

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-21410-2020 IN/AND
CRA-D-664-2019
Date of Decision: 01.12.2021

Naveen

....Appellant

Versus

State of Haryana

.....Respondent

**CORAM: HON'BLE MR. JUSTICE AJAY TEWARI
HON'BLE MR. JUSTICE PANKAJ JAIN**

Present : Mr. Sunil Sihag, Advocate, for the applicant/appellant.

Mr. Vivek Saini, Additional Advocate General, Haryana,
for the respondent-State

AJAY TEWARI, J. (Oral)

Today, application for suspension of sentence was listed, but with the consent of the learned counsel for the parties, the main appeal is being taken on Board for final disposal. Consequently, no order needs to be passed in CRM-21410-2020.

Main Case

1. The appellant had filed the present appeal against order of conviction dated 16.07.2019 and order of sentence dated 18.07.2019 passed by the Additional District Judge, Palwal, in case FIR No.351 dated 21.05.2018 registered under Section 363/366-A of the Indian Penal Code (for short 'IPC') and Section 4 of the Protection of Children from Sexual Offences Act, 2012 (for short 'POCSO Act') at Police Station Sadar Palwal.
2. The appellant was convicted and sentenced as under:-

“Sentenced to undergo rigorous imprisonment for

a period of twenty years (which is the minimum sentence provided under Section 376(3) of IPC) and to pay fine of Rs.25,000/- for the offence committed by him under Section 376(3) of IPC and in default of payment of fine, he shall further undergo rigorous imprisonment for a period of two months.”

3. The allegations emanating from the complaint filed by the father of the victim stating that his 14 years old daughter had been repeatedly harassed by the appellant while she was going to the school and on earlier occasions, he had remonstrated with the parents of the appellant, who had assured him that his son (appellant) mend his ways but he did not desist and on the date in question, he enticed away his daughter and raped her. During trial, the following witness were examined:-

PW-1 :	Victim
PW-2 :	Father of the victim.
PW-3 :	Ravinder Singh Dahiya
PW-4 :	Dr. Epsa Arora
PW-5 :	L/Ct. Kailash Kumari
PW-6 :	Ct. Shakeel Ahmad
PW-7 :	L/ASI Anita
PW-8 :	L/Ct. Sanju
PW-9 :	Dr. INL Kumar
PW-10 :	ASI Ram Karan
PW-11 :	Head Master of the school of the victim
PW-12 :	HC Gurumukh
PW-13 :	SPO Jagbir Singh

4. The two main witnesses i.e. PW-1 and PW-2 turned hostile. Both claimed that no rape had taken place and further that in fact the PW-1 was major. PW-2 further stated that he had reduced the age of PW-1 at the time of her admission in the school. The trial Court however, relied on the medical evidence, which showed the traces of the appellant's semen on the underwear of PW-1. The trial Court further held that the oral version

regarding age of PW-1 could not be preferred over the school record and consequently, the appellant was convicted and sentenced as stated above.

5. The primary contention of the learned counsel for the appellant relates to the findings regarding age. It is his contention that admittedly the age reflected in the school record was not based on any evidence like birth certificate and had been entered on the statement of the father (PW-2). He further contended that in his testimony, PW-2 unequivocally stated that in fact PW-1 was 19 years of age and that he had intentionally got lesser age recorded at the time of getting her admission in school and thus, the school record loses its probative value, more so when PW-1 i.e. the victim had herself asserted that she was in fact 19 years of age. It is further stated that the appellant was also minor at that time but was certified to be tried as an adult.

6. Learned State counsel though has accepted the aforesaid facts but has argued that this is a case where the victim and her father have obviously been won over and therefore, have not given the correct version of events during their testimony. It is his submission that since the date of birth was entered many years ago, it should be presumed that the same was correct and the evidence given when the witnesses were won over, should be discarded. In order to substantiate his argument, he relies upon Section 35 of the Indian Evidence Act.

7. We have heard learned counsel for the parties.

8. Keeping in view the fact that the prosecutrix herself has stated that it was a consensual act, the controversy indeed boils down to the

findings regarding age of the prosecutrix. In our considered opinion, learned State counsel may be right in relying upon Section 35 of the Indian Evidence Act qua admissibility of the school leaving certificate. However, it is a settled law that admissibility of a document is one thing and the probative value thereof is different. In **State of Bihar and others Vs. Radha Krishna Singh and others**, AIR 1983 Supreme Court 684, the Supreme Court dealt with a similar contention and held as under:-

“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.. . . . 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. 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.”

9. Thus, 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 present case, prosecutrix herself has admitted her age to be 19 years old. The father, who is source of entry in the school leaving certificate has admitted that the victim was major and has rather explained the entries as well stating that:-

“It is correct that my victim daughter is 19 years old. It is correct that I got admitted my victim daughter at the latest stage in the school and the school teacher advised us to get entered her date of birth towards the lower side. The date of birth as mentioned in the school record is not recorded as per actual date of birth but the actual age of

my victim daughter is 19 years at that time.”

10. We are guided by law laid down by Apex Court in **Vishnu Vs. State of Maharashtra (2006) 1 SCC 283**, while dealing with a similar issue, the Supreme Court observed that:-

“very often parents furnish incorrect date of birth to the school authorities to make up the age in order to secure admission for their children. For determining the age of the child, the best evidence is of his/her parents, if it is supported by un-impeccable documents. In case the date of birth depicted in the school register/certificate stands belied by the un- impeccable evidence of reliable persons and contemporaneous documents like the date of birth register of the Municipal Corporation, Government Hospital/Nursing Home etc, the entry in the school register is to be discarded.”

11. While analysing law on the point, the Supreme Court in **Satpal Singh Vs. State of Haryana (SC) : Law Finder Doc Id # 212385**, held that:-

“Thus, the law on the issue can be summerised that the entry made in the official record by an official or person authorised in performance of an official duty is admissible under Section 35 of the Evidence Act but the party may still ask the Court/Authority to examine its probative value. The authenticity of the entry would depend as on whose instruction/information such entry stood recorded and what was his source of information. Thus, entry in school register/certificate requires to be proved in accordance with law. Standard of proof for the same remains as in any other civil and criminal case.

12. On examining the facts of the present case in the light of the aforesaid settled legal preposition, we find that no probative value can be attached to the school leaving certificate (Exhibit P-21). We are, therefore, of the view that the conviction of the accused/appellant as made by the learned trial Court and the sentence imposed is not legally tenable. We,

therefore, set aside the same, acquit the accused/appellant. The appeal is allowed. Let the appellant be released forthwith, if not required in any other case.

13. Since the main case has been decided, the pending Criminal Misc. Application, if any, also stands disposed of.

(AJAY TEWARI)
JUDGE

(PANKAJ JAIN)
JUDGE

01.12.2021
adhikari

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