

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

CRM-A-394-MA-2018 (O&M)

Date of Decision: October 23, 2018

State of Haryana

...Applicant

Versus

Sandeep @ Gaurav

...Respondent

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. P.P. Chahar, DAG Haryana
for the applicant.

JAISHREE THAKUR, J. (Oral)

CRM-5482-2018

1. This application has been preferred for condoning the delay of 108 days in filing the accompanying appeal.
2. It is contended that the delay has occurred due to the administrative procedure and official process.
2. For the reasons mentioned in the application, the same is allowed and the delay of 108 days in filing the accompanying appeal is condoned.

CRM-A-394-MA-2018

1. This is an application that has been filed under Section 378(3) Cr.P.C. for grant of special leave to file appeal against the judgment dated 12.07.2017 passed by the Additional Sessions Judge-cum-Special Judge,

Karnal.

2. In brief, the facts of the case are that, FIR No.350 dated 21.07.2015 has been registered under Sections 363, 366-A of Indian Penal Code at Police Station Gharaunda, Karnal on the complaint moved by the complainant that his daughter, aged 15 years (victim) has been enticed away by Gaurav son of Randhir Singh, who was working with Balkar florist, with an intention to solemnize a marriage with her. Despite best efforts, the victim could not be traced.

3. During the course of investigation, the girl was recovered on 24.07.2016 and she was subjected to counselling. Her statement under Section 164 Cr.P.C. was got recorded. The victim was subjected to medicolegal examination, but she refused to undergo the same. The birth record of the victim was collected from her school. She was also subjected to ossification test on 30.07.2015 to assess/determine her age. The accused was arrested on 29.07.2015. Statements of the witnesses were recorded under Section 161 Cr.P.C. and after completion of investigation, challan was presented in the court.

4. Copies of the challan were supplied to the accused and on finding the case to be triable by the Sessions Court, it was accordingly committed to the Sessions Court. On finding a prima facie case, he was charge-sheeted for the commission of offence punishable under Sections 363, 366 of Indian Penal Code, to which he pleaded not guilty and claimed trial.

5. In order to prove its case, the prosecution has examined as many as 08 witnesses i.e. Const. Fakir Chand, Cyber Cell, Karnal as PW1,

Sh. Raj Kumar, Headmaster, Govt. Girls Sr. Secondary School, Gharaunda as PW2, Dr. Sarita Bishnoi, Medical Officer, KCGMCH, Karnal as PW3, complainant as PW4, Dr. Vinod Kumar as PW5, SI Parkash Kaur as PW6, Victim as PW7 and SI Sultan, Investigating Officer as PW8. After the evidence was closed by the prosecution, statement of the accused was recorded under Section 313 Cr.P.C. in which he denied all the allegations and pleaded false implication. However, the accused did not produce any evidence in his defence.

6. After hearing learned counsel for both the sides, the trial court acquitted the accused.

7. Learned State counsel, appearing on behalf of the applicant-State submits that the trial court totally ignored the statement made by the victim herself that about 1 year ago, the accused had enticed her away on the pretext of solemnizing marriage with her and took her to Chandigarh. It is argued that the trial court has also ignored the statement of the complainant. It is also contended that the trial court has failed to convict the accused in the light of the evidence available on record.

8. I have heard learned counsel for the applicant-State and have perused the pleadings and judgment passed by the trial court.

9. The trial court in its judgment has formulated two following points for determination:

1. Whether the victim was a minor as on 20.07.2015, the alleged date of occurrence?
2. Whether the accused had enticed her away from the custody of her lawful guardians on 20.07.2015 with an intention to solemnize the marriage with her?

10. Regarding the age of the victim, the trial court has observed as under:-

“17. Furthermore, the complainant appeared into the witness box as PW4 and during his cross-examination by learned defence counsel, he stated that he had nine children and victim 'P' is his 8th number child. He further stated that his eldest daughter Babli is 42 years old and all of his children were born with a gap of 1 ½ to 2 years. In view of the aforesaid testimony of the complainant, the age of the victim comes around 30 years approximately.

