

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRM-A-1400-2023 (O&M)
Date of Decision: 05.03.2024

STATE OF PUNJAB

...Applicant

Versus

JASVIR SINGH

...Respondent

**CORAM: HON'BLE MR. JUSTICE SUDHIR SINGH
HON'BLE MR. JUSTICE HARSH BUNGER**

Present : Mr. DhruvDayal, Additional Advocate General, Punjab
for the applicant.

HARSH BUNGER, J.

The present application seeking leave to appeal has been filed by the State of Punjab against the judgment dated 20.07.2022, passed by the learned Additional Sessions Judge/Fast Track Special Court under POCSO Act, Ludhiana; in FIR No.201 dated 23.09.2015 at Police Station Samrala, District Ludhiana; whereby and whereunder the learned Trial Court has acquitted the respondent of the charges under Sections 363, 366-A, 376 of the Indian Penal Code (here-in-after referred to as 'the IPC') and Section 6 of the Protection of Children from Sexual Offence Act, 2012 (referred to 'POCSO Act').

2. The prosecution case, as per the complaint of the complainant-Jaswinder Singh (maternal uncle of prosecutrix), is that he is Driver by profession and used to go to Kolkata, U.P. etc., on his Truck to earn his livelihood and before him, his wife, mother and children used to remain in his house along with his niece (victim) daughter of Swaran Singh, who was

residing in their house soon after her birth. The date of birth of the victim, as per school certificate, is recorded as 16.06.1999 and she is stated to have passed Middle Class from Government Middle School, Bathinda, in the year 2015 and thereafter, she left her studies and started to live at home only. It was stated that one day, the complainant had gone to Uttar Pradesh and when he returned back on 23.09.2015 at about 10:00 a.m., his wife disclosed that his niece (victim) had gone somewhere on 22.09.2015 without informing her. The complainant and his family searched for his niece (victim) but to no effect and perhaps some unknown person had enticed his niece by alluring her to perform marriage with her. Complainant, with the prayer for taking legal action against the accused person, got his statement recorded before the Investigating Officer ASI Teja Singh, who made endorsement on it. Thereafter, Ruqa was sent through HC Satnam Singh to police station for registration of case.

3. Case FIR No.201 dated 23.09.2015 was registered at Police Station Samrala, District Ludhiana. On 31.12.2015, complainant got recorded his supplementary statement, wherein he disclosed the names of Manoj Kumar (since proclaimed offender) and Jasvir Singh. On 10.01.2016, the Investigating Officer conducted raid in a hotel at Sunder Nagar (Himachal Pradesh), from where accused Manoj Kumar (since P.O) was arrested, who disclosed that the victim/prosecutrix was residing with him from the last three months after performing marriage with him and is pregnant from his loin. Then, he got recovered the victim/prosecutrix from rented room situated at Ward No.8, Ambedkar Nagar, Sunder Nagar (H.P.). Accused Jasvir Singh was arrested on 11.01.2016. Prosecutrix was got medically examined from Civil Hospital, Samrala and her statement under Section 164 of Cr.P.C was recorded by

Sub Divisional Judicial Magistrate, Samrala. On 27.01.2016, swabs of the prosecutrix were sent to Chemical Examiner at Kharar through Lady Constable Binder Kaur. After completion of the investigation, final report under Section 173 of Cr.P.C was submitted, whereafter cognizance was taken. Thereafter, charges were framed under Sections 363, 366-A, 376 of IPC and Section 6 of POCSO Act, against the accused persons to which they pleaded not guilty and claimed to be tried. Manoj Kumar absented himself from Court on 17.12.2018 and subsequently, he was declared as Proclaimed Offender on 30.09.2019.

