

207 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-A-938-MA-2015
Date of Decision: 03.04.2024

STATE OF HARYANA
...APPLICANT/APPELLANT
VERSUS
RAVINDER KUMAR @DEEPAK
...RESPONDENT

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Vikas Bharadwaj, AAG Haryana
None for the respondent.

HARPREET SINGH BRAR, J.(ORAL)

1. The present application is preferred under Section 378(3) Cr.P.C. against judgment of acquittal dated 13.03.2015 passed by learned Additional Sessions Judge (Exclusive Court for Heinous Crimes against Women), Kurukshetra in FIR No. 68 dated 18.02.2014 registered under Sections 363, 366-A, 376 of the IPC and Section 4 of the Protection of Children from Sexual Offences Act, 2012 (hereinafter 'POCSO Act') at Police Station Pehowa, Kurukshetra.

2. Briefly, the facts are that in the intervening night of 16/17.02.2014, the respondent-accused called the minor daughter of the complainant and caused her to elope with him on the pretext of marriage. The respondent took her to Delhi and Palwal, where he raped her. On 28.02.2014, the prosecutrix was recovered from Railway Station, Kurukshetra with the respondent-accused.

3. Learned State counsel *inter alia* submits that the learned trial Court has failed to appreciate the testimonies of PW6-complainant, father of

the prosecutrix and PW4-prosecutrix. At the time of the alleged incident, the prosecutrix was 16 years of age as proved by the school record which reflects her date of birth to be 15.05.1998 and was tendered into evidence by PW13-Gaj Pal. Further, the prosecutrix was medico legally examined by PW10-Dr. Mansi Gupta, who opined that the possibility of sexual intercourse cannot be ruled out since the hymen was ruptured. The hymen and external injury marks heal within 2 weeks and the prosecutrix was only medico legally examined on 28.02.2014. The learned Court below has failed to appreciate that the prosecutrix got recorded her statement under Section 164 Cr.P.C. under pressure from the respondent-accused. Moreover, the prosecutrix cannot be expected to raise alarm when the respondent-accused had assured marriage.

4. Having heard the learned State counsel and perused the record of the case with his able assistance, it transpires that the age of the prosecutrix is alleged to be 16 years at the time of the alleged occurrence. However, the same has not been duly proved. PW13- Gaj Pal, School In-charge, Government Primary School, Sarsa had presented school records reflecting the date of birth of the prosecutrix as 15.05.1998 and her date of admission in the said school as 08.09.2003. However, the said entries were not made by PW13-Gaj Pal and birth certificate was not presented at the time of admission. The testimony of PW13-Gaj Pal does aid in proving age of the prosecutrix as he has categorically mentioned that the age is based on presumption, evidently based on statement of her parents only. A Division Bench of this Court in ***State of Haryana v. Amarjit @ Nevi 2023(3) R.C.R(Criminal) 814*** has laid down the procedure to establish the factum of age so as to attract the presumptions under Section 29 and 30 of the POCSO Act. Since neither relevant documents have been provided nor ossification test was conducted on the prosecutrix, it cannot be conclusively held that she was a minor at the time of the alleged occurrence.

5. Furthermore, in her cross-examination, PW4-prosecutrix admitted that her marriage was fixed but could not mention a date or place for the same. The fact that her marriage was fixed by her parents indicate that she was of marriageable age indeed. The prosecutrix has also admitted that she carried two extra clothes with her, which clearly indicates that she went with the accused of her own volition. No allegation of rape was made against the accused in the statement recorded by the prosecutrix under Section 164 Cr.P.C. The respondent and the prosecutrix were apprehended from the Railway Station and there could not have been enough time for the respondent to threaten or pressurise the prosecutrix to make a favourable statement before the Magistrate. In fact, she had stated that the two were in love and wanted to get married.

6. The prosecution case does not remain consistent as the prosecutrix had initially stated that the respondent raped her in *bara* of Phullu whereas, in her cross-examination, she deposed that she was taken in a car to a *kotha* after travelling for 3-4 hours where she was raped. The place of the alleged occurrence i.e. *bara* was also not demarcated during the investigation. The inconsistency in her statements coupled with the fact that the prosecutrix did not raise any hue and cry in a crowded public place like the Railway Station and supplemented by the statement of PW11-Investigation Officer indicating that the prosecutrix showed no signs of distress, makes the case of the prosecution improbable.

7. 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. (See **H.D. Sundara and others Vs.**

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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.

8. 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 leave to appeal is denied.

9. Pending miscellaneous application(s), if any, also stand disposed of.

(HARPREET SINGH BRAR)
JUDGE

03.04.2024
manisha

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No