

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

**CRA-S-4444-SB OF 2016 (O&M)
Date of decision:- 20.01.2018**

Gurpreet Singh @ Gopi

...Appellant

Versus

State of Punjab

...Respondent

BEFORE: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Jaspal Singh Pannu, Advocate/Legal Aid Counsel,
for the appellant.

Ms.Manju Arrora, DAG, Punjab.

RITU BAHRI J. (Oral)

This appeal has been preferred against the judgment dated 26.9.2016 passed by the Sessions Judge, Faridkot, whereby accused-appellant (Gurpreet Singh @ Gopi) has been convicted and sentenced to undergo rigorous imprisonment for a period of 10 years and to pay a fine of Rs.10,000/- for commission of offence under Section 5, punishable under Section 6, of the Protection of Children from Sexual Offences Act (for short 'POCSO Act'). He has been further sentenced to undergo rigorous imprisonment for a period of 03 years and to pay a fine of Rs.1000/- for commission of offence punishable under Section 363 IPC.

The prosecution case finds its origin from the statement made by Charat Singh, father of prosecutrix, to the effect that his daughter, aged about 16 years, was a student of 10+1 class in Government School, Rameana. On 08.09.2014, at about 7.00 P.M., when he and his wife Jaspreet

Kaur, returned to their house, they found that their daughter (prosecutrix) was missing from the house. Then, he went to the house of their neighbour Gurmail Singh, father of Gurpreet Singh alias Gopi and enquired about his daughter, but they told them that Gurpreet Singh was also not present in the house and his mobile phone was also switched off. Thus, they became very sure that Gurpreet Singh alias Gopi had taken away their daughter on the pretext of marriage. Then he along with his wife Jaspreet Kaur proceeded to inform the police. On the basis of their complaint, FIR Ex.P14 was recorded by ASI Rajinder Singh. Thereafter, Investigating Officer inspected the spot, prepared rough site plan of the place of occurrence and recorded the statements of the witnesses.

On 04.10.2014, accused-appellant Gurpreet Singh @ Gopi was arrested from bus stand of Village Bargari on the identification of Nirmal Singh, brother of the complainant and the prosecutrix was recovered from his possession. Various memos relating to arrest of the accused were prepared. Thereafter, SI Jaspal Kaur was called at the spot, who recorded the statement of the prosecutrix under Section 161 Cr. P.C. and separate memo regarding the recovery of the prosecutrix was prepared. Thereafter, medical examination, Ex. PW4/D, of the prosecutrix as well as the accused was got conducted from GGS Medical College and Hospital, Faridkot. Site plan, Ex. PW10/A, of the place of recovery was prepared. After examination of the prosecutrix by the Medical Officer, POCSO Act was added in the FIR. Statement of prosecutrix under Section 164 Cr. P.C was also got recorded by the Judicial Magistrate on 04.10.2014.

On completion of investigation, challan was presented against the accused before the Illaqa Magistrate. Thereafter, the case was committed to

the Court of Sessions and accused was charge sheeted under Sections 363, 366-A, 376 of IPC and Section 5 of POCSO Act.

In support of its case, the prosecution examined as many as 15 witnessess. On conclusion of evidence of prosecution, statement of accused-appellant under Section 313 Cr.P.C. was recorded, wherein entire increminating evidence was put to him. However, he denied the same and pleaded false implication. In defence, accused-appellant examined four witnesses.

After going through the evidence led by the parties, trial Court convicted and sentenced the accused in the aforesaid terms. Hence, the present appeal.

Learned counsel appearing for the appellant stated that the prosecutrix was the consenting party. According to the prosecution version, date of birth of the prosecutrix is 25.12.1998, whereas according to birth certificate Ex. DW2/A, proved by DW2 Harpal Singh, the date of birth of the prosecutrix is 25.12.1997 and PW8 Dr. Ruchi, vide report Ex. PW8/B has opined the radiological age of the prosecutrix between 17 and 20 years. Further, as per the settled law, date of birth as entered in the school is only a piece of evidence and not the proof of age of the prosecutirx.

