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

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Date of decision : 29.04.2025

Bala Devi

... Appellant

Versus

State of Haryana and another

... Respondents

**CORAM : HON'BLE MR. JUSTICE ANUPINDER SINGH GREWAL
HON'BLE MR. JUSTICE DEEPAK MANCHANDA**

Present:- Mr. Rishi Pal Singh Garttan, Advocate for the applicant.

Mr. Deepak Bhardwaj, DAG, Haryana.

Anupinder Singh Grewal, J. (Oral)

This appeal has been filed by the complainant (who is the sister of the prosecutrix 'J'), against the judgment of the trial Court dated 16.09.2021 whereby respondent No.2 has been acquitted under Sections 363, 366-A IPC (Section 366-A IPC deleted and Sections 366, 506 IPC and Section 6 of the Protection of Children from Sexual Offences Act, 2012 added later on) in FIR No.435 dated 21.08.2020, registered at Police Station Sadar Thanesar.

2. Learned counsel for the appellant submits that the prosecution had been able to make out a case against respondent No.2 beyond reasonable doubt and he ought to have been convicted. The victim, who was 16 years of age as per the date of birth recorded in the school register as well as in the Aadhar Card, had been enticed away by the respondent no.2 on the false pretext of marriage. Thereafter, he took her to various places and assaulted her.



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3. We have heard the learned counsel for the applicant and have perused the material on record.

4. It is the case of the prosecution that on 21.08.2020, the FIR had been lodged on the basis of the statement of the complainant that her sister who was about 16 years of age, had been allured and taken away by respondent No.2 on 20.08.2020, at about 1:00 am. On 30.08.2020, respondent No.2 had produced the victim before the police. The victim got her statement recorded under Section 164 Cr.P.C. before the learned Magistrate (Ex.P3). On the same day, she gave another statement to the police officials under Section 161 Cr.P.C stating that she had been enticed away by the respondent no.2 and he had sexually assaulted her on the false pretext of marriage. Thereafter, she was also counselled and medically examined. On 30.08.2020, respondent No.2 was arrested, his statement was recorded and he was medico-legally examined. After completion of the investigation, the final report was submitted. Vide order dated 12.11.2020, charges were framed against respondent no.2, to which he pleaded not guilty and claimed trial. To prove its case, the prosecution examined 15 witnesses.

5. The prosecution examined PW-1, namely, Rakhi, Counselor, Child Welfare Committee, who had counselled the victim and prepared her report Ex.P1. PW-2, the victim, had stated in her deposition that on 19.08.2020, she was present at Deha Basti, near Pipli. Respondent no.2 had on the pretext of marriage, called her to the open fields where he then assaulted her. Then she had been enticed away by respondent No.2 to Naraingarh on the pretext of marriage. She was also taken by him to Ambala where he had committed rape upon her forcefully. She further deposed that on 30.08.2020, accused brought



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her to the police station. He threatened her and forced her to make a statement in his favour before the Magistrate. She narrated the sequence of events to the police and her statement was recorded. Thereafter, she was sent to Bal Ashram and from there she was taken to the Counsellor.

6. Dr. Himanshi, who was examined as PW-4, had stated that an application for medical examination of the victim was moved by the police on 30.08.2020. However, both, the victim and her elder sister, did not consent to the medical examination of the victim. She, therefore, conducted only a general medical examination of the victim and prepared the report-Ex.P4.

7. Dr. Neeraj Sharma, who was examined as PW-5, had stated that an application for medical examination of the accused was moved by the police on 30.08.2020. He medically examined the accused and prepared MLR Ex. P5. He further deposed that on the same day, he had conducted a general medical examination of the victim on an application moved by the police and had prepared the report-Ex.P6.

