

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-32220-2018 in/ and
CRM-A-1962-MA-2018 (O&M)
Date of decision: 12.03.2019

Shyam Sunder

.....Applicant

versus

Surender @ Bhim

.....Respondent

**CORAM: Hon'ble Mr.Justice Rajiv Sharma
Hon'ble Mr.Justice Kuldeep Singh**

Present: Mr.Sumit Kalyan, Advocate for
Mr.G.S.Madaan, Advocate for the applicant

1. *Whether Reporters of Local Newspapers may be allowed to see the judgment?*
2. *To be referred to the Reporters or not ?*
3. *Whether the judgment should be reported in the Digest?*

Kuldeep Singh, J.

CRM-32220-2018

For the reasons mentioned in the application, it is allowed and 515 days delay in filing the application under Section 378(3) Cr.P.C. for leave to appeal stands condoned.

CRM-A-1962-MA-2018

This order will dispose of an application filed under Section 378(3) Cr.P.C. for grant of leave to appeal against judgment dated 24.1.2018 passed by learned Additional Sessions Judge, Narnaul, vide which, respondent-accused was acquitted of the charges framed against him under Section 6 of the Protection of Children from Sexual Offences Act

2012 (for short, 'POCSO Act').

The statement of the prosecutrix was recorded on 28.6.2016 in the presence of Legal Advisor Kavita. Prosecutrix stated that she is studying in Class 12th in Senior Secondary School, Akoda. Her date of birth is 15.03.2000. She had been gossiping with accused Surender @ Bhim for the last 10 days. She once met him at bus stand Dadri on Friday on 24.6.2016, where the accused asked her to meet him again. She told the accused that she would go to Court at Mahendragarh on Monday i.e. on 27.6.2016. On 27.6.2016 at 8.45 AM, she left her house and arrived at bus stand Mahendragarh by a roadways bus. Then she proceeded towards Court and reached Mahendragarh-Narnaul road, a little earlier to the Court time. In the meanwhile, accused Surender @ Bhim met her in black colour vehicle, driven by a driver and told her that he would get her leg operated as she is disable by right leg. Prosecutrix voluntarily sat in the vehicle. Accused kept roaming till evening in the vehicle and thereafter took her to unknown Kothi, where the driver of the vehicle left the place and accused committed rape on her. On 28.6.2016, accused Surender @ Bhim dropped her at bus stand Bhiwani and got her bus ticket and gave her Rs.100/- and told that if her parents do not accept her, she can come to him with her all documents. On reaching Rohtak, she made a phone call to her brother Amit from a STD booth, on which, her father along with police party reached there and took her to Mahendragarh.

On the basis of the said statement, FIR under Section 6 of the Protection of Children from Sexual Offences Act 2012 was registered. Prosecutrix was got medico legally examined. Her statement under Section 164 Cr.P.C. was got recorded before learned Sub Divisional Judicial

Magistrate, Mahendragarh.

During the investigation, vehicle bearing Registration Number HR-12-J-8338 used in the crime was recovered. Birth certificate of the prosecutrix was taken into possession. Two more persons Sachin and Kuldeep named by the prosecutrix, were found to be innocent and were kept in column No.2 of the final report under Section 173 Cr.P.C.

After commitment of the case, accused was charge sheeted under Section 6 of the Protection of Children from Sexual Offences *Act* 2012.

In support of its case, the prosecution examined as many as 16 witnesses. When examined under Section 313 Cr.P.C. accused denied the allegations and pleaded false implication.

In defence, accused examined Smt.Sushila Devi, Aanganwadi Worker (DW1) to prove date of birth of the prosecutrix. Accused also examined Dalbir Singh, Primary Head Teacher, Govt. Primary School, Bass Khudana, District Mahendragarh (DW2) to prove the school record of the prosecutrix.

After hearing the prosecution and the accused and going through the evidence, learned Additional Sessions Judge, Narnaul came to the conclusion that the date of birth of the prosecutrix is not 15.3.2000 as given by her and she is 1998 born. Story of kidnapping her was disbelieved. Court came to the conclusion that everything happened with her consent and that the prosecutrix voluntarily accompanied the accused. Medical evidence also does not corroborate the version of the prosecutrix regarding her being subject to sexual assault on the day of incident. Hence, the accused was acquitted.

We have heard learned counsel for the applicant and have also carefully gone through the case file.

While considering the age of the prosecutrix, learned Additional Sessions Judge took into consideration the admission and withdrawal register produced by Amin Khan (PW1), where date of birth of prosecutrix is mentioned as 15.3.2000. He also considered the statements of Smt.Sushila Devi, Aanganwadi Worker (DW1) and Dalbir Singh, Primary Head Teacher, Govt. Primary School, Bass Khudana, District Mahendragarh (DW2) which shows that in the record of Aanganwadi worker, date of birth is recorded as 16.5.1998 and in the school record, it is recorded as 10.8.1998. Further, date of birth of Amit Kumar, younger brother of the prosecutrix is 5.8.2000, which means that the prosecutrix cannot be born after 10 days of the birth of her brother.

Therefore, we are of the view that learned Additional Sessions Judge rightly came to the conclusion that the prosecutrix is 1998 born and she is above 18 years of age. There was no reason for Aanganwadi worker to record a wrong date of birth in her record, which is recorded in the discharge of her official duties.

It is clear from the statement of prosecutrix that she was known to the accused. In her statement before the Magistrate recorded under Section 164 Cr.P.C., she improved her version by alleging that wrongful act was done by the accused Surender @ Bhim as well as driver in the car. No allegations against the driver were levelled in the initial statement recorded in the presence of Legal Advisor Kavita. She has admitted that she met the accused on 24.6.2016 while going to the house of her sister Chamma. She accompanied the accused from bus stand Dadri to the Court at Dadri on the

same day and remained there for 10 minutes. The accused told her that he is to appear in some case. Thereafter, they went to the Chamber of Rakesh Kumar Sharma, Advocate in Chamber No.37. However, she denied the suggestion that she had gone to the Chamber of Advocate for the purpose of marriage. After visiting the Chamber of the Advocate, she again met the accused on the day of occurrence. She kept roaming with the accused for whole of the day and even in the house, she did not raise any alarm.

Medical evidence shows that no force was used on her. No semen was detected on the vaginal smear as well as underwear of the prosecutrix. No external mark of injury on any part of the body was found nor any fresh bleeding was found. No tenderness was found on PV examination. The FSL report merely shows semen stains on the underwear of the accused, which was taken into possession 27 days after the occurrence and therefore, it cannot be connected with the present case.

It being so, we are of the view that the trial Court has taken one of the possible views in the present case. There is no illegality or infirmity in the said findings. Hence, there is no ground to grant leave to appeal.

Application is accordingly dismissed.

**(Rajiv Sharma)
Judge**

**(Kuldip Singh)
Judge**

12.03.2019

gk

Whether speaking/ reasoned:	Yes
Whether Reportable:	Yes