

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

CRM-A-828-MA of 2017

Date of Decision: July 12, 2017

State of Haryana	Versus	Applicant
Javed @ Sahil		 Respondent

**CORAM : HON'BLE MR. JUSTICE T.P.S.MANN
HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU**

Present : Mr. Kapil Aggarwal, Addl. A.G., Haryana.

T.P.S.MANN, J.

The State of Haryana has filed the present application under Section 378(3) of the Code of the Criminal Procedure for grant of leave to appeal against the judgment dated 20.10.2015 passed by the learned Additional Sessions Judge, Panchkula.

Vide impugned judgment, the learned trial Court acquitted the accused/respondent of the charges under Sections 342, 328, 366-A and 376 IPC and, in the alternative, under Section 4 of the Protection of Children from Sexual Offences Act, 2012.

According to the prosecution, on 26.3.2015 ASI Bhartu Ram received a message on telephone that the prosecutrix, who was more than 18 years of age was confined by

the accused/respondent in his house situated in village Khera Sita Ram after making her unconscious. ASI Bhartu Ram alongwith other police officials went to the house of the accused, where he met Sarju, Babloo and Renu. The house of the accused was found locked. As soon as ASI Bhartu Ram entered the house after getting it opened, the accused made good his escape. The prosecutrix was found lying on a bed inside the house of the accused.

After hearing learned State counsel and on going through the impugned judgment, this Court finds that the prosecution has failed to establish that the prosecutrix was less than 18 years of age. While coming to such a conclusion, the statement made by the prosecutrix as PW7 describing her age as 17½ years; the medico-legal report Ex.PC, wherein, the age of the prosecutrix stood recorded as 16 years; the statement Ex.PH made by the prosecutrix under Section 164 Cr.P.C.; and the School Leaving Certificate Ex.PE were duly considered. Further, from the report Ex.PK of the Forensic Science Laboratory, no stupefying or intoxicating material was recovered from the room of the accused. As the prosecutrix was not under the age of 18 years, absence of any injury mark on the prosecutrix at the time of her medico-legal examination by PW8 Dr. Saru Sethi casts a serious doubt in the truthfulness of the prosecution case. PW8 Dr. Saru Sethi admitted that as per her observation, the hymen

had healed. According to the prosecution, the occurrence had taken place in the night of 25/26.3.2015, when prosecutrix was subjected to rape and, therefore, hymen would not have healed by the time medical examination of the prosecutrix was conducted, which healing otherwise takes place a week after sexual intercourse. The doctor also admitted that there was no mark of any swelling over the body of the prosecutrix. Further, in the FSL Report Ex.PK, it was mentioned that semen was detected on pajami Ex.P1 and underwear Ex.P3. However, semen could not be detected on vaginal swabs, pubic hair, glans penis, bed-sheet, pillow cover, etc. During the investigation of the case, the police had recovered empty bottle of cold drink, two disposable glasses and the bucket containing water. However, these items were not sent to the Forensic Science Laboratory.

In view of the above, no fault can be found with the impugned judgment of acquittal passed by the learned trial Court.

The application is devoid of merit and, therefore, dismissed. Leave to appeal is declined.

(T.P.S. MANN)
JUDGE

July 12, 2017
amit rana

(MAHABIR SINGH SINDHU)
JUDGE

Whether reasoned/speaking

Yes/No

Whether reportable

Yes/No