



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

CRA-S-1924-SB-2004 (O&M)
Reserved on: 01.05.2025
Pronounced on: 05.05.2025

Mangli PatelAppellant

Versus

State of Haryana ...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Aditya Sanghi, *Amicus Curiae*
for the appellant.

Mr. Ramesh Kumar Ambavta, AAG Haryana.

HARPREET SINGH BRAR, J. (ORAL)

1. The present appeal is preferred against the judgment of conviction and order of sentence dated 27.05.2004 passed by the learned Additional Sessions Judge, Kurukshetra in the case stemming from FIR bearing No. 469 dated 21.12.2003 registered under Sections 363, 366-A, 376 of the Indian Penal Code, 1860 (hereinafter 'IPC') at Police Station Sadar Thanesar. The appellant was sentenced as under:

Offence under	Sentence
Section 366-A of the IPC	Rigorous Imprisonment for 04 years and a fine of Rs. 5,000/-, in default of which rigorous imprisonment of six months.

FACTUAL BACKGROUND

2. Succinctly, the facts, as alleged, are that on 21.12.2002, the complainant-Ramesh Saroop, father of prosecutrix, reported that on 20.12.2002, his 14–15 years old daughter namely Sudesh (prosecutrix), a Class 9 student, left for school but did not return. Enquiries revealed that she did not attend school. Complainant suspected the appellant, an employee at Mahabir



Washing Soap Factory, of abducting her. On the basis of the statement given by complainant, a formal FIR(*supra*) was registered under Sections 366 and 366-A IPC. During investigation, on 02.01.2003, the prosecutrix was recovered from the possession of appellant at Devi Lal Park, Pipli, where he was also arrested. The prosecutrix made a statement that the appellant met her near school, lured her with promises of trips to Shimla and Delhi, and took her to the Soap Factory where he raped her against her will. Soon after, both were medically examined and consequently, Section 376 IPC was added.

3. On the basis of the material available on the record, the learned trial Court convicted the appellant vide impugned judgment dated 27.05.2004 and was sentenced as mentioned above. Aggrieved by the same, the appellant moved this Court by means of the present appeal.

CONTENTIONS

4. Learned *Amicus Curiae inter alia* submitted that the learned trial Court has fallen into grave error by convicting the appellant as the prosecutrix had eloped with him of her own accord. He further contends that the Court below has failed to appreciate the prosecution's inability to prove the prosecutrix's age beyond reasonable doubt. In fact, the prosecution has only relied upon school certificate which cannot be treated as conclusive evidence, thereby rendering findings qua age of the prosecutrix unsustainable. Lastly, he contended that the investigating officer did not conduct the investigation in a fair and proper manner.

5. *Per contra*, learned State counsel submits that the learned trial Court has passed the impugned judgment based on correct appreciation of the facts and the law. As such, the same does not deserve any interference by this Court.



OBSERVATIONS AND ANALYSIS

6. Having heard the learned counsel for the parties and after perusing the record with their able assistance, it transpires that at around 9:40 A.M., the appellant met the prosecutrix outside her school and persuaded her to accompany him to Shimla and Delhi. He told her that they would first go to the soap factory to collect money and clothes, after which they would proceed to the said destinations. In her cross-examination, she admitted that she had known the appellant, Mangli Patel, for about 7–8 months, during which he used to visit their home to deliver soap. She further stated that she remained in the company of the appellant for approximately ten days, during which time they travelled to various public places and spent nights at railway stations. Notably, she did not allege in her statement that the accused used any force or coercion during this period.

7. Further, there is no evidence on record to suggest that she was either forcibly boarded on a train or unlawfully confined at any place. Her conduct throughout this period, including the absence of any attempt to seek help or raise an alarm despite being in public spaces, undermines the prosecution's claim of coercion or abduction and clearly reflects that she was not kept by the appellant against her will. Reliance in this regard can be placed on the judgments rendered by the Hon'ble Supreme Court in *Mussaiddin Ahmed vs. State of Assam (2010) 1 SCC (Cri) 1445*, *State of Madhya Pradesh vs. Munna @ Shambhoo Nath (2016) 1 SCC(Cri.)536*, *Md. Ali @ Guddu vs. State of U.P.(2015) 3 SCC(Cri.) 82* and *Rajesh Patel vs. State of Jharkhand (2013) 2 SCC(Cri.) 981*.

8. In order to attract the offence under Section 366 A of the IPC, it is of the utmost importance that the victim is proved to be a minor. In furtherance



of the same, the prosecution has placed on the record the school certificate of the prosecutrix, which reflects her date of birth to be 03.05.1986. Mam Chand, Headmaster of the school attended by the prosecutrix, was examined as PW16. He deposed that the date of birth of the prosecutrix, as recorded in the school certificate and the original admission form, is 03.05.1986. However, he did not state that the said date was verified against any birth certificate or supported by any contemporaneous documentary proof at the time of admission. The birth certificate of the prosecutrix does not form a part of the record. As such, it remains unproven that the entry qua date of birth of the prosecutrix was made in the school record after looking at a credible source of information in terms of Section 94 of the Juvenile Justice Act, 2015, as stipulated by a two Judge bench of the Hon'ble Supreme Court in ***P. Yuvaprakash vs. State rep. by Inspector of Police 2023 AIR SC 3525***, wherein, speaking through Justice S. Ravindra Bhatt, the following was observed:

“12. In view of Section 34(1) of the POCSO Act, Section 94 of the JJ Act, 2015 becomes relevant, and applicable. That provision is extracted below:

"94. Presumption and determination of age. –

(1) Where, it is obvious to the Committee or the Board, based on the appearance of the person brought before it under any of the provisions of this Act (other than for the purpose of giving evidence) that the said person is a child, the Committee or the Board shall record such observation stating the age of the child as nearly as may be and proceed with the inquiry under section 14 or section 36, as the case may be, without waiting for further confirmation of the age.

