

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

**CRM-A-1484-MA of 2015(O&M)
Date of decision :-23.2.2016**

State of Haryana

.....Appellant

Versus

Gurdev Singh @ Dev @ Sahaj

.....Respondent

**CORAM : HON'BLE MR.JUSTICE S.S. SARON
HON'BLE MR.JUSTICE GURMIT RAM**

1. To be referred to the Reporters or not? Yes / No
2. Whether the judgment should be reported in the Digest? Yes / No

Present :- Ms.Tanisha Peshawaria, DAG, Haryana
for the applicant - State.

GURMIT RAM, J.

CRM-28434 of 2015

Heard. Sufficient cause has been shown for condonation of 24 days' delay in filing of the appeal. Hence this delay of 24 days in filing of the appeal is condoned and this CRM stands accepted and disposed of accordingly.

CRM-A-1484-MA of 2015

1. This application has been filed by the applicant – State of Haryana u/S 378(3) of the Code of Criminal Procedure (in short – Cr.P.C.) for the grant of leave to file appeal against the judgment dated 7.5.2015 passed by the Court of learned Additional Sessions Judge (Exclusive Court for Heinous Crimes against Women), Kurukshetra in criminal case bearing FIR No.51 dated 6.5.2014 u/Ss 363, 366-A, 376, IPC and u/S 4 of Protection of Children from Sexual Offences Act, 2012 (for short – 'POCSO

Act'), Police Station Ismailabad, District Kurukshetra vide which the accused (respondent-herein) was acquitted of the charges u/Ss 363, 366 of the IPC and u/S 4 of the POCSO Act, 2012, by giving him benefit of doubt.

2. The prosecution version, in brief, as put forth before the learned trial Court was that complainant Gurbaj Singh son of Sucha Singh moved his complaint Ex.P3 before the police of Police Station, Ismailabad, District Kurukshetra against respondent (accused). It was mentioned in the complaint that he had two sons and two daughters. His daughter (victim) aged about 17 ½ years was a student of 10+2 in Balbir Singh Government Senior Secondary School, Ismailabad. She went to her school on 5.5.2014 at about 8:00 A.M. from the house. When he went to her school to bring her back, then she was not found present in the school. On inquiry, he learnt that his said daughter was taken away by one young boy namely Sahaj son of Rulda Ram, resident of Mandwal, Police Station, Rajaund, District Kaithal. His daughter was enticed away by the said boy on the pretext of marrying her. He made search of his daughter at his own level. Further request was made to take action against the culprit.

On the basis of this complaint, FIR was registered in this case. During investigation, statements of witnesses were recorded. Prosecutrix was got recovered from the possession of the respondent (accused). Her statement u/S 164, Cr.P.C. was also got recorded. Medical examination of the victim as well as of the accused was also got conducted. On completion of investigation, challan was presented in the Court.

3. Finding a prima facie case u/Ss 363 and 366 of the IPC and u/S 4 of POCSO Act, 2012 against the accused (respondent-herein), he was charge-sheeted accordingly, to which, he pleaded not guilty and claimed

trial.

4. During the trial, the prosecution examined as many as fourteen witnesses in total to establish its case against the accused, besides bringing on record various documents.

5. Then on the conclusion of prosecution evidence, the accused (respondent-herein) was duly examined as required under the provisions of Section 313 of Cr.P.C. Entire incriminating evidence as brought on the file during the trial of case against him was put to him, which he denied entirely and pleaded his false implication in this case.

In defence, the accused (respondent-herein) also examined four witnesses.

6. The learned trial Court after hearing the learned counsel for both parties and going through the record as well came to the conclusion that prosecution has failed to prove its case against the accused (respondent-herein) and as such he was acquitted of the charges u/Ss 363, 366, IPC and u/S 4 of the POCSO Act, 2012, by giving him benefit of doubt vide the impugned judgment.

7. The applicant being not satisfied with the impugned judgment has come up before this Court by way of instant application for the grant of leave to file appeal against this judgment.

8. We have heard learned counsel for the applicant and also perused the record as available on the file.

9. Learned counsel for the applicant has mainly argued that at the time of alleged occurrence, the victim was minor being of the age of 17 ½ years. In this connection, it is further her contention that her date of birth is 13.8.1997 and the learned trial Court while passing the impugned judgment

has utterly erred by altogether ignoring the factum of minority of victim on the date of alleged occurrence. Herein it is also her submission that since the victim was a minor on the date of alleged occurrence and as such the learned trial Court has wrongly held that she (victim) was a consenting party to the commission of alleged rape upon her by accused (respondent-herein). In support of her contention, she has also referred to the report of FSL, opinion of Dr.Uma Khurani (PW13), Medical Officer and statement of PW11 – Satyawar (Superintendent, Education Board, Bhiwani).