Learned counsel has further pointed out that the prosecutrix had accompanied the appellant of her own accord without any threat, inducement or threat having been made to her and also went out in public with the accused without making any noise or any form of protest and she was roaming around with the accused at various places for about 22 days. It has not been shown anywhere that at any point of time, she had raised hue and cry, which clearly reflects that she was a consenting party. In support of

his arguments, reliance has been placed upon a judgment passed by this Court in **Mohammad Chand versus State of Haryana**, CrI. Appeal No. S-1118-SB of 2016.

On the other hand, learned State counsel has supported the judgment of conviction and stated that accused-appellant has rightly been held guilty, convicted and sentenced by the trial Court. Therefore, appeal is liable to be dismissed.

After hearing learned counsel for the parties, the present appeal deserves to be allowed. As per the birth certificate, Ex.DW2/A proved on record by Harpal Singh, Statistical Assistant, Office of Civil Surgeon, Faridkot (DW2), date of birth of the prosecutrix was 25.12.1997. Accordingly, she was more than 16 years of age at the time of incident.

Coming to the deposition of the prosecutrix, she had stepped into the witness box as PW2. There is a sole testimony of prosecutrix, so far as allegations of kidnapping on pretext of marriage and rape by the appellant are concerned. No doubt, the conviction can be based on the solitary statement of the prosecutrix, but at the same time, it cannot be mechanically applied to every case of sexual assault. The testimony of prosecutrix does not inspire confidence. Her unnatural conduct leaves no doubt that she was a consenting party. In the first version given to the Magistrate in her statement under Section 164 Cr.P.C., she had stated that accused-Gurpreet Singh alias Gopi had enticed her away from her house on the pretext of marriage and took her to an abandoned building near Delayan Wala Bridge on the outskirts of Jaitu, where he committed rape upon her against her consent. Thereafter, he had taken her to Bathinda by bus and then, at about 6.00 P.M., he had taken her from Bhatinda to Rajpura by train and made her

to stay at Railway Station, Rajpura at night. On the next day, at about 4.00 A.M., he had taken her by train to Anandpur Sahib, where he made her to stay in the hall room of the Gurudwara till 30.09.2014. Thereafter, they came back to Faridkot and stayed at Railway Station, Faridkot. From there, they had gone to the Court Complex, Faridkot, in order to perform marriage. But, the Courts were closed due to holiday, therefore, marriage could not be solemnized. Then, Gurpreet singh took her to the house of maternal aunt Kali Kaur at Village Bargari. As per the deposition of prosecutrix, on 04.10.2014, while they were standing at bus stand of village Bargari to board a bus for Bathinda, police party came there and intercepted Gupreet Singh.

From the statement of prosecutrix, it is abundantly clear that they both had gone to the Court Complex, Faridkot in order to solemnize marriage. This shows that the intention of appellant was to perform marriage with the prosecutrix. He had no intention to commit rape upon her. Moreover, keeping in view that she was 16½ years old on the date when she had gone with the appellant (who himself was 20 years of age), it is a case where she had accompanied the appellant with her own consent w.e.f. 08.09.2014 till 04.10.2014 when they were intecepted by the police. During this period, she had stayed with the appellant at variour location, but she had not raised any hue and cry. She had the opportunity to raise alarm, seek help from the police, but she did not do so. Moreover, the places where she had remained with the accused were public places. It is highly improbable that the stay was without her consent. Further, the medical evidence also goes contrary to her version. She had deposed that she was raped upon by the accused. But as per the statement of Dr. Sandesh Ganjoo (PW4), no

injury was found on the body of the prosecutrix or her private parts. The varacity of the deposition made by the prosecutrix is doubtful. Therefore, Section 376 IPC is not attracted in this case.

For the reasons recorded above, it is found that the evidence led by the prosecution suffers from serious infirmities and inconsistencies. It stands duly established that the prosecutrix had left her home on her own in order to perform marriage with the present appellant. Hence it is clear that both are the consenting party.

In view of the above discussion, this Court is of the view that the prosecution has miserably failed to prove its case against accused-appellant beyond the shadow of reasonable doubt and the trial court had erred in convicting and sentencing the appellant on the basis of untrustworthy and unreliable evidence.

Resultantly, the impugned judgment of conviction and sentence is set aside and the accused is acquitted of the charges framed against him. He is ordered to be released forthwith, if not required in any other case.

Allowed accordingly.

20.01.2018
Riya Grover /ajp

(RITU BAHRI)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether reportable</i>	<i>No</i>