

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRA-D-732-DB-2018
Reserved on : 11.07.2019
Date of decision : 17.07.2019

Rajesh

... Appellant

Versus

State of Haryana

... Respondent

CORAM: *HON'BLE MR. JUSTICE RAJIV SHARMA*
HON'BLE MR.JUSTICE HARINDER SINGH SIDHU

Present: Mr.Arvind Galav, Legal Aid Counsel
for the appellant.

Mr.Pradeep Prakash Chahar, DAG, Haryana.

RAJIV SHARMA, J.

This appeal is instituted against the judgment dated 26.03.2018 and order dated 27.03.2018 rendered by the learned Additional Sessions Judge, Faridabad, in Sessions Case RBT no.116 dated 05.09.2016/27.10.2017 whereby the appellant was charged with and tried for offences punishable under Sections 363, 366A, 376(2) of the Indian Penal Code (in short 'IPC') and under Section 6 of the Protection of Children from Sexual Offences Act, 2012 (in short 'POCSO Act'). He has been convicted and sentenced as under:-

Offences	Imprisonment (Rigorous)	Fine	In default of payment of fine (S.I.)
376(2)(n) IPC/ 6 of POCSO Act	12 (twelve) years	Rs.20,000/-	One month

He was acquitted under Sections 363and 366A IPC.

2. The case of the prosecution, in a nutshell, is that on 31.01.2016 complainant Sugreev son of Ram Adhar filed a complaint before Incharge, Police Station Sector 55, Faridabad. According to the contents of the complaint, he had five daughters and one son. His daughter/ prosecutrix was doing the job of helper at plot no.451, Sector 58. On 20.01.2016 at about 9.30 A.M. she left the house. She did not come back. She went away according to her own wishes. He searched for his daughter. The complaint was registered. Investigation was started. On 09.06.2016 the prosecutrix was recovered. Accused was arrested. Statement of the prosecutrix under Section 164 Cr.P.C. was got recorded. Investigation was completed. Challan was put up after completing all the codal formalities.

3. Prosecution examined a number of witnesses in support of its case. The statement of accused was also recorded under Section 313 Cr.P.C. He had denied the case of the prosecution. One witness was examined by the accused in his defence. The accused was convicted and sentenced as noticed hereinabove. Hence this appeal.

4. Learned counsel appearing for the appellant has vehemently argued that the prosecution has failed to prove the case against the appellant.

5. Learned counsel appearing on behalf of the State has supported the prosecution case.

6. We have heard learned counsel for the parties and have gone through the judgment and record very carefully.

7. The prosecutrix (name withheld) appeared as PW-1. She deposed that they were five sisters and one brother. She had passed 8th standard examination. Her father was an auto rickshaw driver. She left the

home on 20.01.2016. She was going to take toffee from the shop. Bablu, Cheeku and Lala alias Upender met her in the street. It was 9.00 A.M. Bablu gagged her mouth. Cheeku pushed her inside the auto rickshaw. Lala closed her eyes. All these persons took her in a room and tied her with a chair. Bablu started teasing her and was touching her with bad intention. Upender tried to stop him by saying that he should not do all these in the morning. All the three left her in that room. In the evening, fathers of Bablu and Upender alias Lala came there and gave her beating mercilessly. Father of Bablu namely Baiju Rawat put knife on her breast. He stated that since her father had quarreled with him, he would teach a lesson to her father. Three boys came to room. They tied her. They consumed liquor. They raped her. It was dark. She regained her consciousness in the morning. Many women were present in the house. The grand mother of accused Rajesh verified that she was in her house. She was kept confined in a room for 24 hours. She was served unhealthy food. Parents of accused abused her. One day, mother of accused offered her to marry with accused. She refused. After six months, the police reached in the house of accused. She got recorded her statements Ex.PA and PB. She became pregnant. She gave birth to a girl child five months ago. In her cross-examination, she admitted that she had given her age as 20 years. About 9/10 family members were residing in the house of Rajesh where she lived.

8. PW-2 Dr.Sushil Kumar Ahlawat had conducted ultrasound examination of the prosecutrix. She was carrying 19 weeks pregnancy.

9. PW-3 Dr.Vijay had medically examined the accused. He tendered his sworn affidavit Ex.PW3/A . The MLR is Ex.PD.

10. PW-4 ASI Savita deposed that she had recorded statement of the prosecutrix vide Ex.PA. The statement of the prosecutrix was also got recorded vide Ex.PB before the Illaqa Magistrate. In her cross-examination, she had categorically deposed that she was not given any age certificate at the time of handing over the prosecutrix. She admitted that the prosecutrix herself stated her age as 20 years. The prosecutrix and Rajesh remained husband and wife. The prosecutrix wanted to live with her husband Rajesh. The same version was also repeated in her statement under Section 164 Cr.P.C.

