

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-A-504 of 2022(O&M)

Date of Decision:27.09.2022

State of Haryana

.....Applicant-appellant

Versus

Sanjay

..... Respondent

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

HON'BLE MR. JUSTICE HARSH BUNGER

Present: Mr.Raman Sharma, Addl.AG., Haryana.
for the applicant.

LISA GILL, J(Oral).

Applicant-State of Haryana has filed this appeal, seeking leave to appeal against judgment dated 02.12.2021 passed by the learned Additional Sessions Judge, Fast Track Special Court, Hisar, whereby the respondent has been acquitted of the charges framed against him, arising from FIR No. 349 dated 24.08.2019, under Sections 365, 366, 376, 506 of the Indian Penal Code (for short 'IPC') and Section 4 of the Protection of Children from Sexual Offences Act (for short 'POCSO Act'), Police Station Azad Nagar, Hisar.

Brief facts necessary for adjudication of the case are that abovesaid FIR was registered on the statement of the victim recorded on 24.08.2019 to the effect that she was 17 ½ years old having two elder brothers and that she was studying in 8th Class. She stated that there were 5-6 cows in their home along with one buffalo. At about 4.00.a.m., on 24.08.2019, she came out of her house to open one of the cows tied to a 'kikar' tree and as she was untying the cow, accused-respondent-Sanjay @ Rajesh suddenly came from behind, closed her mouth and took her near the motorcycle parked on the road. Another boy was stated to be standing there

whom she did not know. It is stated that she was made to sit on the motorcycle between both the boys and taken a little distance away from there and that Sanjay @ Rajesh committed rape upon her in bushes. The other boy is stated to have kept standing by the motorcycle. Prosecutrix further narrated that Sanjay @ Rajesh threatened the victim that in case, she revealed anything about the incident to anyone, he would kill her. The victim further stated that Sanjay @ Rajesh earlier used to come to their home for milking the cattle. Thereafter, both the boys made her sit on the motorcycle and left her at Raipur road, where the victim borrowed a cell phone from some person and informed her mother. The victim's mother and brother reached there and took her back. Action against Sanjay @ Rajesh was accordingly prayed for.

Matter was investigated. Medico Legal Examination of the victim was conducted on 24.08.2019 itself. After registration of FIR, statement of the victim under Section 164 Cr.P.C., was recorded on 26.08.2019. Victim was also counselled by the Child Welfare Committee. Respondent-Sanjay @ Rajesh was arrested on 03.09.2019. When involvement of no other person was found, Section 34 IPC was deleted. Final report/challan under Section 173 Cr.P.C., was presented on completion of investigation.

Charge for the offences punishable under Section 366, 375, 376, 506 IPC and Section 4 of the POCSO Act, was framed against the accused, who pleaded innocence and claimed trial.

Victim and her mother were examined as PW-1 and PW-2 respectively and they did not support the prosecution case on any aspect. Learned trial Court on finding no other substantial evidence against the accused, closed the remaining evidence with a view that no useful purpose

would be served by going through the motions of the entire trial. For want of incriminating evidence against the accused, his examination under Section 313 Cr.P.C., was dispensed with.

Learned trial Court while taking note of the fact that the victim herself while deposing before the learned trial Court on 02.12.2021, stated that she was 21 years old and that respondent-Sanjay @ Rajesh never committed rape upon her and she had no complaint against him. It is further noted that the victim while deposing as PW-1 even denied suffering the statement Ex.P-1, on the basis of which FIR was registered. She further denied the correctness of statement under Section 164 Cr.P.C, statedly suffered by her under pressure. PW-2, mother of the victim also did not support the prosecution case. She categorically denied having recorded statement Ex.P-5 before the police authorities. All suggestions that the accused had enticed the victim or committed rape upon her or criminally intimidated her, were denied, besides denying the victim to be a minor at the time of the alleged incident.

Keeping in view the said facts, learned trial Court concluded that the prosecution case against the respondent is doubtful, therefore, acquitted him of the charges framed against him vide impugned judgment dated 02.12.2021.

Aggrieved therefrom, appellant-State of Haryana seeks leave to appeal.

Learned counsel for the applicant submits that prosecution has cogently and sufficiently proved the evidence against the accused person and that learned trial Court has grossly erred in ignoring the school record, which mentioned the date of birth of the victim to be 21.11.2001. Parameters for ascertaining the age of a juvenile as provided under Rule 12 of the Juvenile

Justice (Care and Protection of Children) Rules, 2007 (for short 'the Juvenile Justice Rules'), it is asserted should have been applied by the learned trial Court to ascertain the age of the victim. Learned counsel submits that if this exercise had been carried out, it would stand proved that the victim was under eighteen (18) years of age at the time of the incident. It is submitted that learned trial Court should have permitted the prosecution to lead other evidence to prove its case and evidence of the prosecution should not have been closed merely on the ground of the victim and her mother turning hostile. Furthermore, learned trial Court, it is submitted has ignored the medical evidence including the FSL and DNA reports, which would indicate the commission of offence as charged. It is thus prayed that leave to appeal against judgment dated 02.12.2021, passed by the learned Additional Sessions Judge, Fast Track Special Court, Hisar, be granted.

