

2024:PHHC:077082



IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

214

CRM-A-1656-MA-2016 (O&M)
Date of decision : 28.05.2024

State of Haryana ...Appellant

Versus

Raju ...Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Neeraj Poswal, AAG, Haryana.

None for the respondent.

MANISHA BATRA, J. (Oral)

1. CRM-28578-2016

The present application has been filed seeking condonation of delay of 70 days in filing the accompanying application for grannting leave to file appeal.

For the resons stated in the application, the same is allowed.
The delay of 70 days in filing the aforesaid application is hereby condoned.

2. CRM-A-1656-MA-2016

This is an application, filed by the applicant-State of Haryana under Section 378(3) of the Code of Criminal Procedure, seeking leave to appeal against the judgment dated 21.03.2015, passed by the Additioinal Sessions Judge, Rewari in case titled as *State vs. Raju*, arising out of FIR No. 67 dated 26.07.2015, registered under Sections 363 and 366-A of IPC at

Police Station Jatusana, Rewari, vide which, the respondent-accused had been acquitted of charges framed against him under Sections 363 and 366-A of IPC.

3. Brief facts of the case relevant for the purpose of disposal of this application are that the aforementioned FIR was registered on the basis of a written complaint lodged by the complainant (*name withheld*) alleging therein that the victim (*name withheld*), who was his minor daughter, had gone to a nearby shop on 23.07.2015 but did not come back. He raised suspicion that she had been enticed away by the respondent. After registration of FIR under Sections 363 and 366-A of IPC, investigation proceedings were initiated. The victim was recovered from the custody of the accused on 27.07.2015. Her statements under Sections 161 and 164 of Cr.P.C. were recorded. She refused to get her medical examination conducted. The accused was also arrested. He suffered disclosure statement on interrogation admitting his involvement in the subject crime. After completion of usual formalities of investigation, *challan* under Section 173 of Cr.P.C. was presented before the Court.

4. On finding a *prima facie* case for commission of the offences punishable under Sections 363 and 366-A of IPC, the accused was charge-sheeted accordingly. He pleaded not guilty to the charges and claimed trial.

5. To substantiate its case, the prosecution examined 11 witnesses in all, besides placing reliance upon certain documents and thereafter, the evidence of prosecution was closed. Statement of accused under Section 313 of Cr.P.C. was recorded separately wherein he abjured his guilt and claimed himself to be innocent. However, no evidence in defence had been adduced by him.

6. On appraising the evidence produced on record and considering the contentions as raised by both the sides, the learned trial Court vide the impugned judgment dated 21.03.2016, acquitted the accused of the charges as framed against him by extending benefit of doubt to him and by holding that the victim was not proved to be a minor and it has also not proved beyond doubt that she had been enticed away by the respondent-accused.

7. Feeling aggrieved, the present application has been filed by the applicant-State seeking grant of leave to file an appeal against the aforesaid judgment of acquittal.

8. It has been argued by learned State counsel that the impugned judgment is liable to be set aside as the findings as given by learned trial Court are not sustainable in the eyes of law the same being based on conjectures and surmises. The learned trial Court did not apply its judicious mind. It committed a grave error by considering the victim as major on the basis of ossification test report though there was overwhelming evidence in the form of birth certificate of the victim duly proved by the headmaster of the school wherein the victim had studied. It was further argued that the evidence produced on record was sufficient to prove that the victim who was a minor girl below 16 years of age on the date of occurrence had been enticed away by the accused from the lawful custody of her guardians without their consent and had been kept by him along with for three days until she was recovered from his custody. Even if she was a consenting party, her consent was immaterial and, therefore, the testimonies of the complainant i.e. father of the victim as well as the victim were sufficient to prove the factum of commission of offence punishable under Section 363 of IPC by the respondent-accused but the learned trial Court did not appreciate

the evidence placed on record to this effect in a proper manner.

