

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

**CRM-A-388-MA of 2014 (O&M)
Date of decision: April 23, 2018**

State of Punjab

.....Applicant

Versus

Jarmanjit Singh @ Kala and others

.....Respondents

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

Present: Mr. H.S. Grewal, Addl. A.G. Punjab.

Mr. Yash Pal Gupta, Advocate for the respondent.

A.B. CHAUDHARI, J.

Heard learned counsel for the rival parties.

State has taken an exception to the judgment and order dated 01.06.2013, passed by the Additional Sessions Judge, Tarn Taran in SC/RBT No.62/15.09.2010/03.10.2011, by which the trial Court convicted the respondent for offence under Section 363 IPC and awarded less sentence and also acquitted him for the offence under Section 376, 366 A and 366 IPC.

Learned counsel for the State fairly submitted that the prosecutrix did not enter the witness box before the trial Court during trial to substantiate the case of the prosecution, obviously because she had expired by that time. However, he further submitted that firstly the medical evidence clearly shows that the prosecutrix was below 16 years and secondly, that the rape was committed upon her. Therefore, the trial Court ought to have convicted

the accused for offence under Section 376 IPC. He further submitted that there was evidence on record to prove the offences under Section 366A, 366 IPC, but the trial Court wrongly recorded acquittal of accused for those offences. He then contended that the trial Court has convicted the accused under Section 363 IPC and sentenced him to undergo rigorous imprisonment for four years only, which is on lower side. Therefore, he prayed for enhancement of sentence.

Learned counsel for the respondent-accused submitted that the respondent-accused has already undergone sentence awarded to him under Section 363 IPC because he did not prefer any appeal against the said judgment of conviction and order of sentence. He opposed the appeal against acquittal and at the same time, submitted that this is a case of no evidence in the matter of alleged rape.

Upon hearing learned counsel for the rival parties and upon perusal of the judgment of the trial Court, we find that the prosecutrix did not enter the witness box obviously because she had expired during trial. Therefore, there is a major lacuna/dent in the prosecution case as there was no substantive evidence before the trial Court. Insofar as, the evidence and opinion of Doctor regarding age of prosecutrix is concerned, we think that the said evidence would not be enough to link accused with the alleged commission of offence of rape. There cannot be any conviction merely on the basis of the opinion of Doctor that too in the absence of any proof that it was applicant-respondent who had committed any sexual intercourse.

In that view of the matter, we agree with the trial Court that no offence under Section 376 IPC was at all proved. Insofar as, the commission of offence of 366A and 366 IPC is concerned, the trial Court has categorically recorded a finding that said offences, have not been

proved. We do not find any reason to interfere with the judgment of acquittal.

In that view of the matter, we find no merit in the application seeking leave to appeal against acquittal.

Hence, we make the following order:-

ORDER

CRM-A-388-MA-2014 is dismissed.

(A.B. CHAUDHARI)
JUDGE

(INDERJIT SINGH)
JUDGE

April 23, 2018
anju rani

Whether speaking/ reasoned: Yes/No

Whether Reportable: Yes/No