4. During trial, the prosecution examined eleven witnesses, namely, Jaswinder Singh, Complainant (PW-1), Prosecutrix (PW-2), HC Rajinder Singh, Swab/sample carrier (PW-3), ASI Teja Singh, Investigating Officer (PW-4), Jaswant Singh, Ex-Sarpanch of Village Kube (PW-5), Dalwinder Singh Kang (PW-6), Constable Sharanpreet Kaur, Member Police Party (PW-7), HC Gurmit Singh, Member Police Party (PW-8), Dr. Rahul Aplish, Medical Officer (PW-8), MeghDass, Head Master, Govt. High School, Otalan (PW-9), Constable Surinder Kaur (PW-9), HC Baljinder Singh (PW-10) and Dr. Kirat Gill, Medical Officer (PW-11).

5. Thereafter, the statement of the respondent-accused was recorded under Section 313 of the Cr.P.C; wherein he stated that he has been falsely implicated at the behest of Jathedar Harbans Singh belonging to Akali Dal (Badal), whereas he belonged to Congress party. He stated that abovesaid Jathedar pressurized him to join Akali Dal (Badal) and when he refused, he was involved in this false case due to party faction in the village.

6. The accused-respondent did not lead any evidence, oral or documentary, in his defence. After conclusion of the trial, the learned Trial Court acquitted the accused-respondent.

7. The grounds considered by the learned Trial Court for acquitting the respondent are as under: -

(i) *The prosecution has failed to prove that prosecutrix was minor at the time of alleged incident. Except the oral testimony of prosecutrix and her maternal uncle, there was no ossification test conducted on the prosecutrix, to determine her age.*

(ii) *No record has been proved by witnesses as to on what basis the date of birth of prosecutrix was got recorded as 16.06.1999 first time in school. No reliance was placed on entry in School Leaving Certificate and admission register of Class-VI.*

(iii) *The testimony of prosecutrix cannot be believed as it suffers from many contradictions and her statements do not corroborate each other, rather evasive answers given by the prosecutrix shows that she was trying to mislead the court. She has denied her earlier version where her version was found to be contradictory with her statement given in this court.*

(iv) *It has not been proved that the spermatozoa detected in her vaginal swabs as per Chemical Examiner's Report Ex. PW11/C, matches with the sperms of accused-Jasvir Singh as no DNA profile of accused-Jasvir Singh, prosecutrix or the child of prosecutrix has been conducted in this case. Mere finding of spermatozoa is not the conclusive proof that it was accused Jasvir Singh, who committed rape with prosecutrix.*

(v) *As per medical evidence, no injury or any forcible abrasion were found on the private parts or any part of the body of the victim.*

(vi) No independent witness has been joined from Kiratpur Sahib or Sunder Nagar where the prosecutrix had stayed for couple of months to prove that she was subjected to any coercion by accused Manoj Singh or that accused Jasvir Singh was seen coming in rented accommodation.

(vii) There was delay in lodging the FIR.

8. While assailing the impugned judgment, the learned State counsel has submitted that the judgment of acquittal dated 20.07.2022, passed by the Trial Court is erroneous, against the facts and law as the Trial Court did not appreciate the evidence on record in correct perspective. It is further submitted that in the instant case, the learned Trial Court, erred in ordering acquittal of the accused, by wrongly observing that ‘no reliance can be placed over school leaving certificate and admission register of Class-VI in the absence of ossification test, and hence the prosecution remains failed to prove the fact that the victim-prosecutrix was minor at the time of alleged incident. It is next submitted that the Trial Court has erroneously observed that ‘as per the Chemical Examiner’s report Ex.PW11/C, spermatozoa was detected in prosecutrix’s vaginal swabs but has not been proved that the said spermatozoon matches with the sperms of the present accused Jasvir Singh in absence of DNA profile of the accused Jasvir Singh, prosecutrix or the child of prosecutrix and mere finding of spermatozoa is not a conclusive proof that it was accused Jasvir Singh, who committed rape with the prosecutrix’.

9. After hearing the arguments advanced by the learned State counsel appearing for the appellant-State of Punjab, and upon considering the material available on the record, the following issues arise for consideration before this Court: -

“(i) Whether in absence of the ossification test, reliance can be solely placed on the Admission Register and School Leaving Certificate of Class-VI, so as to conclude that the victim/prosecutrix was a minor on the date of occurrence?