9. Another argument as raised by learned State counsel is that the provisions of Section 366-A of IPC were also squarely attracted in the case and were proved from the evidence produced on record and by acquitting the respondent-accused under that section also, the learned trial Court committed a grave error. With these broad submissions, it is argued that the impugned judgment is liable to be set aside, the application deserves to be allowed and the applicant-State deserves to be extended leave to file appeal and pursue the appeal as against the respondent.

10. I have heard learned counsel for the applicant at considerable length and have gone through the material placed on record including the trial Court record carefully.

11. Since challenge is to the judgment of acquittal of the trial Court, therefore, before proceeding further and adverting to the arguments raised by learned counsel for the parties, it would be useful to review the approach to be adopted while deciding the appeal against acquittal by the trial Court. In ***Chandrappa and others v. State of Karnataka : (2007) 4 SCC 415***, the Hon'ble Apex Court had observed that it could not be forgotten that in case of acquittal, there is a double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person should be presumed to be innocent unless he is proved to be guilty by a competent Court of Law. Secondly, the accused having secured an acquittal, the presumption of his innocence is certainly not weakened but reinforced, reaffirmed and strengthened by the trial Court. In ***Atley v. State of U.P. : AIR 1955 SC 807***, the approach of the Appellate Court while considering a judgment of

acquittal was discussed and it was observed that unless the Appellate Court comes to the conclusion that the judgment of acquittal was perverse, it should not set aside the same. In *Aher Raja Khima v. State of Saurashtra : AIR 1956 SC 217*, it was observed that for the High Court to take a different view on the evidence “there must also be substantial and compelling reasons for holding that the trial Court was wrong”. In *Ramesh Babulal Doshi v. State of Gujarat : 1996 SCC (Crl.) 972*, the Hon'ble Apex Court while speaking about the approach of the Appellate Court while considering an appeal against the order of acquittal of accused observed that while speaking in judgment over acquittal, the First Appellate Court is required to seek an answer to the question whether the findings of the trial Court are culpably wrong, manifestly erroneous and demonstrably unsustainable. If the Appellate Court answers the above questions in the negative, the order of acquittal should not be disturbed. In *Chandrappa's case* (Supra), the Apex Court after referring to a catena of judgments, culled out the following general principles regarding the powers of the Appellate Court while dealing with an appeal against an order of acquittal in the following words:-

- i) An Appellate Court has full power to review, reappraise and reconsider the evidence upon which the order of acquittal is founded.
- ii) The Code of Criminal Procedure puts no limitation, restriction or condition on exercise of such power and Appellate Court on the evidence before it may reach its own conclusion, both on questions of fact and law.
- iii) An Appellate Court, must bear in mind that in case of acquittal, there is double presumption in favour of the accused.

iv) If two reasonable conclusions are possible on the basis of the evidence on record, the Appellate Court should not disturb the finding of acquittal recorded by the trial Court.

12. In view of the above discussed position of law, it is to be seen as to whether the applicant-State of Haryana deserves to be granted leave to file and pursue the appeal against the judgment of acquittal passed by the trial Court.

13. The case as set up by the prosecution was that the victim, who was a minor girl below the age of 18 years, had been enticed away by the respondent and had been taken out of lawful guardianship of her parents on 23.07.2015 and was induced so that she could be forced to illicit intercourse with some other person. The trial Court observed that the prosecution had failed to prove that the victim was below the age of 18 years as on the date of occurrence i.e. 23.07.2015. For arriving at this conclusion, the trial Court had relied upon Ex. DA i.e. ossification report of the victim, wherein her age was reflected to be approximately 17-18 years. The trial Court had discarded Ex. PI (wrongly mentioned as Ex. P1), certificate issued by the Head Master of the school of the victim, depicting her date of birth as 06.07.1999. On careful scrutiny of the material placed on record, this Court is of the considered that the prosecution failed to produce any cogent and convincing evidence on record to prove that the victim was a minor, though the reasons for arriving at this conclusion are different from the reasons as given by the trial Court. To prove the age of the victim, the prosecution had relied upon the statement of PW-8 Bhim Singh, Head Master of the school, wherein the prosecutrix had studied from 02.04.2012 to 31.03.2015. This witness proved Ex. PI, a certificate issued by him on 27.07.2015 stating that in the school