We have heard learned counsel for the applicant and have gone through the certified copy of record as produced in Court today.

Registration of FIR, on the basis of alleged statement of the victim recorded on 24.08.2019 is a matter of record. As per MLR dated 24.08.2019, no injury i.e., external or internal, was found on the person of the victim. Local examination as mentioned in the MLR reads as under:-

“There is no injury seen on external genitella on seporting labia mofores, labia minora, clitoris, vaginal orifice are normal. Hymen torned and healed. No congestion, no tenderness/bleeding from perennial area and from vaginal orifice.”

It was further mentioned that opinion regarding recent intercourse would be given after chemical analysis report. Opinion rendered by Dr. Deepika Malik, Medical Officer, on 16.03.2022 reads as under:-

“Opinion in relation to MLR DM/HSR/07/2019 dated 24.08.2019.

As per document/FSL report vide letter no. 19/B-5685 A dated 16.09.2019 presented to me by SI Mahender Singh Belt No. 1227 by HSR. Which shows human semen was detected on exhibit-1 a (underwear), exhibit 1 b (salwar), exhibit 2 (vaginal swabs) and exhibit 3 (vaginal swabs). However, semen could not be detected on exhibit-4 (pubic hairs).

After going through all the relevant reports possibility of attempt of sexual assault or sexual intercourse cannot be ruled out.”

We have perused the statement of the victim as well as her mother, who have deposed as PW-1 and PW-2, respectively before the learned trial Court. Both the said witnesses have categorically denied the prosecution version. PW-1, the victim has denied the recording of her statement on 24.08.2019 and has even denied handing over her clothes to the concerned doctor on the basis of which the FSL report etc., has been submitted. It is further stated by the victim that her date of birth is 29.11.2000 and is wrongly recorded in school record as 29.11.2001. She has categorically denied that respondent had enticed her, committed rape upon her or criminally intimidated her in any manner or that she had retracted from her previous stand on account of any compromise to save him from legal punishment. Statement under Section 164 Cr.P.C., is stated to have been recorded under pressure. PW-2, mother of the victim has deposed on the same lines. In respect to the age of the victim, she has stated that date of birth of the victim was recorded incorrectly so as to take benefit in future. Both the witnesses stated that they had deposed truly without any threat, pressure or coercion before the learned trial Court.

Primary argument raised by learned counsel for the applicant is that the victim in this case was about three months short of 18 years as per school record, therefore commission of the offence is clearly proved,

especially when read in conjunction with the medical record because as per the prosecutrix herself she was studying in 8th class. Learned counsel for the applicant has argued that the victim is proved to be under eighteen (18) years of age at the time of the incident in case the parameters as laid down under Rule 12 of the Rules are applied. There is no dispute that Rule 12 of the Juvenile Justice Rules is applicable for determination of the age of a child in conflict with law. It is useful to refer to the judgment of Hon'ble the Supreme Court in **Jarnail Singh Vs. State of Haryana, 2013 (7) SCC 263**, wherein it has been held that said statutory provision should also form the basis for determining age of a child who is a victim of crime on the ground that in so far as the issue of minority is concerned, there is hardly any difference between a child in conflict with law and a child who is a victim of crime.

Rule 12 of the Juvenile Justice Rules reads as under:-

“12. Procedure to be followed in determination of Age.

- (1) In every case concerning a child or a juvenile in conflict with law, the court or the Board or as the case may be the Committee referred to in rule 19 of these rules shall determine the age of such juvenile or child or a juvenile in conflict with law within a period of thirty days from the date of making of the application for that purpose.
- (2) The Court or the Board or as the case may be the Committee shall decide the juvenility or otherwise of the juvenile or the child or as the case may be the juvenile in conflict with law, prima facie on the basis of physical appearance or documents, if available, and send him to the observation home or in jail.
- (3) In every case concerning a child or juvenile in conflict with law, the age determination inquiry shall be conducted by the court or the Board or, as the case may be, the Committee by seeking evidence by obtaining-

- (a) (i) the matriculation or equivalent certificates, if available; and in the absence whereof;
- (ii) the date of birth certificate from the school (other than a play school) first attended; and in the absence whereof;
- (iii) the birth certificate given by a corporation or a municipal authority or a panchayat;
- (b) and only in the absence of either (i), (ii) or (iii) of clause (a) above, the medical opinion will be sought from a duly constituted Medical Board, which will declare the age of the juvenile or child. In case exact assessment of the age cannot be done, the Court or the Board or, as the case may be, the Committee, for the reasons to be recorded by them, may, if considered necessary, give benefit to the child or juvenile by considering his/her age on lower side within the margin of one year.

and, while passing orders in such case shall, after taking into consideration such evidence as may be available, or the medical opinion, as the case may be, record a finding in respect of his age and either of the evidence specified in any of the clauses (a)(i), (ii), (iii) or in the absence whereof, clause (b) shall be the conclusive proof of the age as regards such child or the juvenile in conflict with law.

