittal.

9. Learned State counsel has challenged the acquittal contending *inter alia* on the following points:-

(i) Learned trial Court failed to appreciate the medical testimony of (PW-14) Dr. Sunita Kumari, who medico-legally examined victim (PW-4) and prepared her MLR Ex.PW14/A, statement of Parveen Kumar (PW-24), Clerk of the Court of learned Judicial Magistrate First Class, who proved the statement of PW-4 recorded under Section 164 Cr.P.C. vide PW4/B, forensic evidence and call detail records produced by Sandeep Sharma (PW-16), Nodal Officer, Reliance Jio.

(ii) That the FSL report Ex.PA and PB, and DNA Report (Ex.PC) establishes the presence of semen stains on the salwar of PW-4 victim match with DNA profile of blood sample of accused-Bharat Bhushan.

(iii) That the link evidence including police officials and malkhana officials duly corroborated the safe custody and discharge of the exhibits.

(iv) That the hostility of victim (PW-4) and her parents (PWs 5 and 6) was a result of pressure from accused and some co-villagers and therefore, the corroborative scientific evidence ought to have been relied upon.

10. We have heard learned State counsel and carefully perused the record including the impugned judgment.

11. At the very outset, it requires emphasis that in criminal jurisprudence, foundation of conviction rests upon credible and trustworthy evidence. Scientific and medical evidence, though valuable, cannot supplant



the substantive testimony of a victim, particularly in offences of sexual assault, where the version of the victim constitutes the core of prosecution case.

12. In the instant case, the victim (PW-4 herself), when examined in Court, not only failed to support the case of the prosecution but also categorically denied the allegations against both the accused. She further repudiated her earlier statement recorded under Section 164 Cr.P.C. (Ex.PW4/B), attributing it to police pressure. Her father (PW5) and mother (PW6) also resiled from prosecution version and were declared hostile. Once the victim and her parents did not support the prosecution case, the very substratum of the prosecution collapsed.

13. It is true that DNA Report (Ex.PC) reveals that autosomal STR analysis indicates that DNA profile of seminal stains on *salwar* of the child victim matched with the DNA profile of blood sample of the accused-Bharat Bhushan. However, a crucial gap exists. During trial, both the victim and her parents denied the prosecution allegations and the victim (PW-4) in her statement PW-4/A given to the police after her recovery or in her statement PW4/B recorded under Section 164 Cr.P.C. (correspondent Section 183 of BNSS) has not implicated accused Bharat Bhushan in the commission of penetrative sexual assault upon her at any point of time. During cross-examination of the victim (PW-4) and her parents are not confronted with the clothing of PW-4, there is no evidence that the *Salwar* was handed over by her or belongs to her. In the absence of acknowledgment or identification of the clothing by victim (PW-4) or her parents, the evidentiary value of forensic result stands severely dented. The prosecution failed to bridge this fundamental gap.



14. Further, no positive result was concededly obtained from the vaginal swabs, which could have independently corroborated the allegation of penetration against the accused. Thus, the so-called clinching scientific evidence, when divorced from ownership and identification of the garment, loses its probative worth.

15. However, there is a missing link in keeping the case property intact. There is a discrepancy in the RFSL report (Ex.PB) and DNA report (Ex.PC) regarding the date of deposit of blood samples of accused Bharat Bhushan in the office of FSL.

16. As per RFSL report, Ex.PB, the case property pertaining to accused Bharat Bhushan was received on 28.09.2019 in Regional Forensic Science Laboratory, Sunariya through Constable Hanuman Singh. After examination of blood samples of accused-Bharat Bhushan, it was returned as such in original. HC Dalip Singh (PW-10) stated that he deposited the case property of child victim and accused-Bharat Bhushan at Forensic Science Laboratory, Madhuban on 02.01.2020 through EASI Jai Bhagwan, who handed over the receipt to him after depositing case property, but DNA report Ex.PC proved that case property to the child victim and accused-Bharat Bhushan, was received in the laboratory on 21.01.2020 through EASI Jai Bhagwan. If the case properties was deposited with FSL Madhuban on 21.01.2020, its return receipt certainly cannot be handed over to PW-10-Dalip Singh on 02.01.2020. ASI Jai Bhagwan, who deposited the case property in the office of FSL was not examined and thus, there was fundamental gap regarding deposit of case property and learned trial Court rightly pointed out that material link evidence is missing.



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17. In view of the above, we are of the considered view that the learned trial Court committed no illegality in acquitting the accused. On the contrary, its approach of declining to convict in the face of complete hostility of material witnesses and the absence of reliable corroboration is in consonance with the settled principles of criminal law. To interfere with an acquittal, the learned Appellate Court must find perversity or manifest illegality in the appreciation of evidence, which is conspicuously absent here.

18. Accordingly, the appeal filed by the State is devoid of merit, and is ***dismissed***. The judgment of acquittal dated 28.10.2022 passed by the learned Additional Sessions Judge-cum-Judge, (Fast Track Special Court, under POCSO Act), Yamuna Nagar is hereby upheld.

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

(MANJARI NEHRU KAUL)
JUDGE

(RAMESH KUMARI)
JUDGE

September 04, 2025
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Whether speaking/reasoned:	Yes
Whether reportable:	Yes