

CRM-A-1439-2023 (O&M)

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

(205)

CRM-A-1439-2023 (O&M)

Date of decision: 09.09.2025

State of Punjab

... Applicant/Appellant

Versus

Gursewak Singh @ Mintu

... Respondent

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

Present:- Mr. H.S. Deol, Senior DAG, Punjab.

H.S. Grewal, J.

CRM-43075-2023

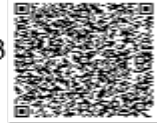
1. This is an application seeking condonation of delay of 140 days in preferring the application seeking leave to appeal.

2. Heard.

3. For the reasons stated in the application, the same is allowed and delay of 140 days in preferring the application seeking leave to appeal is condoned.

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1. The present application has been preferred under Section 378(3) Cr.P.C. seeking grant of leave to appeal against the judgment dated 10.02.2023

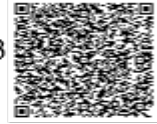


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passed by the learned Additional Sessions Judge/Fast Track Special Court under POCSO Act, Ludhiana in case FIR No. 211 dated 29.11.2020, registered under Sections 363, 366-A, 376 IPC and Section 6 of the Protection of Children from Sexual Offences Act, 2012, (hereinafter referred as 'POCSO Act') at Police Station Jamalpur, Ludhiana whereby the respondent had been acquitted of the charges.

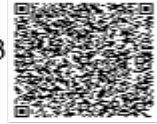
2. The case of the prosecution is based upon the statement of the complainant-Simran w/o Vicky, who had approached ASI Rajpal on 29.11.2020 and got her statement recorded to the effect that her husband Vicky was working at welding shop of the respondent-Gursewak Singh which was situated near their house. The respondent was on visiting terms in their house. She had two children and her husband died due to some illness. The eldest is her daughter/victim, whose date of birth is 25.04.2003. After the death of her husband, the complainant asked the respondent not to come to their house, but he did not stop coming. On 29.11.2020 at about 06:00 A.M., her daughter/victim went alone for Morning Prayer (Parbhat Pheri) but she did not return. The complainant searched her daughter but no clue was found. Later on, she learnt that the respondent had enticed away her minor daughter/victim by alluring her on the pretext of solemnizing marriage with her. Finding a *prima-facie* case under Sections 363, 366-A IPC, ASI Rajpal had sent ruqa to Police Station for registration of case against the respondent. Then ASI Rajpal had started conducting initial investigation during which he inspected the spot, prepared rough site plan and recorded the statements of witnesses under Section 161 Cr.P.C.



3. On 24.02.2021, the victim/prosecutrix was recovered from the custody of the respondent from Sirsa (Haryana) and she was produced before the Magistrate for getting her statement recorded under Section 164 Cr.P.C. Thereafter, her medical was also got conducted and she was handed over to her mother. After recording supplementary statement of the complainant, offence under Section 376 IPC and Section 6 of POCSO Act was added.

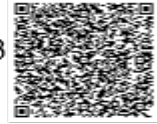
4. After completion of investigation and other formalities, challan was presented against the respondent whereupon charges under Sections 363, 366-A IPC and Section 6 of POCSO Act, 2012 or in the alternative Section 376(2)(n) IPC being made out, to which he pleaded not guilty and claimed trial.

5. Learned State counsel submits that the trial Court had erred in acquitting the respondents despite cogent, reliable and duly corroborated evidence brought on record by the prosecution. He submits that as per school records, including the matriculation certificate (Ex.PW6/A) and Gazette notification (Ex.PW6/B), the prosecutrix's date of birth was 25.04.2003. Thus, on the date of the incident, i.e., 29.11.2020, she was only 17 years and 07 months old. Once her minority was established, her consent became irrelevant in law and any sexual act committed with her, amounted to aggravated penetrative sexual assault under Section 6 of the POCSO Act. Learned counsel further submits that the ocular evidence had been duly corroborated by the medical evidence to prove that sexual intercourse had occurred. The trial Court erred in rejecting the DNA evidence merely on technical grounds relating to link evidence and overlooking its substantive corroborative value. It is further



submitted that the reasoning of the trial court in doubting the credibility of the prosecutrix merely because she did not raise alarm during her stay with the respondent is contrary to settled law. It is contended that a victim of sexual assault, especially a minor girl, may react differently under fear, trauma or influence and it ought not to be expected as a stereotyped reaction. He admitted that there may have been certain lapses in the investigation such as absence of a Daily Diary entry or omission to join local police at Sirsa. However, such defects cannot, by itself, be a ground to discard the cogent and reliable testimony of the prosecutrix. Learned State counsel, therefore, prays for allowing the appeal and setting aside the impugned judgment of acquittal passed by the learned Trial Court.

