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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-A-180-2019 (O&M)
Date of decision: 18.07.2024

State of Haryana

...Applicant

Versus

Kanhaiya

... Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Vikas Bhardwaj, AAG, Haryana
for the applicant.

HARPREET SINGH BRAR, J.(Oral)

1. The present application has been preferred by the State under Section 378(3) of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') against the judgment dated 06.06.2018 passed by the learned Additional Sessions Judge, Palwal, whereby the respondent has been acquitted in FIR No.98 dated 14.10.2017 under Section 451 of the Indian Penal Code, 1860 (for short 'IPC') and Section 8 of the Protection of Children from Sexual Offences Act, 2012 (for short 'POCSO Act'), registered at Women Police Station Palwal.



2. Briefly, the facts are that on 13.10.2017, the victim, a 15 years old girl, was asleep in the courtyard of her house and at about 03:30 a.m., a pebble hit her, causing her to wake up. A little while later, the respondent gagged her mouth. The victim bit him and raised alarm. The mother of the victim woke up and called her uncle Chander Pal, who apprehended the respondent. Thereafter, brother of the victim called the police at 100 and informed them of the said incident. Subsequently, the police took the respondent away.

3. Having heard learned State counsel for the applicant and after perusing the record with his able assistance, it transpires that learned Court below has erred in accepting unsubstantiated claims in order to prove the age of the victim. The prosecution had examined PW7 Ashok Kumar, Principal, Primary School, Rajpura, who brought the admission and withdrawal register as well as the admission form. However, the said documents had been signed by his predecessor. As such, it remains unproven that the entry qua date of birth of the victim was made after examining her birth certificate and consequently, it cannot be conclusively said that the victim was a child in terms of Section 2(d) of the POCSO Act, which is necessary to attract the presumption under Sections 29 & 30 of the POCSO Act. Reliance in this regard can be placed on the judgment rendered by the Hon'ble Supreme Court in *P. Yuvaprakash Vs. State rep. by Inspector of Police, 2023 SCC Online SC 846* and this Court in *Terry Saroya Vs. State of Punjab and*

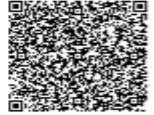


another, 2023 (4) R.C.R. (Criminal) 176.

4. Pertinently, the Hon’ble Supreme Court has dealt with the issue of determination of age of the prosecutrix from school records *in Birad Mal Singhvi Vs. Anand Purohit, (1988) Supp SCC 604*, wherein it was observed that the date of birth in the register of a school would not have any evidentiary value without the testimony of the person making the entry or the person who gave the date of birth.

“14. ...The date of birth mentioned in the scholar’s register has no evidentiary value unless the person who made the entry or who gave the date of birth is examined. The entry contained in the admission form or in the scholar’s register must be shown to be made on the basis of information given by the parents or a person having special knowledge about the date of birth of the person concerned. If the entry in the scholar’s register regarding date of birth is made on the basis of information given by parents, the entry would have evidentiary value but if it is given by a stranger or by someone else who had no special means of knowledge of the date of birth, such an entry will have no evidentiary value.”

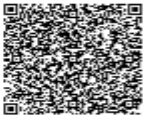
5. Furthermore, the victim, in her statement recorded under Section 164 Cr.P.C., has not mentioned any instances indicating outraging of modesty, which casts a shadow of doubt on the prosecution case. In fact, in spite of the claim that many people assembled at the spot after the victim raised alarm, the Investigating Officer i.e. PW4- Anita, could not bring forth any reason explaining why statements of neighbours, specifically Doji Ram and Krishan, were not recorded. PW4 Anita, Investigating Officer, had stated



that they refused to join the investigation, thus, the record does not reflect any notice being issued to them for the same. Further still, the medico-legal examination of the victim was not conducted, therefore, the allegation of the respondent gagging the victim remains unproven. Lastly, while it is claimed that brother of the victim dialed 100 and informed the police, his statement has not been recorded, for reasons known best to the prosecution.

6. Moreover, 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 Vs. State of H.P., 1973 (2) SCC 808 and Chandrappa and others Vs. 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 **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 learned trial Court.

7. In view of the above discussion, this Court finds that learned State counsel has failed to point out any perversity or illegality in findings



recorded by learned Court below, which warrants any interference. As such, there is no merit in the present application and accordingly, the same stands dismissed.

8. All the peending miscellaneous application(s), if any, shall also stand disposed of.

18.07.2024
vishnu

[HARPREET SINGH BRAR]
JUDGE

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