

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRA-S-85-SB-2013
Date of Decision: 30.04.2024

Gurpreet Singh alias Leelu
... Appellant

Vs.

State of Punjab
... Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Sumeet Puri, Advocate
for the appellant. (Through video conferencing)

Mr. Rishabh Singla, AAG Punjab.

HARPREET SINGH BRAR, J.

1. The present appeal is preferred against the judgment of conviction dated 12.12.2012 passed by the learned Sessions Judge, Sangrur in FIR No. 85 dated 02.06.2012 registered under Sections 363, 366 IPC at Police Station Sadar Dhuri. The appellant was sentenced as follows:

Offence under Section	Sentence
363 IPC	Rigorous imprisonment of 3 years and a fine of Rs. 3,000/-, in default of which further rigorous imprisonment of 3 months.
366 IPC	Rigorous imprisonment of 3 years and a fine of Rs. 3,000/-, in default of which further rigorous imprisonment of 3 months.
376 IPC	Rigorous imprisonment of 10 years and a fine of Rs. 10,000/-, in default of which further rigorous imprisonment of 6 months.

2. Succinctly, the facts are that on the night of 09.05.2012, the family

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of complainant- Gurcharan Singh, comprising of his wife and two daughters, were sleeping in their house. However, on the morning on 10.05.2012, the complainant found the prosecutrix to be missing. Since, he was suspicious about the relationship between the prosecutrix and the appellant, he visited his house but did not find him there. The complainant searched for the prosecutrix in vain till 02.06.2012. Considering that the appellant had also not returned to his house and believing that the he had allured the prosecutrix on the pretext of marriage, the complainant got the FIR (supra) registered against him. Thereafter, on 03.06.2012, the Investigating Officer, accompanied by his contingent, was patrolling the area of canal bank from Babnpur, when he spotted the appellant with the prosecutrix on the turning on village Issra. The appellant was arrested and identified by the complainant.

3. The appellant was charged with offences under Sections 458, 363, 366, 376, 506 IPC to which he pleaded not guilty and claimed trial. In order to establish its case, the prosecution examined 9 witnesses. The statement of the appellant under Section 313 Cr.P.C. was recorded wherein he pleaded false implication and examined 1 witness in his defence. After assessing all the material available on record, the learned Court below passed a guilty verdict against the appellant and sentenced him in the abovementioned terms. Aggrieved by the same, the present appeal was preferred in which the sentence of the appellant was suspended vide order dated 30.08.2016.

4. Learned counsel for the appellant, *inter alia*, contends that the appellant and the prosecutrix who was above the age of sixteen years on the date of alleged incident, were having an affair and she even made a statement

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before the learned Sessions Judge, Sangrur that she wanted to marry the appellant but the said fact remained unappreciated by the said Court. He further submits that a grave injustice has been meted out to the appellant by the learned trial Court as the prosecutrix was of consenting age which is clear from the statement of the complainant PW1, i.e., the father of the prosecutrix. Also, the certificate Ex.MO/1 taken into possession by the police for determining the age of the prosecutrix is a Detail Marks Card (DMC) of the prosecutrix and not her birth certificate. It is further contended that the FIR (supra) was registered under the pressure of the father of the prosecutrix but she herself never made any complaint before the police. He also contends that the complete case of the prosecution is riddled with material discrepancies and moreover, no independent witness has been examined to corroborate the allegations levelled against the appellant.

5. Learned State counsel contends that the impugned judgement has been passed by the 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 judgement of conviction does not warrant any interference by this Court.

6. I have heard the learned counsel for the parties and perused the paper-book with their able assistance. The fact that the prosecutrix was subjected to sexual intercourse by the appellant on the alleged date is not in dispute as the same has been duly established by the report of Chemical Examiner as well as the testimonies of the prosecutrix and the Medical Officer. Further, the prosecutrix was summoned by this Court and as recorded

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in the order passed by this Court on 12.07.2013, she categorically stated that she did not want to marry the appellant, nor at any point of time did she express her desire to marry him. Also, the medical officer PW3 who medico-legally examined the prosecutrix has given the age of the prosecutrix as 15 years. The aforesaid facts are in contravention to the contentions forwarded by the learned counsel for the appellant.

