

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

**CRM-M-30818-2019 (O&M)
Date of Decision : 25.07.2019**

Lovejit Singh Petitioner
Versus

State of Punjab Respondent

CORAM : HON'BLE MR. JUSTICE RAJ SHEKHAR ATTRI

Present : Mr. Prateek Sodhi, Advocate
for the petitioner.

RAJ SHEKHAR ATTRI, J. (Oral)

The petitioner has preferred the instant petition under Section 482 Cr.P.C. for quashing of order dated 30.05.2019, passed by the learned trial court vide which the application under Section 311 Cr.P.C., moved by the prosecution to lead additional evidence for proving the age of the prosecutrix, has been allowed.

Heard. It seems that the prosecutrix had turned hostile not qua her age but also qua the other facts of the case.

The prosecution wants to establish the date of birth of the prosecutrix as 13.12.2003 as she studied firstly in elementary school and then in senior secondary school. In the cross-examination, she admitted that she studied upto 8th standard but she denied if she was minor at the time of occurrence.

If the date of birth of the prosecutrix be accepted as 13.12.2003 then she did not attain the age of majority on the 16/17.11.2017. Thus, till date she is minor. She admitted that in her school record, her age is

recorded as 13.12.2003 but she twisted the matter by saying that it was not got correctly recorded by her father. She has also shown her ignorance with regard to her exact date of birth.

It was the case of her kidnapping by the petitioner. If she turned hostile then the documentary evidence with regard to her age cannot be brushed aside. The prosecution moved an application under Section 311 Cr.P.C. for examining the Principal/clerk of Government Elementary School, Village Mehnia Kohara, Tehsil and District Amritsar to prove the actual date of birth of the prosecutrix. Learned trial court has allowed this application.

To the mind of this Court, although the prosecutrix had turned hostile and she feigned ignorance with regard to her exact date of birth, the prosecution must be allowed to prove and produce the documentary evidence available with regard to her date of birth. She studied in an elementary school, therefore, production of its record and proving the same by competent person is essential for just decision of the case. It will not prejudice to the defence of the accused nor it be taken to cover a lacuna.

While holding the criminal trial, a Judge has to take in mind *inter alia* the following factors:-

- (a) providing the fair trial;
- (b) the role of the Judge while holding a criminal trial

To the mind of this Court, a fair trial is the heart of the criminal jurisprudence. It is well settled that denial of fair trial is crucifixion of human rights. While emphasizing the principle of fair trial and the practice of the same in the course of trial, it is obligatory on the part of the Courts to see whether in an individual case or category of cases, because of non-

compliance of a certain provision, reversion of judgment of conviction is inevitable or it is dependent on arriving at an indubitable conclusion that substantial injustice has in fact occurred. Hon'ble Supreme Court in **Zahira Habibullah Sheikh and another vs. State of Gujarat (SC) 2006 (2) RCR (CrL) 448** has made the following observations:-

“The principles of rule of law and due process are closely linked with human rights protection. Such rights can be protected effectively when a citizen has recourse to the Courts of law. It has to be unmistakably understood that a trial which is primarily aimed at ascertaining the truth has to be fair to all concerned. There can be no analytical, all comprehensive or exhaustive definition of the concept of a fair trial, and it may have to be determined in seemingly infinite variety of actual situations with the ultimate object in mind viz. whether something that was done or said either before or at the trial deprived the quality of fairness to a degree where a miscarriage of justice has resulted. It will not be correct to say that it is only the accused who must be fairly dealt with. That would be turning a Nelson's eye to the needs of the society at large and the victims or their family members and relatives. Each one has an inbuilt right to be dealt with fairly in a criminal trial. Denial of a fair trial is as much injustice to the accused as is to the victim and the society. Fair trial obviously would mean a trial before an impartial Judge, a fair prosecutor and atmosphere of judicial calm. Fair trial means a trial in which bias or prejudice for or against the accused, the witnesses, or the cause which is being tried is eliminated. If the witnesses get threatened or are forced to give false evidence that also would not result in a fair trial. The failure to hear material witnesses is certainly denial of fair trial.”

Secondly, a criminal trial is a search of truth. Therefore, a

Judge has to intervene as and when required, especially to rule out the

illegalities, irregularities or infirmities and also the inadmissible evidence.

To the mind of this Court, the opportunity for proving the age of the prosecutrix is a part of fair trial and also is essential for just decision of the case. It does not amount to filling up of the lacunae.

As such, the impugned order does not suffer from any illegality, irregularity and infirmity and the same does not call for any interference and is hereby affirmed.

Accordingly, the instant petition stands dismissed.

25.07.2019
mamta

(RAJ SHEKHAR ATTRI)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No