11. PW-5 Sugreev deposed that on 20.01.2016 his daughter / prosecutrix had gone to her duty at 9.30 A.M. She was working as helper. Thereafter his daughter did not come back. He searched for his daughter. The age of his daughter was 17 years at the time of occurrence. He moved complaint Ex.PE. He further deposed that his daughter was kidnapped by Bablu, Upender @ Lala and Cheeku. He handed over the date of birth certificate of his daughter / prosecutrix to the police on 07.04.2016.

12. PW-7 ASI Rajesh Kumar deposed that the prosecutrix was recovered from brick kiln on 09.06.2016.

13. PW-9 Lady Constable Poonam deposed that she was posted as Constable in Police Station Women Sector 16-A, Faridabad. She had taken the prosecutrix for medico legal examination. Doctor examined the prosecutrix vide Ex.PC.

14. PW-11 Ghuru Parsad deposed that the date of birth of the prosecutrix was 03.02.2000 as per school record. He proved the attested copy of school leaving certificate as Ex.P1. It was signed by him. He proved

the report Ex.PJ regarding date of birth of the prosecutrix. He tendered copy of admission register Ex.PK regarding date of birth of the prosecutrix. In his cross-examination, he admitted that he did not maintain the school record. It used to remain in the custody of the Principal.

15. PW-12 SI Rajbir Singh prepared site plan Ex.PL. Ex.PI certificate regarding date of birth of the prosecutrix was produced before him. It was taken into possession vide memo Ex.PF. In his cross-examination, he admitted that there was no age proof of the prosecutrix on 31.01.2016. He also admitted that the prosecutrix was not recovered from the possession of accused. Volunteered stated that ASI Rajesh had produced the prosecutrix before him.

16. PW-5 Sugreev in his complaint Ex.PE has stated that his daughter was doing the job of helper at plot no.451, Sector 58. She went away somewhere as per her own wishes. Statement of the prosecutrix was also recorded vide Ex.PA. She has categorically deposed that she had gone to Mainpuri by bus of her own will. She got married there. She and Rajesh were living as husband and wife. She was pregnant with three months. Her husband Rajesh made sexual relations with her after marriage with her own will. She wanted to go with her husband Rajesh with her own consent. Her father had got registered the case. Statement of the prosecutrix under Section 164 Cr.PC. was recorded by the JMIC, Faridabad, vide Ex.PB. In her statement recorded by the JMIC, she deposed that she and Rajesh were working in the same company. She knew Rajesh for the last one year. They liked each other. At about six months back, she came from her house without informing anyone. She married with Rajesh in a temple. She was

living with Rajesh. She was pregnant. She went with Rajesh as per her own will. Rajesh did not do any forceful act with her. She was giving statement voluntarily. She wanted to live with Rajesh.

17. In the statement Ex.PA, the age of the prosecutrix is 20 years. In the statement Ex.PB, the age of the prosecutrix is also mentioned as 20 years. In Ex.PE the complaint lodged at the instance of the father of the prosecutrix PW-5 Sugreev, the age of prosecutrix is mentioned as 19 years. PW-11 Ghuru Parshad had issued Ex.PJ stating the date of birth of the prosecutrix as 03.02.2000. In his cross-examination, he admitted that he did not maintain the school record and the same remained in the custody of Principal. According to Ex.PI, the name of the prosecutrix is mentioned at serial no.354 and her date of birth is mentioned as 03.02.2000. PW-4 ASI Savita deposed that no age certificate was given to her at the time of handing over the prosecutrix. The prosecutrix herself stated her age as 20 years. The prosecutrix has admitted her signatures on Ex.PA and Ex.PB. She also admitted that she was working in the company. She also admitted that the house of accused Rajesh was surrounded by other houses and many people were residing in their houses. About 9 /10 family members were residing in the house of Rajesh. PW-12 SI Rajbir Singh in his cross-examination has categorically admitted that the prosecutrix was not recovered from the possession of the accused. Volunteered stated that ASI Rajesh produced the prosecutrix before him. In the initial statement got recorded by the prosecutrix under Section 164 Cr.P.C. she mentioned her age as 20 years. In the report lodged by her father, the age of the prosecutrix was mentioned as 20 years. According to her statements Ex.PA and Ex.PB,

she had voluntarily gone with Rajesh. She and Rajesh were working in the same company. She got married with Rajesh. She had solemnised marriage with Rajesh in a temple. The prosecutrix in her cross-examination while appearing as PW-1 admitted her signatures on Ex.PA and Ex.PB. The house of accused Rajesh was surrounded by other houses and many people were residing in their houses. She admitted that accused Rajesh has not kidnapped her and some other person had taken her to the house of Rajesh. She also admitted that accused and his family members used to go out of the house and she was never permitted. She could raise alarm when Rajesh and his family members were not present in the house.