18. The victim herself stepped into the witness box as PW7 and deposed her age as 19 years before the court. She further stated that the occurrence took place about one year ago, meaning thereby that she was 18 years of age at the time of occurrence. More interestingly, an application Ex.P24) had been moved by the Investigating Officer before learned Magistrate seeking her ossification test. Order dated 28.7.2015 passed on the aforesaid application by learned Magistrate is available on the file, wherein there is a reference of aadhar card of the victim, wherein her date of birth is mentioned as 1.1.1997. Although the copy of the aadhar card is not available on the judicial file, a reference thereto is given in the application (Ex.P24) moved by the Investigating Officer himself which is duly proved by the prosecution, wherein also it is mentioned as per her aadhar card, the date of birth of the victim is 1.1.1997.

19. The statement of the victim u/s 164 Cr.P.C. (Ex.P17) had been recorded on 25.7.2015 wherein also she disclosed her date of birth as 1.1.1997 and in the like manner, in her statement (Ex.P14) recorded by the

counsellor/LAC, her date of birth is mentioned as 1.1.1997. It has further been mentioned in the aforesaid statement (Ex.P14) that her aadhar card was got prepared by her parents. Meaning thereby that there is a variation in the evidence available on the record regarding the date of birth of the victim and the evidence which has been withheld by the prosecution. The prosecution never raised any objection at the time of recording the testimony of victim as PW7 regarding her age, when she disclosed her age as 19 years.”

11. Regarding, whether the accused had enticed away the victim from the custody of her lawful guardians on 20.07.2015 with an intention to solemnize the marriage with her, the trial court has observed as under:

“21. Once the prosecution failed to prove the victim as a child in the aforesaid scenario, none of the remaining offences attributed to the accused could be established by the prosecution against the accused. The victim herself stepped into the witness box before the court during trial as PW7 and testified that about one year earlier, Sandeep had enticed her away with an intention to solemnize marriage with her and took her to Chandigarh. They performed marriage at Sanatan Dharam Mandir, Panchkula and stayed in a hotel for one day. He established physical relations with her and thereafter, he took her to the house of his sister and on the same day, police reached his sister's house and nabbed them.

22. During her cross-examination by learned defence counsel, she stated that accused Sandeep was known to her since 4-5 months prior to the occurrence. The accused had sent a little child to her home to call her outside the house. When they performed marriage, one Advocate was also there. She did not raise alarm at any place during

her transit alongwith accused Sandeep. They had travelled upto Chandigarh in a car. She had suffered her statement (Ex.P17) u/s 164 Cr.P.C. at her free will. She was in her full senses when she accompanied the accused and when they stayed in a hotel at Chandigarh. She did not raise any alarm to attract any person to her who could have rescued her. After marriage, they had appeared before Ld. Judge in some court at Chandigarh and there also, she did not tell anybody that the accused had taken her there forcibly.

23. *In view of the aforesaid categorical testimony of the victim, it cannot be inferred by the court that she had been enticed away by the accused on 20.7.2015 and at the most, it is suggested to the court that she herself slipped away along with the accused on that day and stayed along with her till 24.07.2015 when she had been nabbed along with the accused by the police from Village Sirsi, Chandigarh.”*

12. The arguments, so advanced by learned counsel for the applicant-State were also raised before the trial court and they have been duly met by the trial court. In the present case, firstly the prosecution has failed to substantiate the fact that the victim was a minor. While stepping into the witness box as PW7, she herself deposed that her age is 19 years. Further, when the statement of the victim was recorded under Section 164 Cr.P.C. she disclosed her date of birth as 01.01.1997 and during counselling too, she disclosed her date of birth 01.01.1997. Under these circumstances, it cannot be accepted that the victim was a minor on the date of occurrence. So far as the argument of enticing away the victim on the pretext of marriage is concerned, the facts that the victim and the accused first

travelled from Gharaunda, Karnal to the Chandigarh, then performed marriage at a temple in Panchkula and thereafter, stayed in a hotel and till the victim and the accused were not nabbed, the victim did not raise any alarm at any point of time, the same is not sustainable. Furthermore, during her statement recorded under Section 164 Cr.P.C., the victim stated that she had solemnized a marriage with the accused and also solemnized a marriage in a temple at Panchkula and wanted to stay along with him only. In this background, it cannot be suggested that the victim was not a consenting party to all this happening.

13. In view of the above discussion, this court does not find any irregularity or illegality in the impugned judgment so passed. No ground is made out to grant special leave to file appeal under Section 378(3) Cr.P.C.

14. Dismissed.

October 23, 2018

vijay saini

**(JAISHREE THAKUR)
JUDGE**

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No