

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

**Crl. Revision No. 1951 of 2006 (O&M)
Date of Decision: 12.08.2015**

Nisha

.. Petitioner

Vs.

State of Haryana & Anr.

.. Respondents

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

1. Whether Reporters of local papers may be allowed to see the judgment? Yes/No
2. To be referred to the Reporters or not? Yes/No
3. Whether the judgment should be reported in the digest? Yes/No

**Argued by:- Mr. U.K. Agnihotri, Advocate
for the petitioner.**

Mr. Amrik Narwal, DAG Haryana.

**Mr. Aman Pal, Advocate
for respondent No.2.**

ANITA CHAUDHRY, J.

The complainant has laid challenge to the judgment dated 19.08.2006 vide which respondent No.2 has been acquitted of charges under Sections 323, 342, 376 and 506 IPC.

FIR No. 10 dated 07.01.2004 was registered at the instance of the complainant-petitioner against respondent No.2 at Police Station City, Rohtak, on the allegations that about six months ago, he had committed rape on the promise of marriage. During these six months as well she was ravished 5-6 times but the accused did not talk of marriage. On 23.12.2003 the accused raped her and then he and his relatives got 3-4 letters written from her and she was criminally intimidated. The prosecutrix did not disclose the incident to anybody. It was further alleged that on 3.01.2004 a

quarrel took place between her family and family of the accused and her brother sustained injuries and it was then a statement was made and the FIR was registered.

Investigations were carried out. The police had filed challan only against respondent No.2. The relatives of respondent No.2 were found innocent.

Charges were framed. Evidence was led. Besides the medical officer and official witnesses, the prosecution examined the complainant and her father and they are the prime witnesses.

When examined under Section 313 Cr.P.C. the accused took the stand that he was having an affair with the prosecutrix and they wanted to marry, but the parents of prosecutrix were objecting and were inimical and had put pressure upon the prosecutrix and he was falsely implicated. He produced letters and photographs Ex.D1 to Ex.D35.

On appraisal of evidence, the trial Court disbelieved the prosecution story and recorded acquittal.

Dis-satisfied with the same, instant revision petition has been filed by the complainant.

I have heard learned counsel for the parties and have gone through the record carefully and of the view that no ground for interference is made out.

The prosecution case mainly rests upon the testimony of prosecutrix, so far as allegations of rape, illegal confinement and criminal intimidation are concerned. Testimony of her father is hearsay. No doubt, conviction can be recorded on the sole testimony of prosecutrix, but it

should be convincing. The statement of prosecutrix was rightly discarded by the Court below and she was found to be a consenting party. It was noticed that she did not make complaint for six months. The silence on her part speaks volume about the veracity of prosecution version. That apart, no injury or marks were found in the medical report. There are photographs and letters written which show that they were having an affair.

No evidence was produced by the prosecution to prove her age. The question of age of prosecutrix in cases of such nature is always of importance, especially when the prosecutrix appeared to be a consenting party. The Middle Examination Certificate was not proved. A photo copy was tendered in evidence and had not been proved. The ossification report gives her age between sixteen and a half year to seventeen and a half years. Hon'ble Supreme Court in the case of **Jaya Mala Vs. Home Secretary, Government of J&K & Ors. AIR 1982 SC 1297** has observed that “...one can take judicial notice that the margin of error in age ascertained by radiological examination is two years on either side.” It is also well settled that in absence of any concrete evidence regarding the age of prosecutrix, the benefit of such variation goes in favour of the accused. Taking into account this fact, she was held to be more than 16 years of age and eligible to give her consent. Such findings are discernible from a perusal of para Nos. 26 and 28 of the impugned judgment and the same read as follows:

“26. *I had considered the rival contentions of the parties in the lights of the authorities produced by both of them and I find that as far as the accused is concerned, he is 21 years. Both prosecutrix and accused belong to same caste. It has also come in evidence that mother of the prosecutrix moved an application against*

the accused as well as his family members in the end of November, 2003 in connection with some dispute. It has also come in evidence that even brother of the prosecutrix received injuries in a quarrel which took place in the beginning of 2004. The latest rape alleged is of 23.12.2003. The perusal of letters produced by the defence on the file clearly shows that letters Ex.D1 to Ex.D16 have been written voluntarily and these letter cannot be written by force. Photographs Ex.D17 to Ex.D31 which have been admitted by the prosecutrix belonging to her and in some of the photographs accused is also shown clearly proves that prosecutrix is a consenting party. Even in Ex.D9 which she has allegedly thrown outside the house of accused. She has mentioned that she was forced to file the complaint against the accused. In this letter, it is further mentioned that she is afraid that she may not be liquidated by her family members. She has admitted that she has been subjected to sexual intercourse 5-6 times during the long spell of many months, but she has never complained to her parents. It is only after a quarrel took place between mother, brother of the prosecutrix on the one side and accused and his family, on the other side and she has narrated this fact. It clearly shows that prosecutrix is made an instrument to teach lesson to the accused and his family members. It is correct that prosecutrix is to be treated as injured but at the same time, we have to see as if law is not misused by levelling false allegations. The Public prosecutor or the counsel for the complainant are unable to explain as to how these sixteen letters as well as aforesaid photographs from which consent of the prosecutrix is proved to the hilt, can be ignored. Ex.D36 further shows that on 4.1.2004 a Calandra under section 107/151 Cr.P.C. was filed against Sahil accused and

Krishan, both brother. As such, the present case is outcome of enmity which has developed among both the parties.

28. *I have considered this aspect of the matter and I have also perused the photographs Ex.D17 to D31 and perusal of the same reveal that the prosecutrix is quite grown up girl. The mark sheet which has been produced on the file is not duly proved. No tangible evidence has been proved on the file in the form of birth certificate to show as to on which date she was born and the ossification test shows her age between 16-1/2 years to 17-1/2 years. The variation is to be taken on both sides as per law laid down by Hon'ble Supreme Court and benefit of variation is to be given to the accused. As such keeping in view the totality of the facts and circumstances on file, I find that the age of the prosecutrix was not less than 16 years, even in June, 2003. The story of illegal confinement is quite false and prosecutrix was a consenting party to the act of sex and she has been made a tool so as to teach lesson to the accused and his family members with whom there are some quarrel.”*

The learned appellate Court below recorded a finding the prosecutrix was over sixteen years of age and a consenting party. It had rightly acquitted the accused. The High Court ought not to interfere with the order of acquittal unless the judgment of acquittal is perverse or highly unreasonable. In the instant case, the judgment of acquittal rendered by the Court below is neither perverse nor unreasonable and it cannot be said that the court based its findings on irrelevant or inadmissible evidence. In the circumstances, the instant revision petition is dismissed.

August 12, 2015
Jiten

(ANITA CHAUDHRY)
JUDGE