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**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH.**

CRA-AD-308-2022

Date of Decision : 17.05.2023

BALWANT SINGH

.....Appellant

Versus

STATE OF PUNJAB AND ANOTHER

....Respondents

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE KULDEEP TIWARI**

Present : Mr. Achin Gupta, Advocate
for the appellant.

Ms. Monika Jalota, Sr. DAG, Punjab.

SURESHWAR THAKUR, J. (Oral)

1. The instant appeal is directed against the verdict of acquittal, as became recorded on 06.09.2022, by the learned Additional Sessions Judge, Fast Track Court (exclusively dealing with rape cases), Ferozepur, upon Sessions Case No. 122 of 05.07.2022.

2. The learned counsel appearing for the appellant (father of the victim-prosecutrix) has vehemently contended that even if assumingly the prosecutrix, did make a testification, wherein she exculpated the incriminatory participation of the respondent-accused, in offences embodied under Sections 363/366-A of the IPC. However, he submits that the willingness, if any, or consent, if any, which became purveyed by the victim-prosecutrix to the accused, rather becomes completely underwhelmed, in the face of the prosecutrix being completely disabled to purvey such purported valid consent to the accused.

3. In the making the above argument, the learned counsel for the appellant has rested the same, upon, the deposition as made by PW-8, who during the course of his examination-in-chief, had placed on record, the report, relating to the authenticity of an entry carried in the birth certificate of the victim. To the said report, Exhibit P-28, became assigned. Though, there is clear echoing made by PW-8, that the birth certificate thus relating to the prosecutrix, besides though the said birth certificate does bear the seals and signatures of the competent authority. However, for the reasons to be assigned hereinafter, the said factum, would not *ipso facto* assign the utmost creditworthiness, to the birth certificate, thus relating to the prosecutrix. The reason being, that there was a pointed cross-examination made by the learned defence counsel, upon, PW-8, thus relating to the authorship of form, on the basis of which the birth certificate of the prosecutrix became prepared. To the said suggestion, the PW-8 was unable to give any valid answer, about the official concerned, who had received the said form and also was unable to get any answer, whether the said form became signed by the parents or by the guardian of the prosecutrix. The necessity of authorship of said form, thus becoming ensured to become proved by the prosecution, and which became the basis of the issuance of a birth certificate relating to the date of birth of the prosecutrix, does arise, as unless it became proved by the prosecution, that the said form was scribed in the hands of the parents of the prosecutrix, thereupon, alone the consequent therewith entries, as became made in the birth certificate of the prosecutrix, rather would assume immense evidentiary vigor.

4. In the above endeavour, it was but imperative upon the prosecution to subsequently cite the parents of the prosecutrix, as

prosecution witnesses, so that they are led into the witness box, so as to enable them to prove theirs authoring the form, which became the basis of an entry of date of birth of the prosecutrix, being made in the birth certificate. The prosecution omitted to make the above recourse. The omission (*supra*), is fatal, to the prosecution, and obviously so, as unless valid proof in respect of the authorship of the said form, became generated, but in the above manner, thereupon, alone the consequent thereto entries in the birth certificate of the prosecution, rather would assume immense evidentiary tenacity.

5. Therefore, for want of the above recourses becoming adopted by the prosecution, it has to be concluded that the prosecutrix, at the relevant stage, thus was not a minor, but was a major and therefore held the legal capacity to mete consent, as became purveyed by her, to the accused to subject her to sexual intercourse(s), if any.

6. Added vigor to the above made conclusion, hence becomes derived, from the factum, that in a statement made under Section 164 Cr.P.C., before the learned Magistrate concerned, and which statement was made in prompt sequel, to the ill fated event taking place, the prosecutrix revealing therein, that the date of birth, is contra to the one, as revealed in Exhibit P-28.

7. Therefore, also when the above statement of the prosecutrix remained unrebutted by her parents, as such, it is to be concluded that the parents of the prosecutrix, acquiesced to the factum of the form, which became the basis of an entry being made in the date of birth of the prosecutrix in the register besides issuance of birth certificate, thus was not made at their instance, but was made at the instance of some one else.

opinion that the appeal directed against the above verdict of acquittal, does not merit any interference, and, is hereby dismissed.

8. However, before parting it is extremely shocking to the judicial conscience of this Court, that despite the prosecutrix entering into a legal wedlock, with the accused, yet the father of the prosecutrix, yet filing the instant appeal, thus challenging the verdict of acquittal, as made by the learned trial Judge concerned. The above is clear attempt to scuttle the marriage of his daughter with the accused, and, as such obviously the said is ridden with mala fides, and, cannot be accepted by this Court.

9. In sequel, the instant appeal is dismissed with costs of Rs.50,000/- being imposed upon the appellant herein-father of the prosecutrix. The said costs be forthwith disbursed to the daughter of the appellant, through his remitting the same in the savings bank account of his daughter.

10. Records be sent down forthwith.

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

17.05.2023

kavneet singh

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