

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

**CRM-28831-2021 in/and
CRM-A-157-2021 (O & M)
Date of decision: 12.07.2022**

204

State of Haryana

....Appellant(s)

Versus

Rohit Kumar

....Respondent(s)

**CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA
HON'BLE MR. JUSTICE VIKAS SURI**

Present: Ms. Palika Monga, DAG, Haryana.

G.S.SANDHAWALIA, J. (Oral)

Challenge in the present appeal is to the judgment passed by the Additional Sessions Judge, Kurukshetra dated 17.10.2018 whereby, the respondent was acquitted in FIR No. 529 dated 12.10.2016 under Sections 363, 366-A IPC registered at P.S. Shahabad, District Kurukshetra.

The appeal is also time barred by 440 days of delay. The ground for acquittal as such by the trial Court including the charge under Section 5(i) of the Protection of Children from Sexual Offences Act, 2012 (in short 'POCSO Act') is that the prosecution as such failed to prove that the victim was below the age of 18 years at the time of occurrence. It was noticed that the complainant had changed her statement in Court and contradicted the averments made in the complaint and so was the case of the victim PW11 which was held to be an after thought. The same is based on the fact that in earlier statement recorded under Section 164 Cr.P.C. before the Magistrate, she had deposed that she did not want any action against the respondent-accused with whom she had gone on her own free will. Medical

record Ex.P-11 was also taken into consideration alongwith the statement of PW6 Dr. Rachna Bansal that there were no marks of injury on the person and, thus, there was no use of force. It was noticed that the victim as such left the house on 06.10.2016 and the FIR was lodged on 12.10.2016. She had returned on 06.12.2016 after 2 months and had resided at different places with the accused and, thus, the conclusion arrived was that the accusations were made under the pressure of the mother, though she was a consenting party.

Counsel for the State has vehemently tried to impress upon this Court that both the school leaving certificates would go on to show that the victim was below the age of 18 years and, therefore, the Appellate Court was not justified in acquitting the accused.

We have gone through the judgment of the Trial Court and find that valid reasons as such have been given to come to the said conclusion. Firstly, it was noticed that at per the version of the complainant Sita Devi herself, her husband had died two years back and she was residing with one Mukesh Kumar as his wife. The victim had been allegedly allured by the respondent. The birth certificate showing date of birth as 15.05.2002 was rightly rejected on the ground that the name of the father had been recorded as Mukesh whereas, victim was the daughter of Naresh Kumar as per the case of the complainant and the victim herself. It was also noticed that the school leaving certificate was not having seal or stamp of the school and even in the admission and withdrawal register Ex.D8, the name of the school was not mentioned and the same was not signed by any competent authority. Valid reasons as such were given not to take the said certificate into consideration.

Regarding the second date of birth which is stated to be 01.06.2001, it was noticed that the witness who had produced the same had admitted that the register entry Ex.P24 was not prepared by her and she could not identify the handwriting of the person who had prepared the said record. The name of the school was also not written in the register or the admission withdrawal register. Page Nos.92 to 96 were blank and same had been closed on 28.04.2015 and there was no note regarding the closing of the register and neither any stamp or signature had been affixed on the last page of the entry of the register. The deposition of the witness to the extent that the admission form and school leaving certificate could not be produced and same had been lost on account of collapse of the school building in the year 2016 in which the records were destroyed was noticed. Therefore, keeping in view that there was contradiction in the date of birth as per the two certificates, the Trial Court rightly came to the conclusion that both the dates could not be relied upon to prove the date of birth of the victim.

Apart from that, the prosecution had been given the right as such to get the ossification test done as per the statement of Dr. Rachna Bansal but the same was not done and, therefore, it was in such circumstances the benefit of acquittal has been granted under the provisions of the IPC and the provisions of the POCSO Act.

Reliance can be placed upon the judgment ***C. Antony Vs. K.G. Raghavan Nair, 2002 (4) RCR (Criminal) 750, Gamini Bala Koteswara Rao & others vs. State of Andhra Pradesh, AIR 2010 SC 589 and Anil Kumar Gupta Vs. State of U.P., 2011 (2) RCR (Criminal) 292***, wherein it has been laid down in principle that in the absence of any perversity the appellate Court would not normally interfere in the order of acquittal of the

trial Court. The Apex Court in the case of *Sanjeev & another vs. State of Himachal Pradesh, 2022 (2) RCR (Criminal) 341*, similarly had set aside the judgment of the High Court of Himachal Pradesh, which had upset the acquittal.

Keeping in view the above, we are of the considered opinion that even otherwise, the appeal is barred by inordinate delay of 440 days and a bald explanation has been given that action was to be taken against the person who was found delinquent in the manner whereby letters had been issued by the office of the Advocate General to file affidavits in applications for condonation of delay but they had been misplaced in the office and enquiry was going on.

In such circumstances, the main appeal as well as the application for condonation of delay stand dismissed.

(G.S. SANDHAWALIA)
JUDGE

12.07.2022
shivani/naveen

(VIKAS SURI)
JUDGE

Whether reasoned/speaking
Whether reportable

Yes/No
Yes/No