



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRA-S-2557-SB-2010 (O&M)
Reserved on: 18.10.2024
Pronounced on: 22.10.2024

Navtej Singh

...Appellant

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR JUSTICE HARPREET SINGH BRAR

Present: Mr. Gurfateh Singh Khosa, Advocate,
Mr. Animesh Sharma, Advocate and
Mr. Vishal Sharda, Advocate (*amicus curiae*)
for the appellant.

Mr. Rishabh Singla, AAG Punjab.

HARPREET SINGH BRAR, J.

1. Present appeal has been preferred against the judgment of conviction and order of sentence dated 31.08.2010 passed by learned Additional Sessions Judge, Patiala, in the case stemming from FIR No.196 dated 10.05.2009 under Sections 363, 366, 376 of the Indian Penal Code, 1860 (for short 'IPC'), registered at Police Station Sadar, Patiala, vide which the appellant was convicted and sentence to undergo rigorous imprisonment

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for a maximum period of 07 years under Sections 363, 366 & 376 of IPC and to pay total fine of Rs.3,000/- along with default mechanism.

FACTUAL BACKGROUND

2. Succinctly, the facts of the present case are that on 10.05.2009, complainant, namely, Hari Singh got his statement recorded to the effect that the victim, who was studying in 12th standard at the time of the occurrence, is his niece and resided with him. On 08.05.2009, the victim had gone to school but she did not come back home. Upon enquiring, the complainant found that the school bus driver i.e. the appellant-accused enticed the victim into eloping with him. On the basis of this statement, FIR (*supra*) was registered. The next day i.e. 11.05.2009, the appellant was arrested and the victim was recovered. The statement of the victim was recorded, on the basis of which offence punishable under Section 376 of IPC was added. The appellant and the victim were medico-legally examined. Upon completion of the investigation and all other necessary formalities, final report under Section 173 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') was presented against the appellant.

3. The appellant was charged with the offences punishable under Sections 363, 366 & 376 of IPC, to which he pleaded not guilty and claimed trial. In order to establish its case, the prosecution examined 07 witnesses. The statement of the appellant under Section 313 of Cr.P.C. was recorded,

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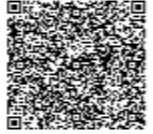


wherein he pleaded false implication and examined 04 witnesses in his defence. After assessing all the material available on record, learned trial Court passed a guilty verdict against the appellant and sentenced him in the abovementioned terms. Aggrieved by the same, the present appeal has been preferred by the appellant.

CONTENTIONS

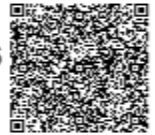
4. Learned counsel for the appellant, *inter alia*, contended that the learned trial Court has wrongly relied upon the document submitted by the prosecution to conclude that age of the victim was under 16 years. Only document brought on record by the prosecution was a photocopy of the birth certificate of the victim. A perusal of the certificate would also show that the name of the victim has nowhere been stated and name of the mother of the victim has also been wrongly mentioned. On the other hand, the appellant had successfully managed to prove the age of the victim as above 16 years. The defence, during course of the trial, duly examined Gurdip Singh (DW-1), Senior Assistant of Examination Branch, Punjab School Education Board, Mohali, who brought on record the gazette, result sheet and admission form of the victim. A review of all the aforementioned documents would clearly reveal date of birth of the victim as 12.08.1992. As such, the victim was capable of giving consent at the time of the alleged incident, being more than 16 years of age. Further, the complainant also mentioned age of the victim as

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more than 16 years in the complaint moved by him. Even at the time of conducting the medical examination of the victim, Dr. Daljit Kaur (PW-4) disclosed that the victim was above the age of 16 years. Once the majority of the victim is duly proved, the impugned judgment becomes completely unsustainable, as the entire defence of the appellant, which proved that the victim was involved in a consensual relationship with the appellant was not considered by learned trial Court. As such, learned trial Court has failed to appreciate the evidence available on record and erroneously delivered a judgment of conviction, which deserves to be set aside. Learned counsel place reliance on the judgments rendered by this Court in ***Rakesh Vs. State of Haryana, 2006(4) RCR (Criminal) 505, Devki Nandan Vs. State of Haryana and another, 2015(4) RCR (Criminal) 64, Sagar Kumar Vs. State of Haryana, 2011(1) RCR (Criminal) 620, Raj Kumar @ Raju Vs. State of Haryana, 2015(2) RCR (Criminal) 627, Naresh Kumar Vs. State of Haryana, 2009(1) RCR (Criminal) 775, Kapil Dev Vs. State of Haryana, 2015(2) RCR (Criminal) 660.***

5. Learned State counsel submitted that the impugned judgment of conviction and order of sentence have been passed by learned trial Court after duly appreciating the complete evidence on record, which establishes the guilt of the appellant beyond the shadow of reasonable doubt and therefore, the said impugned judgment of conviction does not warrant any



interference by this Court.

