

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRA-D-1263-DB-2013(O&M)
DATE OF DECISION: May 25, 2016

Harpal Singh

...Appellant

versus

State of Haryana and another

...Respondents

CORAM:- HON'BLE MR. JUSTICE T.P.S.MANN
HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: Sh. Vaibhav Parashar, Advocate for the appellant.
Mr.Kapil Aggarwal, Addl.A.G., Haryana.
Mr.Johan Kumar, Advocate for respondent No.2.

RAMENDRA JAIN, J.

CRM No.44838 of 2013

Sufficient cause has been shown to condone the
delay in filing the appeal.

Accordingly, the application is allowed. The delay of
104 days in filing the appeal is condoned.

CRA-D-1263-DB of 2013

The present appeal has been filed by the appellant
assailing the judgment of acquittal of respondent No.2 vide
impugned judgment dated 10.4.2013 passed by the learned
Additional Sessions Judge, Faridabad.

On 13.1.2012, the appellant reported to the Police Post Dabua Colony, that respondent No.2 was his tenant, who on 15.12.2011 enticed away his daughter. The appellant tried his best to locate his daughter, but could not find any clue. Accordingly, a case under Sections 363, 366 IPC was registered. During investigation, respondent No.2 was arrested. The prosecutrix was recovered and medico legally examined. Sections 376, 506 IPC were added. Statements of witnesses were recorded. Respondent No.2 was put on trial under the aforesaid Sections of the Indian Penal Code.

On appreciation of evidence, the trial Court did not find itself convinced with the prosecution evidence and, thus, acquitted respondent No.2 vide impugned judgment dated 10.4.2013.

Learned counsel for the appellant submitted that the evidence available on record clearly proves the guilt of the appellant, inasmuch as, the ocular version in its entirety was consistent with the medical evidence. Thus, respondent No.2 may be convicted and sentenced for the offences with which he is charged.

On the other hand, learned counsel appearing for respondent No.2 submits that the trial Court, after analysing the evidence with deeper scrutiny, had come to the conclusion that the prosecutrix was a consenting party to the sexual inter-

course. Thus, the well reasoned judgment of acquittal warrants no interference.

We have given our thoughtful consideration to the arguments advanced by learned counsel for the parties and are of the view that the appeal deserves to be dismissed for the reasons to follow.

The main thrust of argument of learned counsel for the appellant is that since the prosecutrix was minor, her consent for marriage and sexual inter-course was immaterial. Respondent No.2 was tenant of the appellant. He had enticed away the prosecutrix.

Before reaching the logical conclusion that the prosecutrix was a consenting party or not in connection with sexual inter-course, it would be apt to just have a glance over the age of the prosecutrix.

According to the ossification test Ex.P13, the age of the prosecutrix was between 13 to 17 years. It is well settled proposition of law that in case the higher age gives favour to the accused, then it should be considered. When the prosecutrix was medico legally examined by PW5 Dr.Smriti Dhami, she had given her age as 15 years. This witness opined that the secondary sexual characters were well developed and she was habitual of sexual intercourse, which was not possible for a girl of 12 years or 15 years of age. Even her father had given her age as 16 years. Moreover, at one point of time, she deposed

before the Court that she was having the age of 19-1/2 years. This evidence coupled with the admission on the part of the appellant that her daughter had gone at her own and the observations made by the trial Court, suggests that the prosecutrix was a consenting party to the sexual intercourse.

All the facts and circumstances, discrepancies and the observations made by the trial Court lead to the inference that the prosecution case in all probabilities is false.

In view of the aforesaid discussion, we find no merit in the present appeal and, therefore, the same is hereby dismissed.

(T.P.S.MANN)
JUDGE

(RAMENDRA JAIN)
JUDGE

May 25, 2016
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