

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRA-AD-524-2019

Date of Decision: 5.12.2019

Harmandeep Kaur and another

...Appellants

Versus

State of Punjab and others

...Respondents

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

PRESENT: Mr. Mandeep Kaushik, Advocate for the appellants.

Mr. IPS Doabia, Additional Advocate General, Punjab.

Mr. Narinder Singh, Advocate for respondent No.3.

RAJAN GUPTA, J. (Oral)

This court vide order dated 22.7.2019 granted leave to appeal.

The instant appeal arises out from the judgment dated 22.8.2017 passed by the Judge, Special Court, SAS Nagar, Mohali whereby accused No.2 and 3 have been acquitted of the charges framed against them.

Pursuant to a complaint lodged by Manjit Kaur, mother of two girls, an FIR was registered by the Police of Police Station Dera Bassi, under Sections 363, 366A, 376-D of Indian Penal Code and Section 4 of Protection of Children from Sexual Offences Act, 2012. It was stated that she was working as Sweeper in the house of the people and her two

daughters were helping her in day to day work. On 28.12.2014, at about 9.00 AM, both the daughters, i.e., prosecutrix No.1 and prosecutrix No.2 went away from the house and did not return. Complainant being sure that they had been enticed away on the pretext of marriage by Rajan Kangra and Paramveer Singh, lodged a complaint. After registration of FIR, the Police proceeded to investigate the matter and find out the whereabouts of both the prosecutrix. As per police version, on 1.1.2015, a car was intercepted while coming from Shimla to Zirakpur. In the said car, both the prosecutrix and two accused, namely, Rajan Kangra and Paramveer Singh were found. Statements of the girls were recorded under Section 161 of the Code of Criminal Procedure, their medical was conducted. Thereafter, they were restored to their parents. The accused were, however, taken into custody. The Investigating Officer thereafter got the statements of the prosecutrix recorded under Section 164 of the Code of Criminal Procedure before the Judicial Magistrate Ist Class, Dera Bassi. On completion of investigation, challan was presented before the competent court under the same sections which figured in the FIR. Copies of the documents were supplied to the accused in view of provisions of Section 207 of the Code of Criminal Procedure. After framing of charges, the mother and both the prosecutrix deposed before the court. Prosecution examined another 9 witnesses, most of whom were official witnesses. In their defence, the accused examined 11 witnesses. They pleaded not guilty and claimed that they have been falsely implicated. The court on examination of the witnesses found that prosecutrix No.1 had gone to Shimla on 29.12.2014 with her boy friend, ostensibly for the purpose of marriage. They stayed in some hotel for one night and came back to Zirakpur on 31.12.2014. She also gave history of

sexual intercourse on 29.12.2014 with her boy friend's driver as well as with boy. Likewise, prosecutrix No.2 stated that she had accompanied her sister to Shimla on 29.12.2014. She did not give any vivid details of sexual intercourse at Shimla. She only gave a version in this regard before the doctor. It, however, stood established that both the prosecutrix had accompanied the accused of their own accord. As per their statements, they had only gone for solemnizing marriage. The accused also set up plea of *alibi*. The trial court found that there were no call records pertaining to visit of both the accused to Shimla. It was, however, observed that plea of *alibi* needed to be appraised only when prosecution satisfactorily proves the offences. As per the trial court, prosecution failed to discharge this burden. The trial court also proceeded to examine whether the prosecutrix were below 18 years of age on the date of alleged occurrence. No birth certificates were exhibited on record. However, PW4-Dr. Vijay Bhagat, Radiologist, on the basis of X-rays and ultra sound deposed that the age of prosecutrix should be estimated between 15 to 17 years. Trial court observed that the margin of two years had to be given, as assessment of the doctor was based on radiological test only. From the radiological examination, accurate assessment of age cannot be made. Giving the benefit of two years margin, the trial court came to the conclusion that it cannot be said with certainty that both the prosecutrix were below the age of 18 years from the date of incident. The Investigating Officer did not bring on record any document such as birth certificate to prove their age.

In view of above, trial court came to the conclusion that benefit of doubt needed to be given to both the accused. Thus, the accused were acquitted. We find no infirmity with the judgment passed by the court

below. We have examined the entire case on merits and do not find it a fit case for interference in appellate jurisdiction.

Dismissed.

(RAJAN GUPTA)
JUDGE

December 5, 2019
gbs

(KARAMJIT SINGH)
JUDGE

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No