8. PW-7, who is the complainant (sister of the victim), had supported the case of the prosecution. She stated that they had come to Pipli to visit their brother. Respondent No.2 had called her sister at night and had enticed her away to an open plot and had raped her on the pretext of marriage. Thereafter, respondent no.2 had taken the victim to several places including towards Barara, and had also taken her to Ambala and Naraingarh and committed rape with her. In this regard, she had moved a complaint Ex.P8.

9. PW-8 Raman Kaushik, Clerk of the Govt. Middle School, Jhanjhari had produced the copies of the admission and withdrawal register (Ex.P9 and Ex.P10) and copy of the School Leaving Certificate dated



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11.09.2020 (Ex.P11) which indicated that the date of birth of the victim was recorded as 11.05.2004 at the time of her admission in middle school.

10. PW-10 SI Surender Singh, the first Investigating Officer, deposed with regard to the investigation conducted by him. He deposed that on 21.08.2020, he had received a complaint Ex.P8, on the basis of which, the present FIR had been registered. He along with the complainant went to Rewari in search of victim, but she could not be found there and they came back to Kurukshetra. Later, on 30.08.2020, respondent no.2 and the victim had reached the police station by themselves. The statement of the victim was recorded before the Magistrate under Section 164 Cr.P.C. Thereafter, respondent No.2 was arrested and was medically examined. He further deposed that on 14.09.2020 he had moved an application before the CMO, Karnal for obtaining the birth certificate of the victim but the Additional District Registrar (Births and Deaths), Karnal stated that the birth record of the victim is not available with the department and the certificate in that regard is Ex.P23.

11. PW-11 Anju, Primary School Teacher, GPS Jhanjhari, produced the summoned records pertaining to the date of birth of the victim, i.e., copies of the admission form (Ex.P26), admission and withdrawal register (Ex. P27) and the School Leaving Certificate dated 31.03.2016 (Ex. P28) issued by GPS, Jhanjhari. The records indicated that the victim's date of birth was 11.05.2004 as recorded at the time of her admission.

12. PW15 SI Taro, the second Investigation Officer, had deposed that she had moved an application before the SMO, Mathana for the medical examination of the victim but she had refused to undergo the same. She further deposed that the victim had demarcated the place of occurrence at Deha Basti,



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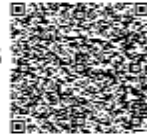
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Pipli and Ambala Cantt. and had prepared the rough site plans Ex.P31 and P32. The Magistrate, who had recorded the statement of the victim under 164 Cr.P.C., was given up as a witness on 22.07.2021.

13. The accused/respondent No.2 in his statement under Section 313 Cr.P.C. had pleaded his innocence and had stated that he had been falsely implicated in the case. He had never put any pressure on the victim to join his company, rather she had forced him to join her company. The victim had left her house on her own accord and was not a minor. The complaint had been made at the behest of the victim's sister who nursed a grudge against him due to some family dispute.

14. The defence had examined three witnesses who include DW-1 Hardev, who had stated that 'RR' s/o 'LS', who was father of the victim, had passed away at Village Jhanjhari on 04.09.2000 and he had attended his cremation. Ravi Pal, Computer Clerk, who was examined as DW-2, had produced the death certificate of Ratna Ram, which indicated that the date of death was 04.09.2000. Head Constable Sandeep Kumar, who was examined as DW-3, had stated that the sister of the victim (present complainant) had earlier filed a complaint on 12.08.2019 and in that regard, produced the summoned record of DD No.18 dated 12.08.2019, Police Station Sadar Karnal. He further deposed that he had conducted the investigation in the earlier complaint filed by the present complainant and during the course of investigation, he had found that the allegations levelled by the complainant were false and fabricated. His report qua the same is Ex.DW3/A.

15. The trial Court, after appreciation of the evidence on record, had acquitted respondent No.2 of all charges.



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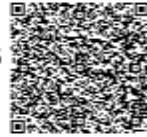
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16. In short, the prosecution's version is that the victim was a minor aged around 16 years of age at the time of commission of the offence who had been enticed away by respondent No.2, who had then established physical relations with her on the false pretext of marriage.

