

**IN THE HIGH COURT OF PUNJAB AND HARYANAAT
CHANDIGARH**

CRA-D No. 717-DB of 2014(O&M)

Date of Decision: April 29 , 2015.

Nepal

..... APPELLANT (s)

Versus

State of Haryana and others

..... RESPONDENT (s)

**CORAM:- HON'BLE MR.JUSTICE HEMANT GUPTA
HON'BLE MRS.JUSTICE LISA GILL**

Present: Mr. Vivek Goyal, Advocate for
Mr. Amit Jain, Advocate
for the appellant.

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reports or not?
3. Whether the judgment should be reported in the digest?

LISA GILL, J.

This appeal has been preferred by appellant – Nepal son of Uday Veer being aggrieved of judgment dated 15.02.2014 passed by learned Additional Sessions Judge, Gurgaon. Respondents No.2 to 5 have been acquitted of the charges for offences punishable under Sections 366/366A/376/506/120B IPC and Section 6 of the Protection of Children from Sexual Offences Act, 2012 vide the impugned judgment.

As per the prosecution version, complaint Ex.PB was submitted by appellant/complainant – Nepal on 01.12.2012 before ASI Hemraj to the effect that his daughter had been enticed away. He revealed that on the night of 29th

November, 2012, he was in the fields in connection with his work. His wife Poonam alongwith his son Ashish and daughter were sleeping in their house. When he returned home the next morning, his wife informed him that their daughter had left home. On enquiry it was revealed that respondent No.2 – Manjeet son of Jaipal had enticed his daughter on the pretext of marrying her. He recovered a mobile phone on searching his home. Complainant further disclosed that his daughter had taken away 120 grams of gold and silver ornaments as well as cash of ₹40,000/-. Date of birth of the prosecutrix was stated to be 24.04.1997. She was revealed to be studying in Class 10 in Karhana Senior Secondary School, Ferozepur Kalan. He prayed for legal action to be taken against accused – Manjeet and for tracing out his daughter. On this information, FIR, Ex.PQ was lodged.

Complainant's daughter, PW1 was recovered on 13.12.2012 from Room No.205, Hotel Plaza, Sector 42 Chandigarh. Manjeet alongwith co-accused Mahender and Sunil were recovered from Room No.104. Statement of the prosecutrix was recorded under Section 164 Cr.P.C. on 13.12.2012. She revealed that she was student of Class 10th. She knew accused Manjeet since she was studying in Class 9th. He used to approach her in school. When she refused to talk to him, he would say that he would die. His elder brother Pardeep threatened that if she did not talk with Manjeet, he would have her younger brother Ashish kidnapped. Due to this fear, she started talking to Manjeet. One Shamima who used to wash clothes in the hostel said that she should talk to Manjeet on a mobile phone. Shamima took a mobile from Manjeet and gave it to her. He used to call her on this mobile and talk to her. Manjeet would say that either she should accompany him or they would kidnap her brother. On

29.11.2012, she was sleeping with her mother and brother at her residence. Her father was not at home as he had gone to the fields. Manjeet alongwith five other persons came to their house on three bikes. She knew three i.e., Mahender, Sunil and Babu out of the said five persons. They came to terrace and threatened her with a country made pistol and forced her to bring her mother's jewellery. They brought her down stairs. She tried to raise an alarm but they threatened to kill her and kept a cloth over her mouth. They fired near the cremation ground outside the village and then took her to Ballabgarh railway station. She was made to sit in a train alongwith Manjeet and others went back. She was first brought to Delhi and then taken to Haridwar on bus. Prosecutrix was kept at Chitra Residency at Haridwar for three days. Sunil and Mahender thereafter called Manjeet that her father and CBI people are looking for him. Sunil and Mahender came to Haridwar on a motorcycle on 03.12.2012. Manjeet after hiring a vehicle brought her to Surat. Sunil accompanied them and Mahender went back. As Manjeet did not have any proof of identification they did not get a hotel room and all three of them proceeded to Mathura by train on 04.12.2012. She was kept at a Resort at Mathura for three days. Sunil thereafter went home. Sunil informed Manjeet that Hodal, Faridabad police is also after him. Sunil and Mahender got a taxi of Thakur from Palwal and she was brought to Chandigarh. They changed hotels almost daily in Chandigarh as their mobile numbers have been traced by the police. She was got married at Arya Samaj Mandir on 12.12.2012 with Manjeet. A lawyer was present at the time of marriage. Arya Samaj people refused to give a certificate on which Manjeet said that he was only enacting a drama and had already left three four girls like this. When she asked

for the mobile he refused to give her the same. One Attar Singh from Palwal was also present at the time of marriage. They were all apprehended by the police at Grand Plaza Hotel at Chandigarh. She was alone in the hotel room at that time. Mahender was in another room and Manjeet had gone to the court. She stated that Manjeet violated her in the hotel at Haridwar, Mathura and Chandigarh and when she protested, he threatened that she will be killed and thrown in the jungle.

