

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

CRM No.A-2554-MA of 2017 (O&M)

Date of decision: January 30, 2018

Tahir Hussain

...Applicant

Versus

State of Haryana and another

...Respondents

**CORAM: HON'BLE MR. JUSTICE A.B.CHAUDHARI
HON'BLE MR. JUSTICE INDERJIT SINGH**

Present: Mr.Suman Jain, Advocate
for the applicant.

INDERJIT SINGH, J.

Applicant-Tahir Hussain has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondents State of Haryana and Sahid, challenging the impugned judgment dated 09.10.2017 passed by learned Addl. Sessions Judge, Palwal, vide which the accused-respondent No.2 was acquitted.

It is mainly stated in the application that accompanying appeal is being filed which is likely to succeed on the grounds taken therein. It is, therefore, prayed that leave to appeal be granted.

From the record, we find that challan was presented against accused Sahid under Sections 363, 366A IPC and Section 5/6 of the POCSO Act, 2012. The brief facts of the case as noted down by learned trial Court, in the judgment are as under:-

“1. Briefly stated, the prosecution case is that on 14.07.2016, PW-4 Tahir Hussain appeared in police station, Hassanpur and presented an application (Ex.P2) wherein he disclosed that on 12.07.2016, his minor daughter (PW1) had gone to Nehru College, Faridabad for taking admission in BA(II) year but she did not return up to evening. The complainant party searched for her and also made calls on her mobile Nos.8813919792 & 9899749102 but it was found switched off. PW4 came to know from the neighbours that the accused was also missing contemporaneously which made the complainant suspect that the accused with the help of 2-3 boys could be responsible for enticing away his daughter.

2. On the basis of application Ex.P1 given by PW4, FIR u/s 363/366 IPC was registered and ASI Vijay Pal carried out the investigations. PW-8 ASI Vijay obtained calls detail record (CDR) of the mobile phone disclosed by the complainant, recorded the statements of witnesses under 161 CrPC and on 03.08.2016, recovered the victim from Delhi. Statement of the victim was also got recorded from Area Magistrate and the custody of the victim was handed over to her legal guardian. On the basis of statement of the victim, section 376 IPC was added to the first information report. On 03.08.2016, the accused was arrested, subjected to medico-legal examination and in pursuance of his disclosure statement the place of the incident was demarcated. After codal formalities, final report u/s173 CrPC was presented in the Court of Area Magistrate who made compliance to ss. 207 and 209 CrPC.”

After necessary investigation, challan was presented against the accused-respondent. Finding prima facie case, the accused was charge-sheeted under Sections 363, 366-A IPC and Sections 5/6 of POCSO Act,2012, to which he pleaded not guilty and claimed trial.

In support of its case, prosecution examined PW-1 victim, who stated that on 12.07.2016 at about 7.00 a.m., she proceeded to her college in Faridabad but met with accused and Mufid who offered her cold drink which made her unconscious and thereafter, by changing the train, she was taken to a room where accused Sahid raped her. The accused again raped her by bringing her back to Delhi. She further stated that she was threatened to kill at the point of knife. When she was taken to a Court in

Delhi, she raised commotion which led to arrest of the accused by the public but Mufid escaped. She identified her signatures on her statements recorded by the police and the Magistrate. PW-2 LC Savita deposed that she assisted the Investigating Officer. PW-3 Constable Shakeel Ahmad deposed regarding delivering of Special Reports. PW-4 Tahil Hussain, complainant, father of the victim, deposed regarding age of the victim. PW-5 Urmila brought the record pertaining to age of the victim. PW-6 Ravinder Singh Dahiya proved the scaled site plan. PW-7 Dr.Rahul Kumar, opined that accused is capable of performing sexual activity. PW-8 ASI Vijay Pal, Investigating Officer, deposed regarding investigation conducted by him in this case. PW-9 Dr.Minakshi, who medico-legally examined the victim, did not rule out possibility of sexual activity. PW-10 SI Mohd. Illyas, deposed regarding sending of samples to FSL and RFSL.

