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IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

CRA-S-12-SB-2011

Reserved on: 23.09.2024

Pronounced on: 25.09.2024

Achhe Lal alias Akshay Lal

...Appellant

versus

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Jagmohan S. Ghumman, Advocate  
for the appellant.

Mr. Vikas Bharadwaj, AAG Haryana.

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HARPREET SINGH BRAR, J.

1. The present appeal is preferred against judgment of conviction and order of sentence dated 16.11.2010 passed by the learned Additional Sessions Judge, Yamunanagar at Jagadhari in the case stemming from FIR No. 684 dated 27.11.2009 registered under Sections 363, 365, 366, 376 of the Indian Penal Code, 1860 (hereinafter ‘IPC’) at Police Station City Yamnunanagar. The appellant was sentences as follows:

| Offence under     | Sentence                                                                                                                      |
|-------------------|-------------------------------------------------------------------------------------------------------------------------------|
| Section 363 IPC   | Rigorous imprisonment of seven years and a fine of Rs. 1,000/-, in default of which further simple imprisonment of one month. |
| Section 365 IPC   | Rigorous imprisonment of seven years and a fine of Rs. 1,000/-, in default of which further simple imprisonment of one month. |
| Section 366-A IPC | Rigorous imprisonment of seven years and a                                                                                    |

|                 |                                                                                                                               |
|-----------------|-------------------------------------------------------------------------------------------------------------------------------|
|                 | fine of Rs. 1,000/-, in default of which further simple imprisonment of one month.                                            |
| Section 376 IPC | Rigorous imprisonment of seven years and a fine of Rs. 1,000/-, in default of which further simple imprisonment of one month. |

**FACTUAL BACKGROUND**

2. Succinctly, the facts as alleged by the complainant are that on 23.11.2009, the prosecutrix, a 14-year old daughter of the complainant, did not return home from school. The complainant and his wife searched for her but could not find her, which caused them to move a missing report with the police on 25.11.2009. The appellant and his friends Mukesh and Sanjay were also not seen since the day, the prosecutrix went missing. Previously, the appellant had taken Nikku, (son of the complainant), to Bihar. It was suspected that the appellant has lured the prosecutrix to run away with him on the pretext of marriage.

3. On assessing all the material available on the record, the learned trial Court convicted the appellant vide impugned judgment dated 16.11.2010. Aggrieved by the same, the appellant has moved this Court in the present appeal.

**CONTENTIONS**

4. Learned counsel for the appellant *inter alia* contended that the learned trial Court has fallen into grave error by convicting the appellant as the prosecutrix left with the appellant of her own accord. The couple travelled to Bihar by train for three days but the prosecutrix did not raise any

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alarm in spite of being in a crowded public place. Moreover, prosecutrix was 16 years of age, which makes her consent valid. Neither a concrete documentary proof qua the age of the prosecutrix has been put forth by the prosecution nor was an ossification test conducted. There is also a delay of 2 days in moving a complaint before the police, which remains unexplained on part of the prosecution. Furthermore, the appellant was not even named in the DDR. Also, the appellant had taken Nikku, son of the complainant with him to Bihar, with the consent of his family.

5. He further submitted that the appellant was residing with the complainant party for the last four years. The appellant used to go to work with the complainant and handover his wages to him at the end of the day. In fact, the prosecutrix was married to the appellant at Yamunanagar in the year 2009, when the complainant could not return the money. Moreover, the wedding ceremony was conducted once again in the appellant's native village in Bihar, which was attended by the complainant party as well. When the appellant demanded his wages, the complainant falsely implicated the appellant in FIR(Supra). Learned Court below has ignored the certificate of marriage as well as the photographs and unjustly held the accused to be guilty.

6. Learned State counsel submitted that the prosecutrix was recovered on 01.12.2009 from the house of the appellant in Bihar. The learned trial Court has correctly appreciated the facts and the law in order to arrive at a guilty verdict. As such, the judgment of conviction does not

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warrant any interference by this Court. Moreover, the appellant has already undergone the entire sentence of seven years imposed upon him.