(ii) Whether in the absence of the DNA analysis of the accused, prosecutrix and her child, can respondent be held guilty of committing the alleged offence; especially when medical evidence showed no mark of injury found on the person of prosecutrix?”

10. With reference to the evidence for proving the age of the victim-prosecutrix, the prosecution has relied upon the testimony of complainant (maternal uncle of the prosecutrix), who appeared as PW1 and the testimony of victim/prosecutrix, who appeared as PW2 and further rested its claim over certificate regarding date of birth of the prosecutrix which is Ex.PW2/A and record of the school, which is Ex.PW9/A. Concededly, no ossification test was conducted nor any application for conducting the ossification test was moved by the prosecution, despite the recommendation of Dr. Kirat (PW11).

It has come on record that PW-1 (complainant) proved his statement (Ex. PA), Arrest memo of accused Jasvir Singh (Ex. PW1/A) and intimation of arrest memo (Ex. PW1/B). Further, PW-2 (prosecutrix) has proved copy of the School Leaving Certificate (Ex. PW-2/A) and PW-9 (Megh Dass, Headmaster, Government High School, Otalan) has proved the attested copy of entry made in the register (Ex.PW-9/A) regarding date of birth mentioned as 16.06.1999, School Leaving Certificate of prosecutrix (Ex. PW-2/A).

11. The learned trial Court, while appreciating the evidence on record, observed that the prosecution has relied upon statement of

PW-9 (Megh Dass, Headmaster, Government High School, Otdan) to prove entry made in the register of Class VI, when prosecutrix was admitted in Government High School, Otdan and also the School Leaving Certificate (Ex.PW-2/A) in which date of birth is recorded as 16.06.1999; however, in cross-examination, the afore-said witness i.e. PW-9 stated that he has not mentioned the document on the basis of which the date of birth of victim was recorded. He further stated that no birth certificate of the victim was available with him.

Considering the afore-said evidence and after referring to the judicial pronouncements, the trial Court observed that it would be improper to base conclusion on the basis of entering school without any corroborative evidence. The learned trial Court further observed that apart from oral testimony of prosecutrix and her maternal uncle regarding date of birth of prosecutrix, there is entry of School Leaving Certificate (Ex. PW-2/A) but no record has been proved by the witnesses as to on what basis the date of birth of prosecutrix was got recorded of 16.06.1999 first time in the school. Consequently, it has been concluded that the prosecution has failed to prove that the prosecutrix was minor at the time of alleged incident.

12. In *Alamelu and another v. State, Represented by Inspector of Police, AIR 2011 Supreme Court 715*, the Hon'ble Apex Court has observed and held as under :-

"38. We will first take up the issue with regard to the age of the girl. The High Court has based its conclusion on the transfer certificate, Ex. P16 and the certificate issued by PW8 Dr. Gunasekaran, Radiologist, Ex.P4 and Ex.P5. Undoubtedly, the transfer certificate, Ex.P16 indicates that the girl's date of birth was 15th June, 1977. Therefore, even

according to the aforesaid certificate, she would be above 16 years of age (16 years 1 month and 16 days) on the date of the alleged incident, i.e., 31st July, 1993. The transfer certificate has been issued by a Government School and has been duly signed by the Headmaster. Therefore, it would be admissible in evidence under section 35 of the Indian Evidence Act. However, the admissibility of such a document would be of not 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. 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. We may notice here that PW1 was examined in the Court on 9th August, 1999. In his evidence, he made no reference to the transfer certificate (Ex.P16). He did not mention her age or date of birth. PW2 was also examined on 9th August, 1999. She had also made no reference either to her age or to the transfer certificate. It appears from the record that a petition was filed by the complainant under Section 311 Cr. P.C. seeking permission to produce the transfer certificate and to recall PW2. This petition was allowed. She was actually recalled and her examination was continued on 26th April, 2000. The transfer certificate was marked as Ex.P16 at that stage, i.e., 26th April, 2000. The judgment was delivered on 28th April, 2000. In her cross-examination, she had merely stated that she had signed on the transfer certificate, Ex. P16 issued by the School and accordingly her date of birth noticed as 15th June, 1977. She also stated that the certificate has been signed by the father as well as the Headmaster. But the Headmaster has not been examined. Therefore, in our opinion, there was no reliable evidence to vouchsafe

for the truth of the facts stated in the transfer certificate.