18. What appears from the evidence is that the prosecutrix had gone with Rajesh who was her colleague, on 20.01.2016. Even her father has stated in the FIR that she had gone with her own will. There is variance in date of birth given in Ex.PI and PJ and statements recorded vide Ex.PA and PB. She went missing on 20.01.2016. FIR was only registered on 31.01.2016. Since she was working in the company, she had already attained the age of majority. According to Ex.PJ, she was admitted in the school on 25.07.2011 and the last date of admission was 31.05.2013. The school leaving date was 30.06.2013. The date of birth was 03.02.2000. It presupposes that she was transferred from some other school since she had given her qualification as 8th standard. School leaving certificate of the prosecutrix is Ex.PI. She had passed her middle standard examination on 30.05.2014. The prosecution has not placed on record the transfer certificate except that PW-11 Ghuru Parsad has deposed in cross-examination that police has verified T.C. from him. In the present case, it has come on record

that the prosecutrix was transferred from another school but name of original school was not mentioned though it was got verified as stated by PW-11 Ghuru Parsad. He categorically stated in his cross-examination that he could not tell whether at the time of recording date of birth in the school register any proof of date of birth of the prosecutrix was taken or not.

19. Their Lordships of the Hon'ble Supreme Court in ***Jagtar Singh vs. State of Punjab, AIR 1993 Supreme Court 2448*** have held that when in the certificate name of original school from which student was transferred, was not mentioned, such certificate could not be relied upon for proving age of the accused. Their Lordships have held as under:-

“1. Originally, there were four accused charged for the murder of the victim Kulwant Singh. The present appellant was one of the four accused. He was charged for the offence under Section 302, Indian Penal Code (the 'IPC') as well as under Section 307 read with Section 34, IPC. The rest three accused were charged for the offence under Section 302 read with Section 34 as well as under Section 307 read with Section 34, IPC. Since the victim was only Kulwant Singh for whose death the accused were charged under Section 302, IPC we have not understood the charge framed by the learned Sessions Judge under Section 307, IPC also in connection with the same murder. Nor have we followed the conviction of the present appellant under Section 307 read with Section 34 in addition to his conviction under Section 302 of IPC. It further appears that the High Court has not noticed this anomaly in the convictions and sentences both under Section 302 and Section 307 read with Section 34, of the present appellant.

The facts are in a narrow compass and the finding recorded by both the courts below can hardly be challenged, namely, that it was the appellant who had inflicted the three fatal injuries on the chest of the victim, as a result of which the victim met with his death. We are, therefore, not inclined to interfere with the said finding of fact and the conviction of the appellant under [Section 302, IPC](#).

Mr Sushil Kumar, learned counsel appearing as amicus curiae for the appellant, however, contended that on the date of the incident, i.e. August 31, 1976, the appellant was below 16 years, his date of birth being May 4, 1961, as per the school leaving certificate. This certificate was produced in this Court at the time of seeking special leave and the enlargement of the accused on bail. There is no dispute that this certificate states that the appellant- Jagtar Singh was admitted into the school in question on September 26, 1975 and he left the school while he was reading in the 8th standard. However, mysteriously, the certificate does not mention the name of the school from which the transfer certificate was obtained and on the basis of which certificate the appellant was admitted to the school. It is not disputed that the date of birth which is given in the certificate produced in this Court is based on the date mentioned in the transfer certificate. Since the name of the school from which the transfer certificate is obtained itself is absent from this certificate, no reliance can be placed on the said certificate. This is apart from the fact that there are certain further facts which have come on the record in this connection.”

20. Their Lordships of the Hon'ble Supreme Court in ***Madan Mohan Singh and others vs. Rajni Kant and another, (2010) 9 Supreme***

Court Cases 209 have held that best evidence qua age is of parents. Their Lordships further held that the entries in school register/school leaving certificate are required to be proved in accordance with law and the standard of proof required in such cases remained the same as in any other civil or criminal cases. If a person wants to rely on a particular date of birth and wants to press a document in service, he has to prove its authenticity in terms of Section 32(5) of Sections 50, 51, 59, 60 and 61 etc. of the Evidence Act by examining the person having special means of knowledge, authenticity of date time, etc. mentioned therein. Their Lordships have held as under:-

"17. In State of Bihar & Ors. Vs. Radha Krishna Singh & Ors. AIR 1983 SC 684, this Court dealt with a similar contention and held as under:-

"40.....Admissibility of a document is one thing and its probative value quite another - these two aspects cannot be combined. A document may be admissible and yet may not carry any conviction and weight of its probative value may be nil.