**OBSERVATIONS AND ANALYSIS**

7. Having heard the learned counsel for the parties and after perusing the record of the case, it transpires that the matter at hand pertains to the era when the age of consent was sixteen years of age. The alleged incident of kidnapping pertains to 23.11.2009 and the date of birth of the prosecutrix is claimed to be 01.05.1996. The prosecution has relied upon the school certificate in order to prove the minority of the prosecutrix, but the person, who prepared the said certificate, has not been examined. Moreover, while the school records reflect the date of birth to be so, it remains unproven if the birth certificate or any municipal records were examined without making the said entry in the school certificate. Admittedly, no ossification test was conducted either.

8. Moreover, the parents of the prosecutrix have given vague statements as to when she was born. The complainant has stated that the prosecutrix was born two and a half years of marriage, which was solemnized twenty years ago. In view of the same, it cannot be conclusively said that the prosecutrix was a minor at the time of the alleged incident, since it has not been proved that the entry in the school record was made after looking at a credible source of information, in terms of Section 94 of the Juvenile Justice Act (Care and Protection of Children), 2015 (hereinafter 'JJ Act, 2015'). Notably, the Juvenile Justice Act, 2015 replaced the Juvenile



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Justice (Care and Protection of Children) Act, 2000 (hereinafter ‘JJ Act, 2000’). However, the procedure for determining the age that falls under the purview of Section 94 of JJ Act, 2015, is *pari materia* to Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007, attached with JJ Act, 2000. As such the same can be invoked in order to prove minority of the prosecutrix in the present case as well. In that vein, a two Judge bench of the Hon’ble Supreme Court in ***P. Yuvaprakash vs. State rep. by Inspector of Police 2023 AIR SC 3525***. Speaking through Justice S. Ravindra Bhatt the following was observed:

*“12. In view of Section [34](#)(1) of the POCSO Act, Section [94](#) of the JJ Act, 2015 becomes relevant, and applicable. That provision is extracted below:*

*"94. Presumption and determination of age. –*

*(1) Where, it is obvious to the Committee or the Board, based on the appearance of the person brought before it under any of the provisions of this Act (other than for the purpose of giving evidence) that the said person is a child, the Committee or the Board shall record such observation stating the age of the child as nearly as may be and proceed with the inquiry under section [14](#) or section [36](#), as the case may be, without waiting for further confirmation of the age.*

*(2) In case, the Committee or the Board has reasonable grounds for doubt regarding whether the person brought before it is a child or not, the Committee or the Board, as the case may be, shall undertake the process of age determination, by seeking evidence by obtaining -*

*(i) the date of birth certificate from the school, or the matriculation or equivalent certificate from the concerned examination Board, if available; and in the absence thereof;*

*(ii) the birth certificate given by a corporation or a municipal authority or a panchayat;*

*(iii) and only in the absence of (i) and (ii) above, age shall be determined by an ossification test or any other latest medical age determination test conducted on the orders of the Committee or the Board:*



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*Provided such age determination test conducted on the order of the Committee or the Board shall be completed within fifteen days from the date of such order.*

*(3) The age recorded by the Committee or the Board to be the age of person so brought before it shall, for the purpose of this Act, be deemed to be the true age of that person."*

**13. It is evident from conjoint reading of the above provisions that wherever the dispute with respect to the age of a person arises in the context of her or him being a victim under the POCSO Act, the courts have to take recourse to the steps indicated in Section 94 of the JJ Act. The three documents in order of which the Juvenile Justice Act requires consideration is that the concerned court has to determine the age by considering the following documents:**

**"(i) the date of birth certificate from the school, or the matriculation or equivalent certificate from the concerned examination Board, if available; and in the absence thereof;**

**(ii) the birth certificate given by a corporation or a municipal authority or a panchayat;**

**(iii) and only in the absence of (i) and (ii) above, age shall be determined by an ossification test or any other latest medical age determination test conducted on the orders of the Committee or the Board".**

*14. Section 94(2)(iii) of the JJ Act clearly indicates that the date of birth certificate from the school or matriculation or equivalent certificate by the concerned examination board has to be firstly preferred in the absence of which the birth certificate issued by the Corporation or Municipal Authority or Panchayat and it is only thereafter in the absence of these such documents the age is to be determined through "an ossification test" or "any other latest medical age determination test" conducted on the orders of the concerned authority, i.e. Committee or Board or Court. In the present case, concededly, only a transfer certificate and not the date of birth certificate or matriculation or equivalent certificate was considered. Ex. C1, i.e., the school transfer certificate showed the date of birth of the victim as 11.07.1997. Significantly, the transfer certificate was produced not by the prosecution but instead by the court summoned witness, i.e., CW-1. The burden is always upon the prosecution to establish what it alleges; therefore, the prosecution could not have been fallen back upon a document which it had never relied upon. Furthermore, DW-3, the concerned Revenue Official (Deputy Tahsildar) had stated on oath that the records for the year 1997 in respect to the births and deaths were missing. **Since it did not answer to the description of any class of documents mentioned in***