*39. Considering the manner in which the facts recorded in a document may be proved, this Court in the case of **Birad Mal Singhvi v. Anand Purohit 1988 Supp. SCC 604 : AIR 1988 Supreme Court 1796.**, observed as follows :-*

"The date of birth mentioned in the scholars' register has no evidentiary value unless the person who made the entry or who gave the date of birth is examined.....Merely because the documents Exs. 8, 9, 10, 11, and 12 were proved, it does not mean that the contents of documents were also proved. Mere proof of the documents Exs. 8, 9, 10, 11 and 12 would not tantamount to proof of all the contents or the correctness of date of birth stated in the documents. Since the truth of the fact, namely, the date of birth of Hukmi Chand and Suraj Prakash Joshi was in issue, mere proof of the documents as produced by the aforesaid two witnesses does not furnish evidence of the truth of the facts or contents of the documents. The truth or otherwise of the facts in issue, namely, the date of birth of the two candidates as mentioned in the documents could be proved by admissible evidence i.e. by the evidence of those persons who could vouchsafe for the truth of the facts in issue. No evidence of any such kind was produced by the respondent to prove the truth of the facts, namely, the date of birth of Hukmi Chand and of Suraj Prakash Joshi. In the circumstances the dates of birth as mentioned in the aforesaid documents have no probative value and the dates of birth as mentioned therein could not be accepted." (AIR 1988 Supreme Court 1796).

*The same proposition of law is reiterated by the Apex Court in the case of **Narbada Devi Gupta v. Birendra Kumar Jaiswal**, reported in **AIR 2004 Supreme Court 175**, where the Apex Court observed as follows :-*

"The legal position is not in dispute that mere production and marking of a document as exhibit by the court cannot be held to be a due proof of its contents. Its execution has to be proved by

admissible evidence, that is, by the "evidence of those persons who can vouchsafe for the truth of the facts in issue"."

40. In our opinion, the aforesaid burden of proof has not been discharged by the prosecution. The father says nothing about the transfer certificate in his evidence. The Headmaster has not been examined at all. Therefore, the entry in the transfer certificate cannot be relied upon to definitely fix the age of the girl."

13. At the cost of repetition, it is pertinent to note that as per settled legal position, mere production and marking of a document as exhibit by the court cannot be held to be a due proof of its contents. Its execution has to be proved by admissible evidence, that is, by the "*evidence of those persons who can vouchsafe for the truth of the facts in issue*". The Apex Court has consistently held that the date of birth mentioned in the school leaving certificate has no probative value unless either the parents are examined or the person on whose information the entry may have been made, is examined. In the present case neither the parents nor the person on whose information the entry was recorded in the registers of the school has been examined by the prosecution. Therefore, the admissibility of the School Leaving Certificate would be of not 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 such school leaving certificate would not be admissible in evidence under Section 35 of the Indian Evidence Act. Therefore, no fault can be found with the conclusion arrived at by the learned trial Court that the prosecution has failed to prove that at the time of occurrence, the prosecutrix was a minor.

