

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

215

CRA-AS-26-2020 (O&M)
Date of order: 16.02.2024

Yogesh Sharma

.....Appellant(s)

Vs.

Vikas Maggu & Another

.....Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Gourav Goel, Advocate
for the appellant.

Nidhi Gupta, J.

CRM-4042-2020

This is an application under Section 5 of Limitation Act, 1963, seeking condonation of delay of 153 days in filing the present appeal.

After going through the contents of the application, which is supported by affidavit of the applicant, the same is allowed, subject to all just exceptions, and delay of 153 days is condoned in filing the present appeal.

MAIN CASE

Challenge in the present petition is to judgment dated 24.05.2019 passed by learned Additional Sessions Judge, Ludhiana, wherein respondent No.1 has been acquitted of the charges under Sections 363 and 366-A IPC in case FIR No.94 dated 30.05.2018 registered at Police Station Division No.3, Ludhiana.

2. Learned counsel for the appellant/complainant/father of the victim has tried to impress upon this Court that at the time of alleged commission of offence i.e. 29.05.2018, the victim/his daughter was a minor, and therefore, the learned trial Court was in patent error in acquitting the respondent No.1/accused.

3. Heard.

4. Perusal of the file brings to fore the following admitted facts on record: – On a direct Court query, as also perusal of the record reveals that it is admitted case that on the date of incident the victim was 17 years and 6 months old. She had gone with the accused/respondent No.1 of her own free will and volition. Thereafter, the victim and the accused/respondent No.1 have also solemnized marriage on 20.03.2019. It has been brought to the notice of this Court that now they have even divorced each other. The victim did not support the prosecution case inasmuch as she had testified that she had left the house on 29.05.2018 as she was beaten up and harassed by her parents; as also sexually harassed by her own brother, who was a drug addict; and the accused/respondent No.1 never enticed her away on the pretext of marriage; the victim was on friendly terms with the accused for the last one year prior to registration of the FIR; even as per the eye witness account (PW3)/cousin of the prosecutrix, the accused/respondent No.1 was seen along with the prosecutrix while coming on a three-wheeler on 29.05.2018 and it was not the case that the accused/respondent No.1 had forcibly taken the prosecutrix or had allured or enticed her away.

5. Learned counsel for the appellant has tried to impress upon this Court that under Section 90 IPC, any consent of the victim is immaterial.

6. In this regard I am in complete concurrence with the reasoning of the learned Court below as contained in Para 33 of the impugned judgment; and the same is as under:-

*“33. Ratio of authority relied upon by learned Counsel for complainant in **Atanu Kumar Sabu versus State of Orissa (Supra)** merely relates to plea that consent of minor who is taken or enticed away is immaterial. There is no dispute as to ratio of aforesaid judgment but prior to holding accused guilty, it is required to be appreciated that any attempt for 'taking' or 'enticing' away the prosecutrix has been made by him. The ratio of authority in **Lakhbir Singh alias Lucky versus State of Punjab (Supra)** relates to taking the prosecutrix by misrepresentation for solemnization of marriage under the garb of which sexual intercourse was committed by the accused. In that context, it was held that consent is given under misrepresentation by a minor would be of no avail. In **State of Gujarat versus Maheshbhai Ganpatbhai Rathod (Supra)**, there was sufficient evidence indicating that minor child below twelve years of age was taken out of custody of the guardian. But same is not factual position in the present case. P.W1 has herself narrated that she left her own house on account of beating being given by her family members. No reference of accused having given any assurance, allurement, threat, coercion, exercises of any undue influence over the volition of the prosecutrix has surfaced on record. Prosecutrix also refused to get herself medically examined”.*

7. At this stage, reference may also be made to the judgment of the Kerala High Court in **Anoop vs. State of Kerala and others 2022 SCC Online Ker 2982**, wherein in para 40 it has been held as follows :-

“40. Therefore, on a profound consideration of the ground realities, the definition of ‘Child’ under Section 2(d) of the POCSO Act can be redefined as 16 instead of 18. Any consensual sex after the age of 16 or bodily contact or allied acts can be excluded from the rigorous provisions of the POCSO Act and such sexual assault, if it is so defined can be tried under more liberal provision, which can be introduced in the Act itself and in order to distinguish the cases of teen age relationship after 16 years, from the cases of sexual assault on children below 16 years. The Act can be amended to the effect that the age of the offender ought not to be more than five years or so than the consensual victim girl of 16 years or more. So that the impressionable age of the victim girl cannot be taken advantage of by a person who is much older and crossed the age of presumable infatuation or innocence.”

8. This Court upon consideration of the complete facts and circumstances of the present case, is in consonance with the abovesaid view taken by the High Court of Kerala.

9. Learned counsel for the appellant is unable to dispute the above said factual and legal position.

10. **Dismissed.**

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

16.02.2024
Sunena

(Nidhi Gupta)
Judge

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