



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

1. CRM-A-618-MA-2018 (O&M)

Union Territory of Chandigarh

... Appellant

Versus

Sumit

... Respondent

2. CRM-A-941-MA-2018 (O&M)

Union Territory of Chandigarh

... Appellant

Versus

Mukesh

... Respondent

Date of decision: 8th September, 2025

**CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL
HON'BLE MR. JUSTICE H. S. GREWAL**

Present: Mr. J.S. Toor, Addl. PP UT Chandigarh with
Mr. Adhiraj Toor, Advocate for the applicant/appellant.

Mr. Umang Bansal, Advocate for
Mr. R.C. Sharma, Advocate for the respondent.

MANJARI NEHRU KAUL, J.

1. Both the instant appeals, detailed herein above, are directed against separate judgments dated 31.08.2017 passed by the Court of learned Additional Sessions Judge-cum-Judge, Special Court, Chandigarh whereby respondent/accused Sumit and Mukesh have been acquitted of the charges framed against them. Both these matters are being taken up together for disposal by this common judgement as they arise out of the same FIR No.139 dated 26.08.2016 under Sections 363, 366, 376 of IPC and Sections 4 and 6 of the Protection of Children from

Sexual Offences Act, 2012 (hereinafter referred to as, 'the POCSO Act') registered at Police Station Maloya, Chandigarh.

2. The case of the prosecution, briefly stated, is that on 26.08.2016, Chanchal (PW-1) mother of the victim, made a complaint Ex.P1 alleging that her younger daughter, aged about 17 years, had been enticed away by the accused – Sumit and Mukesh. It was further alleged that the said accused had subjected her daughter to sexual intercourse against her wishes. The complainant expressed apprehension that her daughter was in danger at the hands of the accused.

3. On the basis of this complaint, the aforesaid FIR was registered under Sections 363, 366, 376 of the IPC and Sections 4 & 6 of the POCSO Act. During investigation, the accused were arrested on the identification of the complainant vide recovery memo Ex.P4. The medical examination of the accused was conducted and MLR Ex.P5 obtained. The victim was produced before the Magistrate and her statement under Section 164 Cr.P.C. Ex.P18 was recorded, wherein she alleged sexual assault by the accused.

4. PW-4 Poonam Gupta, Clerk from the Municipal Corporation, produced the birth record Ex.P6 and Ex.P7, showing that the victim was a minor at the time of occurrence. PW-7 Balam Singh, Manager of Hotel Surya, Sector 42, Chandigarh produced the Hotel registry entry Ex.P11 and copy of Identity Card Ex.P12, allegedly showing the stay of the accused with the victim on 01.08.2016.

5. During the pendency of trial, the victim expired a natural death before she could be examined in Court. The prosecution examined 9 witnesses in total.

6. The trial Court, on appraisal of the record, found:

- (i) The victim never subjected herself to medical examination despite repeated opportunities.
- (ii) She was not recovered from the custody of the accused, but was found alone at the bus stand.
- (iii) PW-1, her mother, did not witness the accused enticing or taking away the victim.
- (iv) The hotel records Ex.P11 and Ex.P12 reflected an alleged stay on 01.08.2016, much prior to the date of occurrence as mentioned in the FIR.
- (v) The statement of the victim under Section 164 Cr.P.C. Ex.P18 was not substantive evidence in the absence of her deposition before the Court.

Holding that the prosecution had failed to prove its case beyond reasonable doubt, the trial Court acquitted the accused.

7. Learned State counsel has assailed the acquittal of the accused on the following grounds:

- (i) That the trial Court erred in discarding the statement of the victim recorded under section 164 Cr.P.C. Ex.P18. Since the victim died before she could be examined in Court, the said statement, duly proved by the Magistrate (PW-9) assumes importance and should have been relied upon, especially as it categorically implicated the accused in sexual assault.
- (ii) The minority of the victim stood conclusively established through the documentary record. Thus, once her age was proved, the ingredients of Sections 366 and 366-A IPC and Sections 4 and 6 of the POCSO Act automatically stood satisfied.

- (iii) The refusal of the victim to undergo medical examination should not have been treated as fatal, since medical evidence is only corroborative and not indispensable.
- (iv) The evidence of PW-1, coupled with the records of the hotel Ex.P11 and Ex.P12, and the statement recorded under Section 164 Cr.P.C., was sufficient to establish guilt of the accused.
- (v) The trial Court adopted a hyper-technical approach in stressing on recovery of the victim from the custody of the accused, whereas such recovery is not a *sine qua non* once her statement directly implicated the accused.
- (vi) The death of the victim and her refusal to undergo medical examination ought not to have been used to disbelieve the prosecution case, particularly when other material existed on record.

On the above grounds, learned State counsel prayed that the acquittal being manifestly illegal, deserve to be set aside.

8. Per contra, learned counsel appearing for respondent/accused supported the judgment of acquittal and submitted that the statement under Section 164 Cr.P.C. is not substantive evidence and cannot be the sole basis of conviction, especially when the maker of the statement was never examined or cross-examined in Court. It was further argued that the victim had not subjected herself to medical examination, thereby depriving the prosecution of crucial corroborative evidence. Still further, it was argued that the hotel records relate to a date much prior to the date of occurrence mentioned in the FIR, and therefore, could not corroborate the prosecution version.

9. In such circumstances, it was urged that the trial Court rightly held that the prosecution failed to prove the case beyond reasonable doubt, and the view taken was a reasonable one which called for no interference in appeal.

10. We have heard learned counsel for the parties and carefully perused the material on record.

11. The principal reliance of the prosecution is upon the statement of the victim recorded under Section 164 Cr.P.C. Ex.P18. However, it is well settled that such a statement, though admissible for corroboration or contradiction, is not substantive evidence. The victim, having died before her examination, could not be subjected to cross-examination. In criminal jurisprudence, where conviction must rest on proof beyond reasonable doubt, reliance upon an untested statement under Section 164 Cr.P.C., by itself, cannot form the foundation of guilt.

12. The refusal of the victim to undergo medical examination, though not fatal in every case, assumes significance here because no other reliable and direct evidence is available. The absence of medical evidence, in such circumstances, leaves the allegations uncorroborated.

13. The hotel records, Ex.P11 and Ex.P12, are of little assistance, since the alleged stay relates to 01.08.2016, which precedes the date of alleged occurrence (26.08.2016). This discrepancy, noticed by the learned trial Court, materially weakens the case of the prosecution.

14. Furthermore, the victim was not recovered from the custody of the accused, but was found alone at the bus stand. This fact dilutes the allegation of enticement. PW-1, her mother candidly admitted that she had not actually seen the accused taking away her daughter. Her testimony is, therefore, not direct evidence of the alleged offense.

15. In the totality of circumstances, the prosecution case rests substantially on suspicion, unsupported by substantive or corroborative evidence. The learned trial Court after analyzing each piece of evidence, found that the prosecution failed to discharge its burden.

16. It is trite law that an order of acquittal strengthens the presumption of innocence in favour of the accused, and unless the judgement is perverse, manifestly illegal, or grossly unreasonable, the appellate Court would be slow to interfere. The view adopted by the learned trial Court is a possible and plausible view on the evidence. We find no infirmity warranting interference.

17. For the reasons recorded above, both the appeals filed by the State are dismissed. The judgments of acquittal dated 31.08.2017 passed by the trial Court are hereby affirmed.

18. Pending application(s), if any, are disposed of.

(MANJARI NEHRU KAUL)
JUDGE

(H. S. GREWAL)
JUDGE

September 8, 2025

rps

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