(2) In case, the Committee or the Board has reasonable grounds for doubt regarding whether the person brought before it is a child or not, the Committee or the Board, as the case may be, shall undertake the process of age determination, by seeking evidence by obtaining -

- (i) the date of birth certificate from the school, or the matriculation or equivalent certificate from the concerned examination Board, if available; and in the absence thereof;*
- (ii) the birth certificate given by a corporation or a municipal authority or a panchayat;*



(iii) and only in the absence of (i) and (ii) above, age shall be determined by an ossification test or any other latest medical age determination test conducted on the orders of the Committee or the Board:

Provided such age determination test conducted on the order of the Committee or the Board shall be completed within fifteen days from the date of such order.

(3) The age recorded by the Committee or the Board to be the age of person so brought before it shall, for the purpose of this Act, be deemed to be the true age of that person."

13. It is evident from conjoint reading of the above provisions that wherever the dispute with respect to the age of a person arises in the context of her or him being a victim under the POCSO Act, the courts have to take recourse to the steps indicated in Section 94 of the JJ Act. The three documents in order of which the Juvenile Justice Act requires consideration is that the concerned court has to determine the age by considering the following documents:

"(i) the date of birth certificate from the school, or the matriculation or equivalent certificate from the concerned examination Board, if available; and in the absence thereof;

(ii) the birth certificate given by a corporation or a municipal authority or a panchayat;

(iii) and only in the absence of (i) and (ii) above, age shall be determined by an ossification test or any other latest medical age determination test conducted on the orders of the Committee or the Board".

14. Section 94(2)(iii) of the JJ Act clearly indicates that the date of birth certificate from the school or matriculation or equivalent certificate by the concerned examination board has to be firstly preferred in the absence of which the birth certificate issued by the Corporation or Municipal Authority or Panchayat and it is only thereafter in the absence of these such documents the age is to be determined through "an ossification test" or "any other latest medical age determination test" conducted on the orders of the concerned authority, i.e. Committee or Board or Court. In the present case, concededly, only a transfer certificate and not the date of birth certificate or matriculation or equivalent certificate was considered. Ex. C1, i.e., the school transfer certificate showed the date of birth of the victim as 11.07.1997. Significantly, the transfer certificate was produced not by the prosecution but instead by the court summoned witness, i.e., CW-1. The burden is always upon the prosecution to establish what it alleges; therefore, the prosecution could not have been fallen back upon a document which it had never relied upon. Furthermore, DW-3, the concerned Revenue Official (Deputy Tahsildar) had stated on oath that the records for the year 1997 in respect to the births and deaths were missing. **Since it did not answer to the description of any class of documents mentioned in Section 94(2)(i) as it was a mere transfer certificate, Ex C-1 could not have been relied upon to hold that M was below 18 years at the time of commission of the offence.** (emphasis added)



Reliance in this regard can also be placed on the judgment rendered by a Division Bench of this Court in ***Terry Saroya vs. State of Punjab and another 2023 (4) R.C.R. (Criminal) 176.***

9. Further still, a two Judge bench of 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. Speaking through Justice K.N. Singh, the following was held:

“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.”

10. Lastly, valid consent necessarily requires due and active consideration of all the relevant circumstances, actions, and consequences that flow from a particular act, before assenting. Whatever choice one makes, it must be reasoned and adopted after being alive to all the probable outcomes. In that vein, this Court is of the considered opinion that all surrounding circumstances point towards the conclusion that the prosecutrix left with the appellant of her own volition. This is further buttressed by the fact that the learned trial Court had acquitted the appellant of the charge under Section 376



of IPC, observing that the sexual intercourse was consensual in nature. It was also categorically noted that at the time of the alleged incident, the prosecutrix was more than sixteen years of age. As such, since the minority of the prosecutrix remains unproven, the conviction of the appellant under Section 366-A IPC cannot stand.

11. In view of the discussion above, it appears that the prosecution has failed to prove its case beyond a shadow of a reasonable doubt and the conviction is solely based on the factum of age of the prosecutrix. It is evident that the minority of the prosecutrix remains unproven. Therefore, the offence under Section 366-A of the IPC cannot be attracted. Consequently, it is on the prosecution to establish its case beyond reasonable doubt, which it has failed to accomplish.

CONCLUSION

12. In view of the discussion above, the present appeal is allowed. The impugned judgment of conviction and order of sentence dated 27.05.2004 passed by the learned Additional Sessions Judge, Kurukshetra is hereby set aside and the appellant is acquitted of the charges framed against him.

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

(HARPREET SINGH BRAR)
JUDGE

05.05.2025

Neha

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