6. We have heard learned counsel for the parties and have carefully perused the material available on record.
7. In order to substantiate the charges against the respondent, the prosecution has examined 08 prosecution witnesses.
8. PW-1 Prosecutrix had deposed as per the case of the prosecution and had proved handing over memo Ex.PW1/A and her statement under Section 164 Cr.P.C. as Ex.PW1/B.
9. PW-2 Simran, who is mother of the prosecutrix, had deposed as per her statement Ex.PA recorded before the police and had identified her signatures as Ex.PA/1.
10. PW3 Dr. Atish Singla, Medical Officer, had deposed that she had conducted medical examination of the prosecutrix and proved the photocopy of MLR Ex.PW3/A and computerized copy of MLR Ex.PW3/B.



11. PW4 Dr. Rohit, Officer Medical had conducted the medical examination of the respondent and had proved computerized copy of MLR Ex.PW4/A, carbon copy of MLR Ex.PW4/B and application for conducting DNA Test of the respondent Ex.PW4/C.

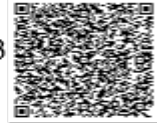
12. PW5 ASI Gurmeet Singh, who was posted as MHC, had deposed that he had handed over sealed parcels and sealed envelopes to ASI Rajpal Singh, who had deposited the same with the office of CFSL Chandigarh.

13. PW6 Mohan Lal, Senior Assistant, Punjab School Education Board, Mohali had brought the record pertaining to date of birth of prosecutrix and proved photocopy of matriculation certificate Ex.PW6/A and attested copy of Gazette Ex.PW6/B.

14. PW-7 HC Jasbir Singh, who was a member of police party along with ASI Rajpal Singh, had proved arrest memo of the respondent Ex.PW7/A and his personal search memo Ex.PW7/B and memo regarding handing over of prosecutrix to her mother.

15. PW8 ASI Rajpal, Investigating officer had proved on record the statement of the complainant Ex.PW2/A. He admitted that he had made his endorsement Ex.P5 on the said statement and had recorded police proceedings Ex.P6. He further proved some other documents which were prepared by him during his investigation.

16. After closing the prosecution evidence, the statement of the accused/respondent was recorded under Section 313 Cr.P.C. and the incriminating circumstances from the prosecution's evidence was presented to him. He had denied the allegations and deposed that he had been falsely

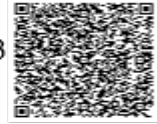


implicated in the case. In his defence, he had examined DW-1 Randhir Singh, Incharge Room Niwas, Gurudwara Shri Dukhnivaran Sahib, Patiala and DW-2 Kunwarjeet Singh, Taxi Driver, in order to prove his *alibi*.

17. After appreciating all the material placed before the trial Court, it was observed by the trial Court that the prosecution had failed to prove its case and the accused/respondent, by giving the benefit of doubt, was acquitted of the charges levelled against him.

18. Having carefully examined the impugned judgment, the evidence led by the prosecution, defence and the submissions advanced on learned counsel, this Court finds no reason to interfere with the well-reasoned decision of the trial Court.

19. Although it is clearly proved from the school records that the prosecutrix was a minor on the date of the incident and such records are legally and judicially accepted as the most reliable proof of age, however, the crux of the prosecution case rests upon the testimony of the prosecutrix. Her version, when examined carefully, suffers from material contradictions, improvements and omissions at different stages because in her statement under Section 164 Cr.P.C., she claimed that she had been taken away by fraud and under threat. However, in her deposition before the Court, she improved her version by alleging forcible marriage proposal, confinement in Sirsa and repeated sexual assault. She admitted that during her stay of about three months with the respondent, she had multiple opportunities to disclose her plight to neighbours, co-passengers in the bus or to the public at large, yet she failed to raise any

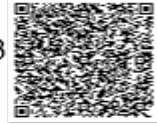


alarm. Due to these contradictions, the version of the prosecutrix could not be trusted.

20. The medical evidence and DNA report, though suggestive of sexual intercourse, cannot sustain conviction unless corroborated by credible testimony of the prosecutrix. It is well settled that forensic evidence cannot be accepted in isolation particularly when link evidence is missing, as observed by the trial court. PW4 Dr. Rohit, who had examined the respondent, had admitted that he had not taken the DNA samples. The author of the DNA report was not examined. In the absence of proper link evidence, the forensic report has no real value.

21. The story of recovery of the prosecutrix from Sirsa also suffers from infirmities. The Investigating Officer himself admitted that he had not lodged any Daily Diary Report regarding the recovery, nor any assistance was sought from the local police at Sirsa. Such lapses in investigation cast further doubt on the prosecution case.

22. The respondent, in his defence, had examined DW-1 and DW-2 to show that the respondent was present at Gurudwara Dukhnivaran Sahib, Patiala, for a significant period of time. This may not fully prove an *alibi* but it supports the possibility of false implication especially when the prosecution evidence is flimsy.



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23. In view of the above, we do not find any illegality or perversity in the well-reasoned judgment of the trial Court acquitting the respondent by giving him the benefit of doubt and the application under Section 378(3) Cr.P.C. seeking leave to appeal is, hereby, dismissed.

24. Pending application, if any, shall stand disposed of accordingly.

(MANJARI NEHRU KAUL)
JUDGE

09.09.2025
A.Kaundal

(H.S.GREWAL)
JUDGE

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