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IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-A-440-MA-2016

Date of Decision: 20.05.2024

State of Haryana

...Applicant

Versus

Jaimal

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRARPresent: Ms. Geeta Sharma, DAG Haryana
for the applicant.Ms. Monika Khatri, Advocate for
Mr. Vivek Khatri, Advocate
for the respondent.

Harpreet Singh Brar, J. (Oral)

1. The present application is preferred under Section 378(3) of the Cr.P.C. against the judgment of acquittal dated 17.08.2015 passed by learned Additional Sessions Judge – cum – Special Court for Heinous Crimes Against Women, Hisar, in the case stemming from FIR, bearing No. 184, dated 05.05.2013 under Section 346 of IPC and Section 8 of Protection of Children from Sexual Offences Act, 2012 (hereinafter 'POCSO Act' for brevity), registered at Police Station Barwala, District Hisar.

2. Briefly, the facts are that on 5th May 2013, the complainant lodged a complaint to the effect that his daughter went missing from the house on the night of 03.05.2013. He further detailed that Rs. 15,000/- were also missing. He had searched for his daughter, but to no avail. He suspected that the respondent-accused had enticed her away. During investigation, prosecutrix was recovered on 28.06.2013 and her statement was recorded before Judicial Magistrate 1st Class under Section 164 of Code of Criminal Procedure, wherein she submitted that on

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ship with the respondent. She further claimed that she telephonically called the respondent and persuaded him to elope with her. Therefore, the respondent took her to Delhi, where they performed a Court marriage in Tees Hazari followed by a wedding in a temple on 15.05.2013. She claimed that her age is seventeen years and nine months. After her statement was recorded, she was sent to Nari Niketan Karnal, as per order of the Magistrate.

3. Having heard the learned counsel for the parties and after perusing the record of the case with their able assistance, it transpires that during the trial proceedings, Mr. Subhash Garg, Head Master, Government Girl High School, Rajali, who was examined as PW3, produced a school certificate (Ex. P9), in order to prove the age of the victim. However, during cross-examination, he admitted that the victim was not admitted in the first standard of their school rather, she was admitted in the ninth standard relying on the basis of previous school record. He also stated that he cannot say whether the date of birth of the victim mentioned in the said certificate is correct or not. It is settled law that the probative value of school records would depend upon the source of information at the time of first admission of the child in school. Nothing has been brought forth by the prosecution to show what was the source of information at the time of making of entry in the school record. The Juvenile Justice (Care and Protection of Children) Rules, 2007 give a place of primacy to the matriculation certificate over the other proofs of date of birth, however, that provision has been replaced by the Act of 2015. Section 94 of the Act of 2015 governs the procedure for determination of age, according to which, date of birth certificate from the school or the matriculation or equivalent certificate from the concerned examination board is given primacy and in

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Authority or a Panchayat is to be considered. The Hon'ble Supreme Court in the judgment passed *in P. Yuvaprakash Vs. State rep. by Inspector of Police AIR 2023 SC 3525* has held that transfer certificate and extracts of admission register are not what Section 94 (2) (i) of the Act of 2015 mandates nor are they in accordance with the same. Resultantly, the prosecution has not been able to conclusively establish that the date of birth of the victim as mentioned in the school record is accurate.

4. Furthermore, the statement of the victim recorded under Section 164 of Cr.P.C. portrays that she was turned out her house. Moreover, the nature of the relationship between the victim and the respondent was consensual and the victim wanted to elope with the respondent. Later, when she appeared into the witness box as PW4, she completely changed her version by imposing that she was taken away by the respondent after she was administered some intoxicant. This account is riddled with inconsistencies and contradictions. She further deposed that the respondent threatened to kill her father and brother and under apprehension for their lives she signed blank papers. However, the respondent has adduced sufficient material to substantiate that the victim willingly married him. Both the defence witnesses have corroborated this fact. The marriage certificate, which bears the photographs and the signatures of the victim, has been categorically admitted by her. Ex. D2 clearly shows that the marriage was registered. At the time of solemnisation of marriage, the victim furnished an affidavit (Ex. D4) wherein she mentioned her date of birth as 02.10.1994. Lastly, application for the registration of marriage (Ex. D6) moved by the victim and the respondent also mentions her date of birth as 02.10.1994.

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5. The power of the Appellate Court to unsettle the order of acquittal on the basis of re-appreciation of the evidence is subject to the settled law that where two views are possible and out of the two, one points towards the innocence of the accused, the view which favours the accused should prevail over the other pointing towards his guilt. Furthermore, the trial Court has the additional advantage of closely observing the prosecution witnesses and their demeanour, while deciding about the reliability of the version of prosecution witnesses. (See **H.D. Sundara and others Vs. State of Karnataka, Criminal Appeal No.247 of 2011 decided on 26.09.2023; Kali Ram v. State of H.P., 1973 (2) SCC 808 and Chandrappa and others v. State of Karnataka, (2007) 4 SCC 415**). A Division bench of this Court in the judgment passed in **State of Haryana Vs. Ankit and others** passed CRM-A No.3 of 2022 decided on 06.07.2023 has held that presumption of innocence further gets entrenched on the acquittal of accused by the trial Court.
6. In view of the facts and circumstances of the case, this Court finds that learned State counsel has failed to point out any perversity or illegality in findings recorded by the learned trial Court which warrants interference by this Court. As such, there is no merit in the present application and hence, the leave to appeal is denied.
7. Pending miscellaneous application(s), if any, shall also stand disposed of.

(HARPREET SINGH BRAR)

JUDGE

20.05.2024

Ajay Goswami

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No