In the statement under Section 313 Cr.P.C., accused denied all the incriminating evidence against him and pleaded his false implication. In defence, accused examined DW-1 Constable Krishan Kumar, DW-2 Satbir, DW-3 Shaka Basista, DW-4 Mohd. Shakeel, DW-5 Molana Quazi Riyazuddin Amini and DW-6 Surender Singh, Advocate, who deposed that he filed protection petition for the victim and the accused in High Court of Delhi but due to some technical objections, the same was returned to him.

Learned trial Court, after appreciating the evidence, acquitted the accused-respondent vide impugned judgment dated 09.10.2017.

Aggrieved from the above-said judgment, present appeal along with application for grant of leave to appeal has been filed.

We have heard learned counsel for the applicant and have gone

through the record.

Learned trial Court, after appreciating the evidence as well as other documents, held that the date of birth of the victim is 11.07.1998 but as per the record brought by PW-5 Urmila, the date of birth of the victim is 07.11.1998. The Court after relying upon the law laid down by the Hon'ble Supreme Court in Jarnail Singh vs. State of Haryana, 2013(3) RCR (Criminal) 644, held that even though, Rule 12 is strictly applicable only to determine the age of a child in conflict with law, we are of the view that the aforesaid statutory provision should be the basis for determining the age, even for a child who is a victim of crime. It is also held that in their view, there is hardly any difference insofar as the issue of minority is concerned, between a child in conflict with law and a child who is a victim of crime. Learned trial court relied upon the date of birth in the matriculation certificate, which is mentioned as 11.07.1998 and held that victim was major at that time. The victim does not disputed that in all her documents, her date of birth is mentioned as 11.07.1998. She identified the signatures on her statement got recorded under Section 164 Cr.P.C., in which the victim has categorically stated to the Magistrate that on 11.07.1998 she completed 18 years of age. Even the father of the victim PW-4 Tahir Hussain stated that he does not remember the date of birth of any of his children. He himself got admitted the victim in the school. PW-4 also admitted that in all the documents of the victim, her date of birth is recorded as 11.07.1998. PW-4 has not filed any application for correcting the date of birth of the victim recorded in her education testimonials.

Secondly, the perusal of the findings shows that in her statement Ex.P2 before the Magistrate, the victim has denied that she was subjected to forcible relations. She has not denied that she was kept in a

room in Sarai Kale Khan in Delhi from 17.07.2016 to 03.08.2016. In nutshell, she categorically denied that she was subjected to forcible sexual inter-course or she was forced to undergo ceremony of *nikah* against her wishes.

The Court below also took note of the fact that victim has made different statements at different times and therefore, before relying upon her testimony, the Court looked for corroboration on independent points. The Court also held that victim did not raise alarm when she was in the train. The victim does not dispute that Railway Police was present at Palwal Railway Station. The police was also present when she was in another train.

Learned trial Court further found that Mufid was not challaned and application to summon him under Section 319 Cr.P.C. was also dismissed. The Court also took note of the fact that PW-2 LC Savita admitted that at the time of recording of statement of victim under Section 164 Cr.P.C., she was accompanied by her family members but despite that, the victim does not impute anything against the accused. It is held by learned trial Court that victim attained majority on the midnight of 11-12.07.2016 and on 12.07.2016, she accompanied the accused, which shows well hatched planning between the victim and accused which nullifies any allegation of kidnapping, abduction and rape. PW-9 Dr.Meenakshi ruled out any mark of fresh injury on the entire body of the victim. The Court below also discussed the defence evidence produced by the accused.

The perusal of the record also shows that the findings given by learned trial Court are as per evidence and law. In no way, the findings can be held as perverse or against the evidence and law. Nothing has been

material evidence has not been considered by the Court below. Nothing has been pointed out as to how the findings are perverse or against the law and what illegality has been committed by learned trial Court.

In view of the above discussion, we find that the impugned judgment dated 09.10.2017 passed by learned Addl. Sessions Judge, Palwal, is correct, as per law and evidence and does not require any interference from this Court. No ground is made out for grant of leave to appeal and therefore, the present application stands dismissed.

(A.B.CHAUDHARI)
JUDGE

(INDERJIT SINGH)
JUDGE

January 30, 2018
Vgulati

Whether speaking/reasoned
Whether reportable

Yes
No