17. We shall at the first instance, examine the evidence before the trial court with regard to the issue of the age of the prosecutrix. The prosecution has relied upon the date of birth entered in the school register, which was recorded as '11.05.2004' to argue that on the day of the occurrence she was a minor, aged about 16 years 3 months. It is true that the date of birth of the victim as recorded in the school was '11.05.2004', but the officials of the two schools, who were examined as PW-8 and PW-11 respectively, had stated in their cross-examination, that the entry with regard to her date of birth at the time of her admission in the school, had been made only on the basis of the verbal instructions of the mother of the victim 'S'. No birth certificate or affidavit had been furnished at the time of her admission in the school and, therefore, a copy of the same was not available with the school in its records.

18. We may refer to the judgment of the Supreme Court in the case of ***Birad Mal Singhvi v. Anand Purohit***, 1988 Supp SCC 604, wherein it was held 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. Relevant extract of the same is reproduced hereinbelow:

"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



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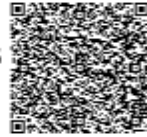
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knowledge about the date of birth of the person concerned. If the entry in the scholar's register regarding date of birth is made on the basis of information given by parents, the entry would have evidentiary value but if it is given by a stranger or by someone else who had no special means of knowledge of the date of birth, such an entry will have no evidentiary value."

However, in the instant case, the date of birth of the victim as recorded in the school record and the School Leaving Certificate has not been corroborated by the mother 'S' as she was not even joined in the investigation. Even otherwise, no other evidence has been led to corroborate this date of birth. Rather, evidence to the contrary has been produced.

19. The factum of death of the father of the victim on 04.09.2000 has been duly established from the Death Certificate produced by DW-2 Ravi Pal, the testimonies of other witnesses, including DW1 (resident of village Jhanjhari), as well as the cross-examination of the victim and the complainant. The victim herself had stated in her testimony that at the time of the death of her father, she was about 6-7 months old, which would mean that she would have been aged about 20 years and 5 months at the time of the alleged incident. Similarly, the complainant had stated in her deposition that at the time of the death of their father, their mother was about 2½ months pregnant with her sister i.e., the victim. Even assuming that the victim was in the womb of her mother at the time of the death of her father, she would still be over 19 years of age at the time of the alleged incident.

20. Furthermore, the Supreme Court in ***P. Yuvaprakash vs. State Rep. by Inspector of Police, 2023 SCC OnLine SC 846*** has held that in the absence of the birth certificate or the matriculation certificate, it is incumbent upon the prosecution to prove through acceptable medical tests/examination that the



victim's age was below 18 years as per Section 94(2)(iii) of the Juvenile Justice Act, 2015. Relevant extract of the same is reproduced hereinbelow:

“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.

*15. In a recent decision, in **Rishipal Singh Solanki v. State of Uttar Pradesh,(2021) 12 SCR 502** this court outlined the procedure to be followed in cases where age determination is required. The court was dealing with Rule 12 of the erstwhile Juvenile Justice Rules (which is in pari materia) with Section 94 of the JJ Act, and held as follows:*



“20. Rule 12 of the JJ Rules, 2007 deals with the procedure to be followed in determination of age. The juvenility of a person in conflict with law had to be decided *prima facie* on the basis of physical appearance, or documents, if available. But an inquiry into the determination of age by the Court or the JJ Board was by seeking evidence by obtaining: (i) the matriculation or equivalent certificates, if available and in the absence whereof; (ii) the date of birth certificate from the school (other than a play school) first attended; and in the absence whereof; (iii) the birth certificate given by a corporation or a municipal authority or a panchayat. Only in the absence of either (i), (ii) and (iii) above, the medical opinion could be sought from a duly constituted Medical Board to declare the age of the juvenile or child. It was also provided that while determination was being made, benefit could be given to the child or juvenile by considering the age on lower side within the margin of one year.”