Prosecutrix, PW1 was medico-legally examined on 13.12.2012 by PW7 Dr. Kusum Bisla, Medical Officer, Govt. Hospital Gurgaon. Accused Manjeet was also got medically examined. Prosecutrix is mentioned to be 16 years of age. No external mark of injury was found on the prosecutrix and it was opined that possibility of sexual intercourse could not be ruled out.

On completion of investigation, challan/report under Section 173 Cr.P.C. was presented against the accused. Charge was framed. Offences punishable under Sections 376/120B IPC were added subsequent to the statement of the prosecutrix recorded under Section 164 Cr.P.C.

Prosecution examined as many as ten witnesses to prove its case.

All the accused while denying the incriminating material put to them, pleaded innocence and false implication. Accused Manjeet specifically claimed that he and prosecutrix were in love with each other. They had got married at Arya Smaj Mandir at Chandigarh. Family of the prosecutrix were against the marriage on account of difference of castes. They were approaching this court for protection but before they could appear, they were apprehended by the police. It was specifically denied that the prosecutrix was enticed or induced to leave her house or to marry him. In fact, the prosecutrix had written letters

(Ex.D2 to Ex.D5) to his family members revealing the undue pressure upon her. He has stated prosecutrix to be over 18 years of age.

Learned trial court on consideration of the entire facts and circumstances as well as the evidence on record concluded that the prosecution has miserably failed to connect the accused with the commission of the alleged offences. While disbelieving the age of the prosecutrix to be below 18 years, it has been concluded that an attempt has been made to bring on record false evidence by manipulating school record so as to cause conviction of the accused in this case by projecting the prosecutrix to be younger than she actually was. A separate inquiry under Section 340 Cr.P.C. was directed to be initiated. After holding the prosecutrix to be 18 years of age, the learned trial held as under:-

“XX XX XX XX

Here the victim of the crime has left her house in company of the accused. It is thus established on record that prosecutrix had willingly left her home for the purpose of marriage with the accused as she was in love affair with the accused.

49. In the given circumstances what can be inferred is that accused and prosecutrix were friendly with each other and prosecutrix herself has eloped with the accused. There was no enticement on the part of accused in taking her away from her house. Furthermore it is also not established on record that she was ever ravished by the accused. Therefore, prosecution has not been able to bring home guilt to the accused.”

Learned counsel for the appellant submits that the trial court has grossly erred in returning the above findings and in acquitting the accused in this case. It is submitted that prosecutrix's date of birth is 24.04.1997 therefore, at the time of commission of the offence i.e., 29.11.2012 she was about 15-1/2 years of

age. She was under 16 years of age at the time of incident. Therefore the question of consent becomes irrelevant. He further submits that prosecutrix, PW1 has duly supported the prosecution version. She has revealed the commission of offence at the very outset when her statement was recorded under Section 164 Cr.P.C. There is no reason to disregard her testimony. There is nothing on record to suggest that she was in a relationship with accused Manjeet and had voluntarily fled from her home taking away jewellery and cash alongwith. In this situation, it is prayed that the impugned judgment be set aside and accused-respondents No.2 to 5 be convicted under the offences as charged and sentenced accordingly.

We have heard learned counsel for the appellant and gone through the record.

Complainant – Nepal has disclosed his daughter's date of birth to be 24.04.1997. Reliance was placed on birth certificate (Ex.PN) issued on 13.05.2013, as well as school certificates (Ex.PU and Ex.PU/1). As per the certificate (Ex.PU) sought to be proved by PW9 Jai Pal, Principal of the Karhana Senior Secondary School, Ferozepur Kalan the date of birth of the prosecutrix is mentioned as 24.04.1998. PW10 Surender Rao, Principal of the RPS Senior Secondary Public School, village Mohla, District Faridabad where the prosecutrix is stated to have studied till 2010 has proved her Admit Card (Ex.PV) where her date of birth is mentioned as 20.08.1998. Affidavit of the complainant i.e., the prosecutrix's father in respect to her date of birth is Ex.PV/1. It was found by the trial court that while making the entries in the records, fluid has been used. In this regard the following observations have been made by the

learned trial court:-

“27. However, from cross-examination of this witness it is evident that while making entry of prosecutrix in this document Ex.PV/2 fluid is used. When he was asked specifically about use of fluid in all the columns including the column of her date of birth, he states that on inquiry the concerned teacher who made the entry revealed to him of some mistake it was required to be made in increasing order. Therefore, correction was made after using the fluid.