- (4) If the age of a juvenile or child or the juvenile in conflict with law is found to be below 18 years on the date of offence, on the basis of any of the conclusive proof specified in sub-rule (3), the Court or the Board or as the case may be the Committee shall in writing pass an order stating the age and declaring the status of juvenility or otherwise, for the purpose of the Act and these rules and a copy of the order shall be given to such juvenile or the person concerned.
- (5) Save and except where, further inquiry or otherwise is required, inter alia, in terms of section 7A, section 64 of the Act and these rules, no further inquiry shall be conducted by the court or the Board after examining and

obtaining the certificate or any other documentary proof referred to in sub-rule (3) of this rule.

- (6) The provisions contained in this rule shall also apply to those disposed of cases, where the status of juvenility has not been determined in accordance with the provisions contained in sub-rule (3) and the Act, requiring dispensation of the sentence under the Act for passing appropriate order in the interest of the juvenile in conflict with law.”

In respect to the precedence to be given to the number of options postulated in Rule 12 (3) of the Juvenile Justice Rules for determining the age of the child, it was held by Hon’ble Supreme Court in **Jarnail Singh’s case (supra)** as under:-

“The manner of determining age conclusively, has been expressed in sub-rule (3) of Rule 12 extracted above. Under the aforesaid provision, the age of a child is ascertained, by adopting the first available basis, out of a number of options postulated in Rule 12(3). If, in the scheme of options under Rule 12(3), an option is expressed in a preceding clause, it has overriding effect over an option expressed in a subsequent clause. The highest rated option available, would conclusively determine the age of a minor. In the scheme of Rule 12(3), matriculation (or equivalent) certificate of the concerned child, is the highest rated option. In case, the said certificate is available, no other evidence can be relied upon. Only in the absence of the said certificate, Rule 12(3), envisages consideration of the date of birth entered, in the school first attended by the child. In case such an entry of date of birth is available, the date of birth depicted therein is liable to be treated as final and conclusive, and no other material is to be relied upon. Only in the absence of such entry, Rule 12(3) postulates reliance on a birth certificate issued by a corporation or a municipal authority or a panchayat. Yet again, if such a certificate is available, then no other material whatsoever is to

be taken into consideration, for determining the age of the child concerned, as the said certificate would conclusively determine the age of the child. It is only in the absence of any of the aforesaid, that Rule 12(3) postulates the determination of age of the concerned child, on the basis of medical opinion.”

It is a matter of record that there is no matriculation certificate of the victim on record as it is the case of the victim herself that she had not completed matriculation. Insofar as record of the school in question is concerned, first and foremost there is nothing on record which has been pointed out to indicate that this is the first school attended by the victim and furthermore, peculiar facts of the present case where the victim and her mother while not supporting the prosecution case have categorically stated the victim to be over 18 years of age with the victim even going to the extent of denying handing over of the clothes at the time of her medical examination, compel us to refrain from intervention in this matter. We do not find any ground whatsoever to interfere with the finding of the learned trial Court that the victim being below 18 years of age at the time of occurrence is doubtful.

It is a settled position that an order of acquittal is not to be interfered with lightly because presumption of innocence of the accused is further strengthened by acquittal. Interference is called for only under compelling circumstances with substantial reasons forthcoming therefor and where the impugned judgment of acquittal is clearly unreasonable with relevant and convincing materials on record ignored unjustifiably by the trial Court. Reference in this regard can gainfully be made to decisions of Hon’ble Supreme Court in **State of Madhya Pradesh Vs. Bacchudas @ Balram and others, 2007(9) SCC 135, Bhagwan Singh Vs. State of M.P, 2003(3) SCC 21 and Mahamad Khan Nathekhan vs. State of Gujarat,**

(2014) 14 SCC 589.

In the present case, learned counsel for the applicant is unable to point out any such compelling or substantial grounds which call for interference for setting aside judgment dated 02.12.2021 passed by the learned Additional Sessions Judge, Fast Track Special Court, Hisar, whereby respondent has been acquitted of the charges framed against him.

However, at this stage, it is necessary to record a word of caution that this order does not indicate approval of the course adopted by the learned trial Court as a rule in all cases. Sufficient opportunity in ordinary course should be provided to the prosecution to adduce evidence and statement of the accused should be recorded under Section 313 Cr.P.C. It is reiterated that no interference is being caused in the present case keeping in view the peculiar circumstances presented before us as apparent from the record produced in Court today. Same is however not to be treated as a precedent.

Keeping in view the facts and circumstances as above, leave to appeal is denied and application is accordingly dismissed.

(LISA GILL)
JUDGE

(HARSH BUNGER)
JUDGE

September 27, 2022.
s.khan

Whether speaking/reasoned : Yes/No.
Whether reportable : Yes/No.