record, the date of birth of the victim was mentioned as 06.07.1999. During cross examination, he stated that at the time of admitting the victim to the school, he had taken into possession the record of her passing 5th Class as she was firstly admitted in the school in primary wing and he did not possess the record when she was admitted in 1st Standard. As stated by him, the entry as to the date of birth of the victim was made and mentioned at Sr. No. 48 of the Admission & Withdrawal Register. It is clear from his statement that the date of birth of the victim was disclosed by him as 06.07.1999 as per entry made in the Admission & Withdrawal Register of the school.

14. Now the question that arises for consideration is as to whether the aforesaid entry can be considered for the purpose of arriving at a conclusion as to the age of the victim? In the context, it may be stated that the well settled position of law is that the entries made in the school register/school leaving register are required to be proved in accordance with law and the standard of proof required in such cases remains the same as in any other civil case. Reliance in this regard can be placed upon the observations made by Hon'ble Supreme Court in ***Madan Mohan Singh and others vs. Rajni Kant and another : (2010) 9 Supreme Court Cases 209***, wherein it was held that if a person wants to rely on a particular date of birth and wants to press a document in service, he has to prove its authenticity in terms of Section 32(5) or Sections 50, 51, 59, 60 & 61 of the Evidence Act, by examining the person having special means of knowledge, authenticity of date, time etc. mentioned therein. Reliance in this context can also be placed upon ***Alamelu and another vs. State represented by Inspector of Police : 2011 (2) SCC 85***, wherein the Hon'ble Supreme Court

had observed that the date of birth mentioned in the transfer certificate would have no evidentiary value unless the person, who made the entry or who gave the date of birth is examined. In that case, the Headmaster, who had issued the transfer certificate, had not been examined. It was observed that though the certificate was admissible in evidence under Section 35 of the Indian Evidence Act but the admissibility would not be of much evidentiary value to prove the age of the girl in the absence of the material on the basis of which the age was recorded and that the date of birth mentioned in the transfer certificate would have no evidentiary value unless the person, who made the entry or who gave the date of birth is examined.

15. PW-8, who issued certificate Ex. PI, was obviously not the person/official, who had made entries in the Admission & Withdrawal Register regarding date of birth of the victim. The mother of the victim had not been examined, though her father had been examined as PW-3 but he did not utter even a single word to the effect that the entry in the school record of the victim with regard to her age was got recorded by him. The entry in the Admission & Withdrawal Register of the school of the victim might have been made by some official in performance of his/her official duties but the question is with regard to probative value of this entry. It is also well settled proposition of law that entries made in the official record by an official authorized for performance of duties might be admissible under Section 35 of the Evidence Act but the Court has a right to examine their probative value. Reference in this regard can be made to the observations made by a Division Bench of this Court in ***Lokesh vs. State of Haryana : 2020(2) RCR (Criminal) 5***. Similar position of law was laid down in

Updesh Kumar and others vs. Prithvi Singh and others : (2001) 1 SCC 524 and State of Bihar vs. Radha Krishna Singh : AIR 1983 SC 684.

16. PW-8 did not say that the entry made in the school record was based on some date of birth certificate of the victim received from Registrar, Births and Deaths or from the Chowkidar of the village or the same was recorded by either of the parents of the victim. As such, in the considered opinion of this Court, the age of the victim could not have been determined on the basis of the Ex. PI and this document cannot be stated to be reliable enough to vouch the correctness of the date of birth of the victim. Though, with regard to ossification report Ex. DA also, no definite conclusion can be drawn as to the age of the victim because this report is also giving the approximate age of the victim to be between 17 to 18 years and this report was simply tendered in evidence by the respondent without examining the doctor(s) who prepared this report and, therefore, the same cannot be even considered to be duly proved in accordance with law. However, in view of the discussion as made above to the effect that the prosecution itself has not succeeded in discharging its duty to prove the probative value of Ex. PI, certificate regarding age of the victim, this Court finds no reason as to why the findings given by the trial Court that the victim was not proved to be below the age of 18 years should not be upheld.