OBSERVATION AND ANALYSIS

6. Having heard learned counsel for the parties and after perusing the record of the case with their able assistance, it transpires that the narrative put forward by the prosecution is laden with ambiguity. To attract the offences alleged against the appellant, it is crucial that the victim is proven to be a minor, incapable of giving consent. In furtherance of the same, the prosecution placed on record a photocopy of the birth certificate of the victim issued by the Registrar of Births and Deaths, Patiala, which pointed to the victim being 15 years and 06 months old at the time of the alleged incident. However, production of mere photocopy of the birth certificate would not be sufficient to establish the age of the victim, even if the same has been duly notarized. Neither the original birth certificate has been produced before learned trial Court nor the prosecution has examined any witness from the concerned issuing authority. Therefore, the only evidence led by the prosecution to establish the age of the victim i.e. the photocopy of the birth certificate, which is in the nature of secondary evidence, has not been proved in terms of the judgment rendered by a Division Bench of this Court in *State of Haryana Vs. Amarjit Singh @ Nevi, 2023(3) RCR (Criminal) 814*. Further, a two Judge Bench of the Hon'ble Supreme Court in *Narbada Devi Gupta Vs. Birendra Kumar*

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Jaiswal and another, 2003 (8) SCC 745, speaking through Justice D.M. Dharmadhikari, held as follows:

"16....The legal position is not in dispute that mere production and marking of a document as exhibit by the court cannot be held to be a due proof of its contents. Its execution has to be proved by admissible evidence, that is, by the 'evidence of those persons who can vouchsafe for the truth of the facts in issue..."

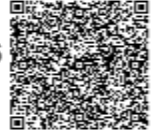
7. Pertinently, the complainant stated the age of the prosecutrix to be 16 and a half years, while reporting the alleged offence. The victim herself claimed to be 16 and a half years old at the time of her medico-legal examination and the same has been duly recorded in her MLR. Further still, the defence examined one Gurdeep Singh, Senior Assistant of Examination Branch, Punjab School Education Board, Mohali as DW1, who produced the Gazette, result sheet and the admission form of the victim. According to the said documents, date of birth of the victim is 12.08.1992, which indicates that she was 16 years and 8 months old at the time of the alleged offence, capable of consenting to the act. Curiously, learned trial Court observed that the said date of birth was orally recorded by Kabal Singh (now deceased) in the school records, without relying upon her birth certificate and the same has been carried forward in the PSEB records. However, it remains unclear as to how learned trial Court arrived at this conclusion. The PSEB records cannot be considered unreliable merely at the *ipse dixit* of the prosecution, in absence of any cogent evidence to corroborate its suggestion. As such, the

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prosecution has failed to establish the age of the victim beyond reasonable doubt. Since the age of consent at the time of the alleged incident was 16 years and the material available on record suggests that the victim was about 16 years and 8 months of age, this Court is of the considered opinion that she was capable of consenting to the alleged occurrence.

8. Admittedly, the victim travelled to Delhi from Patiala with the appellant by train and bus. However, it seems rather unnatural as to why she would not raise any alarm in spite of being in a crowded public set up for a prolonged period of time. Furthermore, the appellant himself brought the victim back to Patiala to meet her brothers. Surprisingly, in spite of the extensive travels, no independent witness was examined by the prosecution to support its case. To further strengthen his defence of a pre-existing consensual romantic relationship, the appellant brought on record several letters authored by the victim, which point towards a pre-existing romantic relationship between them. A perusal of these letters makes it clear that the victim wanted to marry the appellant and reside with him. They further reveal that it was the victim, who had insisted on eloping together. However, while appearing as PW1, the victim had deposed that she was forced to write those letters i.e. Ex. P-1 to Ex. P-5 by the appellant under threat and she did not write the letters presented as Mark P-6 to Mark P-10. However, subsequently, a handwriting analysis was conducted by DW4 Navdeep



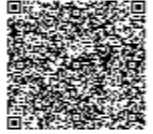
Gupta, Handwriting and Fingerprints Expert and it was proved that the said letters were in fact written by the victim. As such, in the facts and circumstances of the case, the explanation put forth by the victim does not inspire any confidence in this Court.

9. While it is settled law that the conviction in a case of sexual assault can be made solely on the testimony of the prosecutrix, however, such testimony must bear sterling character, which does not appear to be the case with respect to the matter at hand. A two Judge Bench of the Hon'ble Supreme Court in ***Krishan Kumar Malik Vs. State of Haryana, 2011(3) RCR (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 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.”

10. 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

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

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11. The absence of consent on the part of the woman is *sine qua non* to attract the offence of rape as defined under Section 375 of IPC. While Section 90 of IPC does not lay down all the necessary ingredients to constitute consent, it elucidates circumstances that would render consent irrelevant, for instance, when consent is given under misconception of fact, the incident cannot be deemed to be consensual. Valid consent necessarily requires due and active consideration of all the relevant circumstances, actions, and consequences that flow from the said act, before assenting. Whatever choice one makes, it must be reasoned and adopted after being alive to all the probable outcomes. While adjudicating a case, the factum of consent is to be inferred, after closely scrutinizing the surrounding and relevant circumstances.

12. From the discussion above, it cannot be pragmatically concluded that the element of the consent was missing. The material on record indicates that the victim was above the age of consent i.e. 16 years and she voluntarily eloped with the appellant, as they were in a romantic relationship. 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

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improbable and belies logic, would be doing violence to the very principles which govern the appreciation of evidence in a criminal matter.”

CONCLUSION

13. In view of the above discussion, this Court finds that learned counsel for the appellant has been successful in establishing his case. Hence, the present appeal is allowed and consequently, the impugned judgment of conviction and the order of sentence dated 31.08.2010 passed by learned Additional Sessions Judge, Patiala, are hereby set aside.
14. The appellant stands acquitted of the charges framed against him in the present case and his bail/surety bonds shall also be discharged.
15. All the pending miscellaneous application(s), if any, shall stand disposed of.
16. The High Court Legal Services Committee is directed to pay the remuneration to learned *Amicus Curiae* for rendering his valuable assistance to this Court, as per rules.

[HARPREET SINGH BRAR]
JUDGE

22.10.2024
vishnu

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