

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

251

CRM-A-1580-MA-2017(O&M)
Date of order: 15.03.2024

Rajpal

.....Applicant(s)

Vs.

State of Haryana & Another

.....Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Jarnail S. Saneta, Advocate
for the applicant.

Mr. Aditya Pal Singla, AAG Haryana.

Nidhi Gupta, J.

This is an application under Section 378(4) Cr.P.C. seeking grant of leave to file appeal against impugned judgment dated 24.04.2017 passed by learned Additional Sessions Judge-cum-Special Court for the cases of Heinous Crime Against Women, Karnal, vide which accused/respondent No.2 has been acquitted of the charges levelled against him in case FIR No.711 dated 28.09.2015 registered under Sections 363 and 366-A IPC at P.S. Sadar, Karnal.

2. Brief facts of the case as set out by the complainant/applicant herein are that the applicant had given a complaint to the police with the facts that he was blessed with 2 sons and 2 daughters. He has been working in the Treasury at Karnal. His daughter/victim was born on 24.11.1998 and was a student of 12th Class in Government School Nilokheri. On 28.09.2015 at about 11.00 a.m. his daughter left home without telling the family. Further, that the complainant had a suspicion that Chand son of Bhagwan has enticed away his daughter to solemnize marriage. Said Chand was residing with his maternal uncle Suresh at the village of complainant since 3 years. He had disclosed the phone number 73572-36302 belonging to Chand. He had

further mentioned that one Rajiv, a friend of Chand knows the whereabouts of Chand. On the basis of this complaint, above said FIR under sections 363/366A IPC was registered. During investigation, the victim returned to her home on 29.09.2015 at about 10.00 a.m. She was produced in the police station by her father. The prosecutrix was subjected to counseling and her statement under section 164 Cr.P.C. was recorded before Ld. Magistrate. In the statement, she had stated that she herself slipped away along with Chand and that they had stayed in a Temple near a bus stand overnight. When she came to know that her family members are searching, she returned home and expressed her willingness to accompany her parents who had undertaken to get her marriage solemnized with Chand on attaining majority. She refused for medico legal examination. As per directions of the Court, the custody of victim was entrusted to Nari Niketan Karnal and respondent No.2 was arrested. Her date of birth certificate showing her date of birth as 24.11.1997 was taken into possession by the police.

3. Learned counsel for the applicant inter alia submits that the applicant before this court is the complainant/father of the victim, on whose statement present complaint was registered. It is submitted that the learned court below framed two issues in the matter which are at page 26 of the paper book and the same are reproduced hereinbelow:-

“1. What was the age of the victim as on 28.9.2015, when she had been allegedly kidnapped by the accused?

2. Whether the accused had enticed the victim away from the lawful custody of her guardian on 28.9.2015 with an intention to seduce her for marriage or for establishing physical relations etc?”

4. It is submitted that on the basis of evidence adduced before it, learned Special Court returned the finding that the victim was a minor at the time of incident. Admittedly, date of birth of the victim is 24.11.1997 and date of incident is 28.09.2015. Hence, the victim was 17

years and 10 months old at that time i.e. two months short of attaining majority.

5. It is submitted that however, despite finding that the victim was minor at the time of incident, in respect of the second issue the learned Special Court has acquitted respondent No.2. Learned counsel further contends that the said acquittal is prima facie unsustainable as the victim who appeared as PW1 has supported the prosecution case. Even the complainant/applicant had appeared as PW2 and had corroborated the version of the complaint. It is argued that in view of the categorical evidence led by both the complainant and the victim, the learned trial Court could not have acquitted respondent No.2. In support, learned counsel relies upon judgments of this Court in **“Sunil Kumar Vs. State of Haryana” law Finder doc ID # 145235**; and **“Dinesh Vs. State of Haryana” Law Finder Doc ID # 208883**, wherein it has been held as under:-

“Indian Penal Code, 1860, Sections 366 and 376 - Kidnapping and rape with consent - Accused acquitted - Prosecutrix was 16 years, 10 months and 27 days on date of occurrence - Testimony of prosecutrix reveal that she had herself left house and had met accused in Bazar - From there she accompanied accused in auto-rickshaw to bus stand where tickets were purchased - She herself boarded the bus - There was police post at bus stand and number of persons were also roaming at bus stand - Prosecutrix had not made complaint to anybody - She remained in house of accused for three days - From conduct of prosecutrix it can be safely concluded that she herself had accompanied appellant and she had consented for sexual intercourse - No offence under Section 376 made out - However prosecutrix was less than 18 years of age - She was taken away from lawful custody of her parents - Therefore offence under Sections 363 and 366 Indian Penal Code made out - Conviction and sentence under Section 376 set aside however conviction and sentence under Sections 363 and 366 maintained.”