7. However, the entire case of the prosecution stands on the factum of age of the prosecutrix. It has been contended by the learned counsel for the appellant that the age of the prosecutrix was above the age of sixteen years and the sexual intercourse between them was consensual and thereby, no offence was committed by the appellant. Upon careful perusal of the material on record, it comes to the fore that the certificate Ex.MO/1 produced by the complainant PW1 before the police is a 5th Standard DMC of the prosecutrix. In his cross-examination, the complainant PW1 admitted that he was married in the year 1990 and the prosecutrix was born after 4-5 years of the said marriage. The complainant has further admitted that he was unable to produce the birth certificate of the prosecutrix before the police as the same had been deposited with her school. Interestingly, the concerned officer examined to corroborate the veracity of the said DMC is PW4, being the clerk in Block Primary Education Office, who has categorically admitted in her cross-examination that in the record brought by her before the learned trial Court did not contain the birth-certificate of the prosecutrix and that she could not say anything about the correctness of the date of birth of the prosecutrix. It is pertinent to mention here that the prosecutrix, while appearing as PW2, stated that she had accompanied



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the appellant out of her own free will and had consensual intercourse with him.

8. Pertinently, the Hon'ble Supreme Court has dealt with the issue of determination of age of the prosecutrix from school records in **Birad Mal Singhvi v. Anand Purohit(1988) Supp SCC 604**, wherein, it was observed that the date of birth in the register of a school would not have any evidentiary value without the testimony of the person making the entry or the person who gave the date of birth.

“14. ...The date of birth mentioned in the scholar's register has no evidentiary value unless the person who made the entry or who gave the date of birth is examined. The entry contained in the admission form or in the scholar's register must be shown to be made on the basis of information given by the parents or a person having special knowledge about the date of birth of the person concerned. If the entry in the scholar's register regarding date of birth is made on the basis of information given by parents, the entry would have evidentiary value but if it is given by a stranger or by someone else who had no special means of knowledge of the date of birth, such an entry will have no evidentiary value.”

9. In the case at hand, the prosecution relied upon the 5th Standard DMC of the prosecutrix to establish her age. However, the same cannot be reasonably considered to be sufficient to conclude that the prosecutrix was less than sixteen years of age at the time of the alleged offence, especially when contradictory evidence were available before the learned trial Court. Moreover, bone ossification test for determination of the age of the prosecutrix was not conducted as well. This Court is of the considered view that convicting the appellant without duly establishing the age of the prosecutrix, as per procedure established by law, amounts to a violation of his right to free and fair trial under Article 21 of the Constitution of India, particularly when the age of the



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prosecutrix was such a crucial factor in the case.

10. Recently, a two Judge Bench of the Hon'ble Supreme Court in ***P. Yuvaprakash vs. State rep. by Inspector of Police 2023 SCC Online SC 846***, has held that whenever a dispute with regard to the age of a person arises in the context of her or him being a victim under the Protection of Children from Sexual Offences Act, 2012 (hereinafter 'POCSO Act'), the Courts must take recourse to the steps indicated under Section 94 of the Juvenile Justice Act, 2015. It was also declared that the transfer certificate indicating date of birth of the victim is not a credible source to conclude that the prosecutrix was a child under the provisions of Section 2 (1) (d) of the POCSO Act. The above conclusion was made on the basis of the fact that the witness who produced the transfer certificate conceded that she has no knowledge about the document on the basis of which the date of birth was recorded. In the case at hand, since the prosecution has failed to establish the age of the prosecutrix as below 16 years on the date of incident, in accordance with the procedure laid down by a Division Bench of this Court in ***State of Haryana vs. Amarjit Singh @ Nevi 2023(3) R.C.R(Criminal) 814***, the finding of the learned trial Court that the consent of the prosecutrix was irrelevant for the reason of age, does not find favour with this Court.

11. 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 dated 12.12.2012 passed by the learned Sessions Judge, Sangrur, is hereby set aside.

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12. The appellant stands acquitted of the charges framed against him in the present case and his bail bonds and surety bonds also stand discharged.
13. Pending miscellaneous application(s), if any, shall also stand disposed of accordingly.

April 30, 2024
manisha

(HARPREET SINGH BRAR)
JUDGE

- (i)

Whether speaking/reasoned

Yes/No
- (ii)

Whether reportable

Yes/No