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**Section 94(2)(i) as it was a mere transfer certificate, Ex C-1 could not have been relied upon to hold that M was below 18 years at the time of commission of the offence.** (emphasis added)

Reliance in this regard can also be placed on the judgment rendered by a Division Bench of this Court in ***Terry Saroya vs. State of Punjab and another 2023 (4) R.C.R. (Criminal) 176.***

9. Further, there is an inordinate delay of two day in moving the complaint regarding prosecutrix being missing. Delay in setting the law into motion by lodging a complaint and registration of FIR is normally viewed by the courts with suspicion as it undermines the integrity of the cause of action. Hence, it becomes imperative to satisfactorily and cogently explain the delay. In the case at hand, however, no explanation has been put forth by the prosecution to justify the delay. Here, it would be worthwhile to refer to the judgment of the Hon'ble Supreme Court in ***Thulia Kali vs. State of Tamil Nadu (1972) 3 SCC 393***, wherein a two Judge Bench, speaking through Justice H.R. Khanna, observed as follows:

*“12. The object of insisting upon prompt lodging of the report to the police in respect of commission of an offence is to obtain early information regarding the circumstances in which the crime was committed, the names of the actual culprits and the part played by them as well as the names of eyewitnesses present at the scene of occurrence. Delay in lodging the first information report quite often results in embellishment which is a creature of afterthought. On account of delay, the report not only gets bereft of the advantage of spontaneity, danger creeps in of the introduction of coloured version, exaggerated account or concocted story as a result of deliberation and consultation. It is, therefore, essential that the delay in the lodging of the first information report should be satisfactorily explained...”*

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10. Further still, there are material contradictions in the testimonies of the prosecution witnesses. PW4-Shiv Parshad had stated that the appellant called his wife to inform her that he took the prosecutrix with him from her school. However, PW5- Rita Devi, wife of the complainant deposed that she called the appellant to enquire about the whereabouts of her daughter. Moreover, PW8- Nikku, brother of the prosecutrix stated that the appellant took him to Bihar on the pretext of his engagement. He returned to Yamunanagar with the brother of the appellant. He claimed that his sister, the prosecutrix, was kept by the appellant as he wanted to marry her. It is unfathomable how a brother would leave his own sister with someone who had allegedly abducted him. Such unnatural conduct on part of the brother of the prosecutrix casts serious doubts on the prosecution case.

11. The prosecutrix appeared as PW7 and stated that the appellant, who was presented to be a friend of her father, would come to her house often and tease her. She also alleged that the appellant raped her on 20.11.2009 and took her to his native village in Bihar on 23.11.2009. In spite of such grave allegations, the prosecutrix failed to inform anyone of the repeated incidents of teasing or the rape. She claimed that she went with the appellant to Bihar under threat as he had her brother in his custody. However, no complaint was moved by the complainant party to corroborate that Nikku was taken by the appellant without their information or consent. Furthermore, the complainant party has alleged that the appellant caused the

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prosecutrix to elope with him on the pretext of marriage. However, if the prosecutrix was being repeatedly sexually harassed by the appellant, it does not seem probable that she would run away with him in order to solemnize marriage. On her medical examination, it was found that she is 4-5 months pregnant. However, the circumstances indicate that the appellant and the prosecutrix were in a consensual relationship, therefore the factum of pregnancy does not assist the prosecution by any stretch of imagination. As such, this Court is of the considered opinion that the prosecution case fails to meet objective standards of reason. A two Judge bench of the Hon'ble Supreme Court in ***Tameezuddin @ Tammu vs. State of (NCT) of Delhi (2012) 15 SCC 566*** has held as follows:

*“7. It is true that in a case of rape the evidence of the prosecutrix must be given predominant consideration, but to hold that this evidence has to be accepted even if the story is improbable and belies logic, would be doing violence to the very principles which govern the appreciation of evidence in a criminal matter.*