6. No other argument is made on behalf of the petitioner.
7. I have heard learned counsel for the petitioner and perused the case file in detail.
8. Perusal of record of the case shows that no doubt, the victim in her testimony as PW1 has supported the prosecution case. However, prior to that, in her statement under section 164 Cr.P.C. (Ex.P2), the victim has stated before the learned Magistrate that she wanted to marry respondent No.2 after attaining majority as she was in love with him. It is also undisputed that after the said statement of the victim, the complainant/applicant had refused to accept custody of the victim. This is evident from his statement (Ex.DA); whereafter, the victim had even opted that she should be sent to Nari Niketan, Karnal. Thus, it is only in her testimony as PW1, that she has resiled from her earlier statements and testified that respondent No.2 had kidnapped her and raped her.
9. In this regard relevant findings as contained in the impugned judgment are reproduced hereinbelow:-

“21. It is also not disputed that in the instant case immediately after the recovery of the victim, her statement under Section 164 Cr.P.C (Ex.P2) was also got recorded by the Investigating Officer and in the said statement also, she had stated before the Ld. Magistrate on 30.9.2015 that she had slipped away alongwith the accused on 28.9.2015 at her own, had visited him in a temple situated near the bus stand, Karnal and after staying with him for one day, he returned back to her home. She further stated before learned Magistrate that she wanted to solemnize the marriage with Chand on attaining the age of majority. Her aforesaid statement suggests to the Court that she had been in love alongwith the accused and that is why, she had slipped away from her house alongwith him after she had returned to her home on 28.9.2015 after collecting the roll number for 12th class examination”.

10. Even further, the victim in her cross-examination has admitted that she had given the statement (Ex.P2) before the learned Illaqa Magistrate without any fear or pressure from respondent No.2; and has further admitted that respondent No.2 was not having any weapon at the time when she was with him, meaning thereby, that she was not coerced in any manner by the respondent no.2. She has also admitted her signatures on the application (Ex.P6 at Mark-A) vide which she had refused to undergo medico-legal examination. These facts have been noticed in Para 24 of the impugned judgment, and have not been controverted by learned counsel for the applicant.

11. It has also come on record that there are major discrepancies in the prosecution case as it has been recorded in the impugned order as under:-

“26. Her testimony recorded on oath during the trial suggests to the Court that that she was abducted by the accused on 28.9.2015 when she had been on her way back to her home from the school, whereas, her father 'RP' (PW2) has stated that after collecting her roll number, the victim had returned to her house and it was thereafter at about 11.00 AM that she left the house again without telling anything to anybody. As such, the testimony of the victim that the accused had put the handkerchief on her mouth on her way back to the home from the school, due to which she had gone unconscious and thereafter, she was taken away in a car by the accused alongwith two other boys, gets contradicted.”

12. However, it is to be noted that that prior to recording her testimony as PW1 on 21.9.2016, the victim was married to someone else on 25.11.2015. Thus, it is only thereafter while deposing as PW1 on 21.09.2016 that the victim made improvements in her earlier version of events. From the above said facts, it is the clear opinion of this Court that offence against the respondent no.2 is not made out beyond reasonable doubt.

13. Further, the aforesaid judgments relied upon by learned counsel for the applicant are distinguishable on facts being different from the facts and circumstances of the present case as, in the relied upon cases, there were allegations under Section 376, 363 and 366 IPC.

14. Learned counsel for the applicant is unable to controvert the above said findings of the learned trial Court.

15. At this stage reference may be made to judgment of Madras High Court in **“Sabari @ Sabarinathan @ Sabarivasan Vs. Inspector of Police & Others” 2019 SCC OnLine Mad 18850: Law Finder doc Id # 1443121**, wherein it has been held that: -

“A. Indian Penal Code, 1860 Section 363 Protection of Children from Sexual Offences Act, 2012 Sections 5 and 6 Sexual assault - Conviction - Accused alleged to have kidnapped prosecutrix and committed sexual assault on her - Prosecutrix herself turned hostile and did not support case of prosecution - Nothing could be elicited from her even remotely in order to implicate accused with offences he was charged with - Evidence of grandparents and parents of prosecutrix does not unequivocally point to guilt of accused, since there was no direct evidence given by any of them as having seen accused and victim girl together - Girl having accepted that she knew accused being student of same school and she had no other relation with him - It was only case of presumption on part of relatives of victim girl that accused could have kidnapped her and could have committed sexual assault on her - Accused acquitted.

E. Protection of Children from Sexual Offences Act, 2012 Sections 43 and 44 Public awareness - Court expressed its concern about growing incidence of offences under POCSO Act and also rigorous imprisonment envisaged under Act - Some times such offences are slapped against teenagers - Act itself provide for wide publicity to its provisions to spread awareness

among people about scope, import and object and ramification on its implementation - Spreading of awareness is to curb abominable menace of POCSO offences and also warn potential offenders that in case, they run afoul of Legislation they would face minimum of seven or ten years Rigorous Imprisonment - It is legally and socially imperative to ensure that awareness programmes reached people of State across Board in order to achieve ultimate aim of Society to be free from such crimes in future.

F. Protection of Children from Sexual Offences Act, 2012 Section 2(d) Child - Redefining - When girl below 18 years is involved in relationship with teen age boy or little over teen age it is always question mark as to how such relationship could be defined - Such relationship cannot be construed as unnatural one or alien to between relationship of opposite sexes - Where age of girl is below 18 years, even though she was capable of giving consent for relationship, being mentally matured, unfortunately, provisions of POCSO Act get attracted if such relationship transcends beyond platonic limits - On profound consideration of ground realities definition of Child in POCSO Act can be redefined as 16 instead of 18 - Any consensual sex after age of 16 or bodily contact or allied acts can be excluded from rigorous provisions of POCSO Act and such sexual assault, if it is so defined can be tried under more liberal provision - Respondents directed to take issue forward as they deem fit, as expeditiously as possible."

16. In view of the above, I find no merit in the present application and the same is accordingly **dismissed**.
17. Pending application(s) if any also stand(s) disposed of.

15.03.2024

Sunena

Whether speaking/reasoned

Whether reportable

(Nidhi Gupta)

Judge

Yes/No

Yes/No