

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

**CRM-A-1208-MA of 2018
DATE OF DECISION : 13.12.2019**

State of Haryana

.....Appellant

Versus

Talwinder Singh @ Dogar

.....Respondent

**CORAM : HON'BLE MR. JUSTICE RAJAN GUPTA
HON'BLE MR. JUSTICE KARAMJIT SINGH**

Present : Mr. Vishal Garg, Additional Advocate General, Haryana,
for the appellant.

Mr. Karamjit Kaur, Advocate,
for Mr. P.K.Ganga, Advocate,
for the respondent.

KARAMJIT SINGH, J.

This is an application under Section 378(3) Cr.P.C. seeking leave to appeal by the State against the judgment dated 22.12.2017 passed by the court of Additional Sessions Judge, Sirsa, whereby accused/respondent-Talwinder Singh @ Dogar has been acquitted of the charges levelled against him under Sections 363, 366, 376(2) and 506 of the Indian Penal Code (for short, 'IPC') and Section 6 of the Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as 'Act of 2012').

Learned State counsel has contended that the evidence led by the prosecution was not properly appreciated by the learned trial Court. The prosecutrix was just 17 years of age and was sexually assaulted by the accused. So, the case of the prosecutrix against the accused stands proved. It is further argued that evidence led by the prosecutrix should be

re-appreciated in the right perspective.

The brief facts of the case are that PW8-Panja Singh, father of the prosecutrix, lodged a complaint with the police that on the intervening night of 4/5.04.2016, accused enticed his daughter, i.e., prosecutrix, aged about 17 years and had taken her away with him. On the basis of the said complaint, formal FIR was registered under Sections 363 and 366-A IPC at Police Station Sirsa City.

The prosecutrix was recovered on 30.04.2016 and her statement under Section 164 Cr.P.C was recorded by the Magistrate on the same very day and thereafter, she was handed over to her parents as she refused to get herself medico legally examined. The accused was arrested in this case on 01.05.2016. Thereafter, on 19.05.2016, another statement of the prosecutrix under Section 164 Cr.P.C was recorded and her medico legally examination was also conducted and on the basis of the same, offence under Section 6 of the Act of 2012 was added.

The date of birth of the prosecutrix was 31.07.1999, as has been proved by PW1-Head Mistress of the Government School, where the prosecutrix was studying. The alleged occurrence took place on the intervening night of 4/5.04.2016. It means the prosecutrix was aged about 17 years at the time of the alleged occurrence. The father of the prosecutrix while appearing in the witness box deposed that he moved a complaint, Exhibit P6, with the police when her daughter went missing from his house. In the said complaint, it was specifically mentioned that while leaving the house, prosecutrix also took away Rs.20,000/- and gold earrings weighing 1.5 tolas.

As per the prosecution version, prosecutrix was recovered on

30.04.2016 and on the same very day her statement under Section 164 Cr.P.C was recorded. In the said statement dated 30.04.2016, the prosecutrix nowhere stated that she was forcibly taken away from the house by the accused or that he did any wrong act with her. At that time, the prosecutrix refused to get herself medico legally examined. The said statement of the prosecutrix is Exhibit P13. The accused was arrested in this case on 01.05.2016 and it has come into evidence that he was granted bail by the court on 18.05.2016. Thereafter, medico legal examination of the prosecutrix was conducted on 19.05.2016 and her second statement (Exhibit P16) under Section 164 Cr.P.C was also recorded by the Magistrate on 20.05.2016. In the said statement dated 20.05.2016, the prosecutrix stated before the Magistrate that the accused kept her in village Pachwara (U.P) from 04.04.2016 to 27.04.2016 and he committed rape upon her against her wishes. So, in her second statement recorded under Section 164 Cr.P.C, the prosecutrix changed the original version. At the first instance, she did not disclose to the police about the alleged rape.

While appearing in the witness box as PW7, the prosecutrix admitted that while leaving the house, she took away Rs.20,000/- with her. Then, she along with the accused reached bus stand, which was at a distance of about 2/3 kilometers from her house. The bus started from Sirsa at about 4/5 a.m and at that time, many passengers were present at the bus stand. However, she did not disclose anything to the driver, conductor or the passengers, who were present in the bus. She further depose that they reached village Pachwara on the next day in the evening and on the way, they changed many buses. She also admitted that they stayed in village Pachwara for 27 days. She also admitted that the accused is son of her

maternal uncle. It is evident that the prosecutrix was about 17 years of age at the time of the alleged occurrence. As per her statement (Exhibit P13), the prosecutrix left the house on 03.04.2016 as she got compartment in two subjects in his matriculation examination. So, she was mature enough and was fully knowing the consequences of leaving her parent's house at midnight with a young boy aged about 20/21 years.

The prosecutrix was recovered in this case from bus stand Fatehabad on 30.04.2016 but not from the custody of the accused. The accused was arrested in this case on 01.05.2016 and was released on bail on 18.05.2016. The accused was in custody from 01.05.2016 to 18.05.2016 and during that period, there was no threat to the prosecutrix from his side. So, no plausible explanation is coming-forth as to why the prosecutrix remained silent for aforesaid eighteen days and did not offer her for medical examination at the earliest. As per the statement (Exhibit P13) dated 30.04.2016, no rape was committed on the prosecutrix by that date. It means that the alleged sexual assault was committed during the above said eighteen days.

From the afore-said circumstances, it could be easily inferred that the prosecutrix left the house of her free will, without having any threat or pressure from the side of the accused and while leaving the house she also took away Rs.20,000/- and gold earrings with her. She remained away from her house for 27 days during which, she did not try to make any contact with her parents and even remained silent for another 18 days after her recovery on 30.04.2016 and did not disclose about the alleged rape to anyone till 19.05.2016. Admittedly, during the period from 30.04.2016 to 19.05.2016, she was not in the company of the accused. As per report of

Forensic Science Laboratory (Exhibit P3), no semen was found on the examination of vaginal swab of the prosecutrix. Thus, causing doubt regarding the prosecution story. The trial Court acquitted the accused while giving him benefit of doubt. We have examined the entire case on merits and are of the considered opinion that no ground for interference in the impugned judgment is called for. Thus, prayer for grant of leave to appeal is hereby declined to the State.

Dismissed.

(RAJAN GUPTA)

JUDGE

13.12.2019

adhikari

(KARAMJIT SINGH)

JUDGE

Whether speaking/non-speaking	:	Yes/No
Whether reportable	:	Yes/No