10. Regarding age of the victim, her father Gurbaz Singh (PW4) in his complaint Ex.P3 has stated that she was 17 ½ years old at the time of alleged occurrence. Then PW11 Satyawar, Superintendent, Education Board, Bhiwani deposed that as per the record, date of birth of the victim was 13.8.1997. Further he proved the report Ex.P23 which was prepared on police request Ex.P24. In this connection, he produced the original record of result-sheet Ex.23/A, the basis of document Ex.P23. But in this case, the person who had got admitted the victim in the school was not examined by prosecution. Then in this case PW13 Dr. Uma Khurani, Medical Officer, who had medically examined the victim of the alleged occurrence had recommended for conducting her ossification test by some Radiologist, but the prosecution did not bother to conduct this test of victim despite the advice of PW13 Dr. Uma Khurani. Then no record either from the Chowkidar's register of the village or from the office of Civil Surgeon containing birth entry of the victim was brought on the file during trial of the case. So as such, the prosecution has withheld the best evidence with regard to the fact of determining the age of victim. So, it is difficult to say that victim was below 18 years of age at the time of the alleged occurrence.

Then another material document which is found relevant for the adjudication of this point in controversy is the statement Ex.P9 of victim under Section 164, Cr.P.C., made by her before the Court. Its contents in nutshell were as under:

“That she is student of 10+2. On 17.1.2014, she alone went to village Gurudwara where she came across Gurdev. After introducing with each other, they disclosed their respective mobile numbers to each other. Then they started conversation with each other daily on mobile phone of which her parents were not aware. On 28/29.1.2014, she contacted Gurdev on phone who asked her to go somewhere for lunch. On the next day, she accepted his proposal and on 30.1.2014 she left for school from her house as usual and met Gurdev at Petrol Pump, Ismailabad. She boarded the vehicle of Gurdev from Petrol Pump, Ismailabad who took her to Jashan Hotel, Kurukshetra. On reaching there, they alighted from the vehicle and went inside the hotel. Gurdev got booked one room in the hotel and then both of them went inside that room. There Gurdev developed physical relation with her, with her consent. Then Gurdev left her at her house on that vehicle. She returned to her house at the same time, when she used to come back from the school. Thereafter also, they used to talk with each other on mobile phone almost daily. Then on 4.5.2014, they both made a plan to marry each other while running away from their respective houses. Then on 5.5.2014, she started from her house on the pretext of going to school and met Gurdev near the school. Then they both stayed at the residence of some relative of Gurdev. On 13.5.2014, when they reached at Railway Station, Ambala for going to Chandigarh in order to perform their marriage, there her brother was found present. They tried to run away but they were apprehended by the police, which took her to Ismailabad.”

11. Then herein, it is also found relevant to discuss the statement of

PW13 Dr.Uma Khurani. This witness medico-legally examined prosecutrix/victim on 13.5.2014. It was found recorded in her statement that there was history of willingness of victim at the time of sexual intercourse. There was also history of first episode of sexual intercourse on 30.1.2014, when she (victim) went with the accused (respondent-herein) with her own will. Then on 5.5.2014, she again went with the same person (present respondent) with her own will. There was no mark of injury on the external genitalia and hymen was ruptured. So if the above discussed statement Ex.P9 made by the victim under Section 164, Cr.P.C. and the statement of PW13 are to be considered as a whole, then it can safely be concluded that it was a case of consent on the part of victim qua the alleged physical relation of accused (respondent-herein) with her.

12. Then there were also statements of DW1 to DW3 to the effect that at the time of the alleged occurrence, accused (respondent-herein) was not present in the village. Rather on the relevant date, he was in Andhra Pradesh being employed therein at the shop of DW2 – Narwar Singh alias Nehru. Then it had also come on the record that victim had accompanied the respondent to some hotel at Kurukshetra, then to the house of some relative of the respondent and then to Railway Station, Ambala. So as such, she was having ample opportunities to raise hue and cry, had she been kidnapped by the accused (respondent-herein) forcibly. So her own act and conduct smells a rat about the genesis of the prosecution story.

13. In the light of above discussion, no case for the grant of leave to appeal is made out. Hence the application stands dismissed.

23.2.2016
Brij

(S.S. SARON)
JUDGE

(GURMIT RAM)
JUDGE