* * *

53.....where a report is given by a responsible officer, which is based on evidence of witnesses and documents and has "a statutory flavour in that it is given not merely by an administrative officer but under the authority of a Statute, its probative value would indeed be very high so as to be entitled to great weight.

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145.(4) The probative value of documents which, however ancient they may be, do not disclose sources of their information or have not achieved sufficient notoriety is precious little."

18. *Therefore, a document may be admissible, but as to whether the entry contained therein has any probative value may still be required to be examined in the facts and circumstances of a particular case. The aforesaid legal proposition stands fortified by the judgments of this Court in Ram Prasad Sharma Vs. State of Bihar AIR 1970 SC 326; Ram Murti Vs. State of Haryana AIR 1970 SC 1029; Dayaram & Ors. Vs. Dawalatshah & Anr. AIR 1971 SC 681; Harpal Singh & Anr. Vs. State of Himachal Pradesh AIR 1981 SC 361; Ravinder Singh Gorkhi Vs. State of U.P. (2006) 5 SCC 584; Babloo Pasi Vs. State of Jharkhand & Anr. (2008) 13 SCC 133; Desh Raj Vs. Bodh Raj AIR 2008 SC 632; and Ram Suresh Singh Vs. Prabhat Singh @Chhotu Singh & Anr. (2009) 6 SCC 681. In these cases, it has been held that even if the entry was made in an official record by the concerned official in the discharge of his official duty, it may have weight but still may require corroboration by the person on whose information the entry has been made and as to whether the entry so made has been exhibited and proved. The standard of proof required herein is the same as in other civil and criminal cases.*

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20. *So far as the entries made in the official record by an official or person authorised in performance of official duties are concerned, they may be admissible under [Section 35](#) of the Evidence Act but the court has a right to examine their probative value. The authenticity of the entries would depend on whose information such entries stood recorded and what was his source of information. The entry in School Register/School Leaving Certificate require to be proved in accordance with law and the standard of proof required in such cases remained the same as in any other civil or criminal cases.*

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22. *If a person wants to rely on a particular date of birth and wants to press a document in service, he has to prove its authenticity in terms of [Section 32 \(5\)](#) or [Sections 50, 51, 59, 60 & 61](#) etc. of the [Evidence Act](#) by examining the person having special means of knowledge, authenticity of date, time etc. mentioned therein. (Vide: *Updesh Kumar & Ors. Vs. Prithvi Singh & Ors.*, (2001) 2 SCC 524; and *State of Punjab Vs. Mohinder Singh*, AIR 2005 SC 1868)."*

21. Their Lordships of the Hon'ble Supreme Court in ***Alamelu and another vs. State represented by Inspector of Police, (2011) 2 Supreme Court Cases 385*** have held that the date of birth mentioned in the transfer certificate would have no evidentiary value unless the person, who made the entry or who gave the date of birth is examined. The Headmaster has not been examined at all. Their Lordships have held as under:-

"40. Undoubtedly, the transfer certificate, Ex.P16 indicates that the girl's date of birth was 15-6-1977. Therefore, even according to the aforesaid certificate, she would be above 16 years of age (16 years 1 month and 16 days) on the date of the alleged incident, i.e., 31-7-1993. The transfer certificate has been issued by a Government School and has been duly signed by the Headmaster. Therefore, it would be admissible in evidence under [Section 35](#) of the Indian Evidence Act, 1872. However, the admissibility of such a document would be of not much evidentiary value to prove the age of the girl in the absence of the material on the basis of which the age was recorded. The date of birth mentioned in the transfer certificate would have no evidentiary value unless the person, who made the entry or who gave the date of birth is examined.

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44. *In our opinion, the aforesaid burden of proof has not been discharged by the prosecution. The father says nothing about the transfer certificate in his evidence. The Headmaster has not been examined at all. Therefore, the entry in the transfer certificate can not be relied upon to definitely fix the age of the girl.*

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47. *We are of the opinion, in the facts of this case, the age of the girl could not have been fixed on the basis of the transfer certificate. There was no reliable evidence to vouchsafe the correctness of the date of birth as recorded in the transfer certificate. The expert evidence does not rule out the possibility of the girl being a major. In our opinion, the prosecution has failed to prove that the girl was a minor, at the relevant date.”*

22. Accordingly the prosecution has failed to prove case against the appellant beyond reasonable doubt. The appeal is allowed and the judgment dated 26.03.2018 and order dated 27.03.2018 are set aside. The appellant is acquitted of the charges framed against him by giving benefit of doubt. He is ordered to be released forthwith if not wanted in any other case. Release warrants be prepared.

(RAJIV SHARMA)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

July 17, 2019.
Davinder Kumar

Whether speaking / reasoned	Yes/No
Whether reportable	Yes/No