17. The prosecution had also relied upon sworn deposition of the victim and her statement recorded under Section 164 of Cr.P.C. to claim that she had been induced/enticed away by the respondent on the pretext of performing marriage with him and with intent that she might be forced or seduced to illicit intercourse with other person. So far as the offence of kidnapping punishable under Section 363 of IPC is concerned, the essential

ingredients of this section are as follows:

- (i) that the age of the minor is less than 16 years if the minor is a male and less than 18 years if the minor is a female;
- (ii) that the minor was taken or enticed away;
- (iii) that the minor was in the keeping on his or her lawful guardian and
- (iv) that the guardian did not consent to his or her removal.

Since the very first ingredient of this section is that the person taken away, if female, must be less than 18 years of age and as the findings given by the trial Court to the effect that the victim is not proved to be less than 18 years of age as on the date of occurrence, therefore, this section obviously cannot be stated to be having any application. Therefore, the findings given by the trial Court that the respondent was not liable to be held guilty for commission of offence punishable under Section 363 of IPC warrant no interference.

18. Now coming to the charge framed against the respondent under Section 366-A of IPC. To establish charge under this section, the prosecution has to prove and establish that a minor girl under the age of 18 years was induced to go from one place to other with intention that such girl might be forced to have illicit intercourse with another person. Therefore, in such an offence, the chief ingredient is that a minor girl is made to go from one place to other with intention or knowledge that she might be forced to illicit intercourse. On a perusal of the testimony of the victim, who appeared as PW-2, it is revealed that though she stated that she had been taken away by the respondent by enticing and seducing her to other place but in what

manner and how she had been enticed had not been explained by her. It is also relevant to mention here that in her statement recorded under Section 164 of Cr.P.C., Ex. PC, she simply stated that in the morning of 22.07.2015, she along with the respondent left their village and had gone to Shinghpura and then to different villages and lastly they reached village Dahina, from where they were apprehended by the police. She did not utter even a single word to the effect that the respondent had either induced her or enticed her away to go along with him. At the cost of repetition, it may be stated that the victim is not proved to be below the age of 18 years. However, even if, she is considered to be so for the sake of argument, still the ingredients of her being induced by the respondent to go from one place to another and taking her away from the lawful custody of her parents, are missing in this case. Rather, her statement recorded under Section 164 of Cr.P.C. clearly reveals that she had voluntarily accompanied the respondent and it was not a case of enticement or inducement on his part to remove her from the lawful custody of her parents. The victim is not shown to have raised any hue and cry from the date when she had been allegedly taken away by the respondent till the date of her recovery. She is not shown to have made any complaint that any force was exerted upon her by the respondent to go along with him. More so, there is neither any allegation nor even an iota of evidence to prove that the victim was taken with the intention or knowledge that she would be forced or seduced to illicit intercourse with some other person. As such, the ingredients required for proving the commission of offence punishable under Section 366-A of IPC by the respondent were also certainly missing in this case and the trial Court, while observing so, had rightly held that the respondent was not liable to be held guilty for commission of offence under

this section as well.

19. In view of the discussion as made above, this Court finds that the applicant-State of Haryana has failed to establish any convincing reason for this Court to form an opinion that there was any manifest illegality, perversity or the gross miscarriage of justice in the impugned judgment passed by the trial Court, thereby acquitting the respondent from charges framed against him, for which, the interference of this Court is warranted by way of granting leave to file appeal against the same. Accordingly, the application, seeking leave to appeal, is hereby dismissed.

28.05.2024
Waseem Ansari

(MANISHA BATRA)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No