

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CRM-A-74-2022 (O&M)

Date of order: 25.08.2023

Jai Bhagwan

.....Appellant(s)

Vs.

State of Haryana & Others

.....Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr.Rahul Jaswal, Advocate
for the appellant.

Ms. Deep Shikha Chauhan, AAG Haryana.

Nidhi Gupta, J.

Challenge in the present appeal is to the impugned judgment of acquittal dated 19.03.2021 passed by learned Additional Sessions Judge, Panipat in case bearing No.SC-427 of 2017 arising out of FIR No.194 dated 31.07.2017 registered under Sections 363, 366-A and 34 IPC and Section 9 of Child Marriage Act at Police Station Israna, Panipat.

2. Brief facts of the case are that the appellant filed a complaint Ex.P8 on 31.07.2017 before the learned trial Court that the daughter of his brother-in-law i.e. victim is residing with him for the last about 12 years. She is about 14 years old. On 29/30.07.2017 she went out of the house without disclosing anything. They searched her but could not trace her. They came to know that Kamal, son of Sandeep had taken away the girl with an intention to marry her. The brother of Kamal, Kunal, his father Sandeep, and mother Sunita/respondents No. 2 to 5 herein

respectively, also have played active role in taking away of the victim by Kamal. The girl i.e. victim may be searched. On the basis of above complaint, present FIR was registered under Section 363, 366A read with Section 34 of IPC.

3. The matter was investigated. The record of the date of birth of the victim was obtained from the school as per which her date of birth is 05.05.2004. Accused, Sandeep, Kunal and Sunita were arrested on 10.08.2017. On 20.08.2017 the victim girl and Kamal came present in the Police Station and produced protection order dated 16.08.2017 passed by this Court in CRM-M-29664 of 2017. The statement of victim under Section 164 of Cr.P.C. was got recorded. She refused to get herself medically examined. Accused Kamal was arrested on 30.08.2017. After completion of investigation challan was produced in the court, and upon trial, the accused persons have been acquitted vide the impugned judgment.

4. Learned counsel for the appellant/complainant/uncle of the victim submits that the respondents No.2 to 5 herein have been wrongly acquitted in the present case. It is stated that the victim was 14 years old at the time of incident i.e. 29/30.07.2017, as evident from her School Leaving Certificate (Exhibit P1) wherein her date of birth is recorded as 05.05.2004. It is submitted that the evidence on record established the guilt of the accused/respondents No.2 to 5 herein however, the learned trial Court acquitted the accused persons on the point of disputed age of victim. Learned counsel further submits that the learned trial Court has failed to appreciate the evidence correctly in respect of the age of the victim.

5. No other argument has been raised before this Court.

6. I have heard learned counsel for the appellant and also gone through the impugned judgment in great detail.

7. Few undisputed facts and findings on the record are that:

7A. Rajesh-PW5-father of the victim has admitted in his cross-examination that his eldest daughter is about 24-25 years old and victim is 3 years younger to her. Accordingly, at the time of incident, the age of the victim comes to be 21-22 years;

7B. The victim and the accused Kamal had solemnized their marriage and had sought protection from this Court which was granted vide order dated 16.08.2017 passed in CRM-M-29664 of 2017, wherein the victim had submitted her affidavit where her date of birth is mentioned as 10.01.1999;

7C. It has further come on record that in her statement under Section 164 Cr.P.C., the victim has stated that she had voluntarily left her home out of her own free will without any allurements from the accused. She has further stated herself to be 19 years of age;

7D. As per ossification test report of the victim (Exhibit P9) and dental report (Exhibit P27), age of the victim was found to be around 16-17 years.

7E. Learned counsel for the appellant has placed great reliance upon School Certificate of the victim (Exhibit P1), wherein date of

birth of the victim is mentioned as 05.05.2004. In fact, the whole case of the appellant is based solely upon the said School Certificate. However, admittedly, in the said certificate it has not been specified as to who was the guardian of the victim, and on what basis the entry regarding the date of birth being 05.05.2004 was made therein.

7F. Accordingly, from the above facts, it is clear that it has not been conclusively established on record that the victim was a minor at the time of alleged incident.

8. Moreover, there are other relevant attendant factors which cannot be ignored. These are that: a) admittedly, the victim had refused to get herself medico-legally examined as evident from her refusal (Exhibit P28); b) As the victim had refused to accompany the appellant/her uncle she was sent to the Orphan Shelter Home at Panipat; c) Even in her deposition as PW3, the victim has stated that she herself went to Ambala with the accused because of harassment caused to her by her uncle/the appellant.

9. In my view therefore, it has been rightly held by the learned trial Court that in view of the above undisputed facts, no case of kidnapping is made out. Accordingly, I find no ground is made out to interfere in the impugned order. Present appeal stands **dismissed**.

10. Pending application(s) if any also stand(s) disposed of.

25.08.2023

Sunena

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No

(Nidhi Gupta)
Judge