14. With reference to the medical evidence, while evaluating report of medical examination conducted by Dr. Kirat Gill, (PW-11) and

report of Chemical Examiner, several points come to light that spermatozoa was detected in her vaginal swabs but it was not proved that the same matched with the sperms of the accused-respondent as no DNA profile of the accused-respondent, prosecutrix or child of prosecutrix has been conducted. Mere finding of spermatozoa cannot be considered as conclusive proof that the accused-respondent has committed rape over the prosecutrix. Moreover, as per version of PW11, Dr. Kirat Gill, police had not moved any application for getting conducted DNA of victim and her child which could provide the best link evidence. Furthermore, as per the medical evidence; no injuries or any forcible abrasions were found on the private parts or any other part of the body of victim/prosecutrix. This indicates that the medical report and Chemical Examiner reports do not provide conclusive evidence of the commission of rape. Even though spermatozoa were detected in her vaginal swabs, yet no DNA test was conducted to analyze or cross-match the spermatozoa detected in the vaginal swabs of the prosecutrix with that of respondent-accused. The Hon'ble Apex Court in ***Krishan Kumar Malik vs. State of Haryana, 2011 (3) RCR (Crl.) 589 (SC)***, held that failure to send semen found on the undergarments of the prosecutrix to a forensic laboratory for DNA testing / analysis would be deemed fatal to the prosecution's case. Hon'ble Supreme Court in the case of ***Ram Narain Vs. State of Punjab, (1975) 4 SCC 497*** and ***Amar Singh and Ors. Vs. State of Punjab, AIR 1987 SC 826***, held that inconsistency between the ocular and medical evidence is a fundamental defect in the prosecution case, and unless reasonably explained, it is sufficient to discredit the entire case. Further, upon a careful perusal of the available records, it becomes evident that the prosecutrix herself has ruined the credibility of her evidence by repeatedly changing her stand in

statements recorded under Sections 161 Cr.P.C and 164 Cr.P.C. The victim/prosecutrix failed to provide her reliable stand. The learned trial Court has noticed in detail that the testimony of PW-2 (prosecutrix) suffers from anomalies as she kept on changing her stand in her different statements.

15. Thus, there is no conclusive proof in the instant case, more so supported by any clinical finding that the respondent-accused had committed rape upon the prosecutrix. Still further, there are material contradictions in the prosecution case. Accordingly the issues were decided in negative.

16. In criminal appeal against acquittal what the Appellate Court has to examine is whether the finding of the learned Court below is perverse and prima facie illegal. Once the Appellate Court comes to the finding that the grounds on which the judgment is based is not perverse, the scope of appeal against acquittal is limited considering the fact that the legal presumption about the innocence of the accused is further strengthened by the finding of the Court. At this point, it is imperative to consider the decision of the Hon'ble Supreme Court passed in the case of ***Surajpal Singh & Ors. Vs. The State, 1952 SCR 193***, has held as under :-

“...the High Court has full power to review the evidence upon which the order of acquittal was founded. But it is equally well settled that the presumption of innocence of the accused is further reinforced by his acquittal by the trial Court and the findings of the trial Court which had the advantage of seeing the witnesses and hearing their evidence can be reversed only for very substantial and compelling reasons.”

In the case of GhureyLal Vs. State of Uttar Pradesh, (2008)

10 SCC 450 in para no.75, the Hon'ble Supreme Court re-iterated the said view and observed as follows :

“75. The trial court has the advantage of watching the demeanour of the witnesses who have given evidence, therefore, the appellate court should be slow to interfere with the decisions of the trial court. An acquittal by the trial court should not be interfered with unless it is totally perverse or wholly unsustainable.”

17. Thus, an order of acquittal is to be interfered with only for compelling and substantial reasons. In case, the order is clearly un-reasonable, it is a compelling reason for interference. But where there is no perversity in the finding of the impugned judgment of acquittal, the Appellate Court must not take a different view only because another view is possible. It is because the trial Court has the privilege of seeing the demeanor of witnesses and, therefore, its decision must not be upset in the absence of strong and compelling grounds.

17. In view of the above, we do not find any illegality and perversity in the findings recorded by the trial Court. Accordingly, the present application is dismissed and leave to appeal is declined.

(SUDHIR SINGH)
JUDGE

(HARSH BUNGER)
JUDGE

March 05, 2024
gurpreet

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No