12. It is settled law that an accused in a rape case can be convicted even on sole testimony of the prosecutrix. However, the same should be of sterling quality. A two Judge bench of the Hon'ble Supreme Court in ***Krishan Kumar Malik vs. State of Haryana 2011(3) R.C.R(Criminal) 539***, speaking through Justice Deepak Verma, made the following observations:

*“31. No doubt, it is true that to hold an accused guilty for commission of an offence of rape, the solitary evidence of prosecutrix is sufficient provided the same inspires confidence and appears to be absolutely trustworthy, unblemished and should be of sterling quality. But, in the case in hand, the evidence of the prosecutrix, showing several lacunae, have already been projected hereinabove, would go to show that her evidence does not fall in that category and cannot be relied*



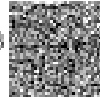
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*upon to hold the Appellant guilty of the said offences. Indeed there are several significant variations in material facts in her Section 164 statement, Section 161 statement (Criminal Procedure Code), FIR and deposition in Court.”*

Further, a two Judge bench of the Hon’ble Supreme Court in ***Rai Sandeep @ Deepu vs. State of NCT of Delhi (2012) 8 SCC 21***, speaking through Justice Fakkir Mohammed Ibrahim Kalifulla, opined as follows:

*“15. In our considered opinion, the 'sterling witness' should be of a very high quality and caliber whose version should, therefore, be unassailable. The Court considering the version of such witness should be in a position to accept it for its face value without any hesitation. To test the quality of such a witness, the status of the witness would be immaterial and what would be relevant is the truthfulness of the statement made by such a witness. What would be more relevant would be the consistency of the statement right from the starting point till the end, namely, at the time when the witness makes the initial statement and ultimately before the Court. It should be natural and consistent with the case of the prosecution qua the accused. There should not be any prevarication in the version of such a witness. The witness should be in a position to withstand the cross-examination of any length and howsoever strenuous it may be and under no circumstance should give room for any doubt as to the factum of the occurrence, the persons involved, as well as, the sequence of it. Such a version should have co-relation with each and everyone of other supporting material such as the recoveries made, the weapons used, the manner of offence committed, the scientific evidence and the expert opinion. The said version should consistently match with the version of every other witness. It can even be stated that it should be akin to the test applied in the case of circumstantial evidence where there should not be any missing link in the chain of circumstances to hold the accused guilty of the offence alleged against him. Only if the version of such a witness qualifies the above test as well as all other similar such tests to be applied, it can be held that such a witness can be called as a 'sterling witness' whose version can be accepted by the Court without any corroboration and based on which the guilty can be punished. To be more precise, the version of the said witness on the core spectrum of the crime should remain intact while all other attendant materials, namely, oral, documentary and material objects should match the said version in material particulars in order to enable the Court trying the offence to rely on*

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*the core version to sieve the other supporting materials for holding the offender guilty of the charge alleged.”*

**CONCLUSION**

13. In view of the discussion above, the present appeal is allowed and the appellant is acquitted of the charges framed against him. Pending miscellaneous application(s), if any, shall also stand disposed of.

14. Before parting with this judgment, this Court finds it necessary to take note of the protracted delay in this case as it is a matter of profound concern. The appellant being a poor labourer could not engage a private counsel due to lack of resources. The appeal was filed in 2010 through a legal aid counsel. The learned counsel for the appellant moved an application for suspension of sentence in 2012 but the same was dismissed vide order dated 29.11.2012. While the Registry was directed to list the appeal within 6 months, it is deeply troubling that no further action was taken. The High Court Legal Services Committee also failed to take appropriate steps to secure a hearing for the release of the appellant. The matter was finally listed out of turn, on a priority basis, since the appellant was still languishing in jail. His appeal is finally heard in 2024, after a lapse of 14 years, and has led to his acquittal, but tragically, by now, he has already served the entirety of his sentence. This delay has highlighted an unacceptable lapse in securing the ends of justice which has gravely undermined the appellant's personal liberty and has shocked the conscience of this Court. Let this matter be put

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up before Hon’ble the Chief Justice for appropriate administrative action, he  
may deem necessary, in similar cases.

25.09.2024  
*Ajay Goswami*

(HARPREET SINGH BRAR)  
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No