



CRM-A-808-MA-20161

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-A-808-MA-2016 (O&M)
Decided On: 12.12.2024

RUBI KUMARI THROUGH HER MOTHER PUNITA DEVI

...Applicant-Appellant

Versus

STATE OF PUNJAB AND ANOTHER

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Kashish Garg, Advocate
for the applicant-appellant

Mr. Subhash Godara, Addl. AG, Punjab

HARPREET SINGH BRAR, J. (ORAL)

1. This instant application under Section 378(4) read with Section 482 Cr.P.C. is being preferred against the judgement and order of conviction dated 03.02.2016 passed by learned Additional Sessions Judge, Bathinda whereby respondent no.2 has been convicted and sentenced for the offences punishable under Sections 458 and 354 of IPC but acquitted him from the charges framed for the commission of offence punishable under Section 8 of Protection of Children from Sexual Offences Act, 2012.
2. The facts, in brief, as alleged by the applicant-complainant are that she suffered a statement before the concerned police to the effect that she was 17 years of age and was working as a sweeper. On 20.06.2015, at about 10.00 PM when she had gone to her neighbours house for sleeping then respondent no.2-accused entered into her room at about 1.00 AM at night, after scaling the wall of the house. The said accused tried to sit her straight but she raised an alarm. Due to this, the accused put his hand on her mouth and threatened to give electric shocks

to her in case she did not lower her voice. But the accused escaped by jumping through the window. The victim/applicant immediately ran outside into the courtyard and raised hue and cry. Consequently, her maternal aunt (*mami*) woke up and some of the neighbours also started to gather. On the basis of the statement made by the victim, an FIR bearing No.54 dated 27.06.2015 was registered under Sections 458, 354 of IPC and Section 8 of POCSO Act at Police Station- Cantt., Bathinda. The place of occurrence was inspected by the police and a site plan was prepared. Statements of witnesses were also recorded. The accused-respondent no.2 was arrested and he was subjected to a medical examination. On 02.07.2015, statement of the victim/applicant was recorded under Section 164 Cr.P.C. Upon completion of the investigation by the police, a final report under Section 173 Cr.P.C. was presented against the accused. The case was committed to the Court of Sessions for trial. Upon finding a prima facie case, charges under Sections 458 and 354 of IPC and Section 8 of POCSO Act were framed against the accused, to which he pleaded not guilty and claimed trial. Ultimately, the trial Court proceeded to convict the accused under Sections 354, 458 of IPC and sentenced him to undergo rigorous imprisonment for one year but acquitted him of the charges framed under Section 8 POCSO Act. Feeling distressed, the victim-complainant has approached this Court by way of the present application/appeal.

3. I have heard the learned counsel for the parties and carefully perused the record with their able assistance. It is pertinent to note at the outset that the prosecution has failed to prove date of birth of the applicant/victim and therefore the accused-respondent no.2 cannot be held liable for commission of offence punishable under Section 8 of POCSO Act, 2012. It has been deposed by the mother of the victim when she was examined as PW-3 that the victim was born in the State of Punjab and her birth was never registered in the State of Bihar.

Further, the date of birth of the victim was not registered with the chowkidar of

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the village. Although School Certificate of the victim has been proved by PW-4 Buggar Singh, Head Teacher (PW-4) as Ex.PW3/A and he has also deposed that the date of birth of the victim is 22.10.1998 but in his cross-examination, he has categorically stated that no document regarding her date of birth was taken into possession at the time of her admission. Moreover, no affidavit of any parent or guardian was taken at the time of admission in the school. The school certificate (Ex.PW3/A) produced before the Court is not supported by any birth certificate of the victim. When no conclusive evidence was available before the learned trial Court to establish the correct age of the victim, it was incumbent upon the prosecution to conduct an ossification test of the victim which was not done. Further, it is a settled law that any document presented in order to establish the age of the prosecutrix must be proved in accordance with the law laid down, as also observed in the judgement rendered by a Division Bench of this Court in ***State of Haryana Vs. Amarjit Singh @ Nevi, 2023(3) R.C.R (Criminal) 814***. In light of the aforesaid facts, this Court finds itself standing firmly with the observation recorded by the learned trial Court.

4. Furthermore, 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**



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Vs. Ankit and others 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.

5. In view of the facts and circumstances of the case, this Court finds that learned counsel for the applicant-appellant 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.

(HARPREET SINGH BRAR)
JUDGE

12.12.2024
Ajay Goswami

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>