28. However, such like explanation furnished by this witness is not found to be plausible explanation. There is no such initials of the concerned teacher, who could have made so, if there was some mistake. Moreover, it is quite improbable to believe that entire entry was made and even the signatures of the student were obtained, then fluid was used to correct the entry but there is no use of fluid on the signatures. All this clearly goes to show that there has been deliberate attempt on the part of school authority in collusion with complainant side, so as to make and prepare wrong record which has been produced into evidence before the court. Such like deliberate attempt to produce forged record before the court certainly amounts to giving false evidence before the court and such like deliberate attempt is liable to be dealt with seriously which amounts to perjury.

29. The observation of this court that there is manipulation made in the school record are further fortified from the fact that the witness examined in defence Shri Kumarpal (DW1) teacher from Roxy Public School, Palwal has also produced the record qua date of birth of prosecutrix wherein her date of birth is mentioned as 25.09.1994. This witness has deposed that she was admitted in their school in fourth class on the basis of migration certificate Ex.D5. This migration certificate was issued from R.D.S.Memorial Public High School. In this migration certificate also her date of birth is mentioned as 25.09.1994. Her admission in Roxy Model Primary School, was made on the basis of application filled in by her father

Nepal on 01.05.2004 when he has requested for her admission in fourth class and this application is proved on record as Ex.D4. Here also her date of birth is mentioned as 25.09.1994. Therefore, in admission and withdrawal register of Roxy School Ex.D4 date of birth of prosecutrix is mentioned as 25.09.1994.”

It is to be noted that PW7 Dr. Kusum Bisla has specifically recommended for age verification of the prosecutrix as no document regarding proof of age was presented before her. Age of the prosecutrix was got recorded as 16 years at the time of medical examination. No effort was made to have the ossification test, dental/radiological examination conducted for determining the age of the prosecutrix despite specific recommendation by PW7 Dr. Kusum Bisla. Certificates produced by the prosecution attempting to project the prosecutrix to be under 16 years of age cannot be relied upon in the peculiar circumstances of this case. In this view of the matter it is clear that the prosecutrix (PW1) was indeed over 16 years of age at the time of the occurrence. Alleged incident is of November/December, 2012 i.e., before the amendment was brought about in Section 375 IPC wherein the age of consent was raised from 16 to 18 years. Prosecution has failed to prove the prosecutrix to be under 16 years of age at the time of alleged occurrence.

Evidence on record succinctly shows that the prosecutrix (PW1) had voluntarily fled from her home alongwith accused Manjeet alongwith jewellery and money belonging to her parents. It is admitted by her that she knew accused Manjeet since she was studying in Class 9th. She has admitted having written letters/pages (Ex.D1 to D6) to the accused. Prosecutrix has admitted the photographs (Ex.D7) depicting solemnization of her marriage with the accused at

Arya Samaj Mandir. She admits that she never raised any objection, neither made any attempt to raise an alarm on any of the days she stayed with the accused from 29th November, 2012 till 13th December, 2012 when she was recovered.

Furthermore, complainant – Nepal has denied having any knowledge about any relationship of his daughter with accused Manjeet whereas, the prosecutrix (PW1) reveals that her father had been aware of their relationship and he had asked her not to talk to Manjeet. PW1 specifically revealed that her brother had informed their father about her affair with the accused and that she used to talk to him on the phone. Complainant – Nepal has admitted that he was opposed to the marriage of accused Manjeet with his daughter even if Manjeet's family was ready and willing. He specifically deposed that he would not be agreeable to the marriage even if his own daughter was willing for the same.

Contents of the letters (Ex.D2 to D5) would reveal that she was forced to depose against the accused under pressure. Her cross-examination was deferred on 17.05.2013 and thereafter concluded on 13.09.2013. In the interregnum she had gone to the school to take her exams. She wrote letters (Ex.D2 to D5) some of which were addressed to the father of the accused revealing the pressure upon her. She has admitted having written the said letters. Reality comes to the fore when prosecutrix discloses that she was told by Shamima that if she wrote the letters, accused Manjeet would not get implicated in any case.

In these circumstances, learned trial court has rightly concluded that the prosecutrix eloped with accused Manjeet out of her own free will and

consent. There was no question of commission of offences as alleged.

We find no perversity, infirmity or illegality in the impugned judgment 15.02.2014 passed by learned Additional Sessions Judge, Gurgaon which is well reasoned decision rendered on proper appreciation of evidence which warrants no interference by this Court. It is a settled position that possibility of another view cannot be a ground to set-aside acquittal of the accused in the absence of any perversity or illegality in the impugned judgment.

Consequently, this appeal being devoid of any merit is dismissed.

**(HEMANT GUPTA)
JUDGE**

**(LISA GILL)
JUDGE**

April 29 , 2015.
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