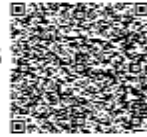
16. Speaking about provisions of the Juvenile Justice Act, especially the various options in Section 94(2) of the JJ Act, this court held in **Sanjeev Kumar Gupta v. The State of Uttar Pradesh (2019) 9 SCR 735** that:

“Clause (i) of Section 94(2) places the date of birth certificate from the school and the matriculation or equivalent certificate from the concerned examination board in the same category (namely (i) above). In the absence thereof category (ii) provides for obtaining the birth certificate of the corporation, municipal authority or panchayat. It is only in the absence of (i) and (ii) that age determination by means of medical analysis is provided. Section 94(2)(a)(i) indicates a significant change over the provisions which were contained in Rule 12(3)(a) of the Rules of 2007 made under the Act of 2000. Under Rule 12(3)(a)(i) the matriculation or equivalent certificate was given precedence and it was only in the event of the certificate not being available that the date of birth certificate from the school first attended, could be obtained. In Section 94(2)(i) both the date of birth certificate from the school as well as the matriculation or equivalent certificate are placed in the same category.”

17. In **Abuzar Hossain @ Gulam Hossain v. State of West Bengal (2012) 9 SCR 224**, this court, through a three-judge bench, held that the burden of proving that someone is a juvenile (or below the prescribed age) is upon the person claiming it. Further, in that decision, the court indicated the hierarchy of documents that would be accepted in order of preference.

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19. It is clear from the above narrative that none of the documents produced during the trial answered the description of “the date of birth certificate from the school” or “the matriculation or equivalent certificate” from the concerned examination board or certificate by a corporation, municipal authority or a Panchayat. In these circumstances, it was incumbent for the prosecution to prove through



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acceptable medical tests/examination that the victim's age was below 18 years as per Section 94(2)(iii) of the JJ Act.

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However, no such ‘ossification test’ or ‘any other latest medical age determination test’ of the victim was conducted.

21. Therefore, we are in agreement with the findings of the trial Court that the prosecutrix was not a minor at the time of the incident and the provisions of the POCSO Act, 2012 are not attracted in the case at hand.

22. Let us now examine whether the testimony of the prosecutrix inspires confidence, so as to warrant the conviction of respondent no.2 under Sections 363, 366, 366-A, 506 IPC. It is trite that when a conviction is to be based on the sole testimony of the prosecutrix, the court has to be extremely careful while examining the testimony. Reference can be made to the judgment of the Supreme Court in the case of ***Sadashiv Ramrao Hadbe v. State of Maharashtra, (2006) 10 SCC 92***, wherein the Supreme Court had made the following observation:

“It is true that in a rape case the accused could be convicted on the sole testimony of the prosecutrix, if it is capable of inspiring confidence in the mind of the court. If the version given by the prosecutrix is unsupported by any medical evidence or the whole surrounding circumstances are highly improbable and belie the case set up by the prosecutrix, the court shall not act on the solitary evidence of the prosecutrix.”

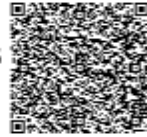
23. The Supreme Court in ***Rai Sandeep vs. State (NCT of Delhi) (2012) 8 SCC 21*** had the occasion to define as to who can be said to be a ‘sterling witness’. The relevant extract of the judgment is reproduced hereunder:

“15. In our considered opinion, the ‘sterling witness’ should be of a very high quality and caliber whose version should, therefore, be unassailable. The Court considering the version of such witness should be in a position to accept it for its face value without any hesitation. To



test the quality of such a witness, the status of the witness would be immaterial and what would be relevant is the truthfulness of the statement made by such a witness. What would be more relevant would be the consistency of the statement right from the starting point till the end, namely, at the time when the witness makes the initial statement and ultimately before the Court. It should be natural and consistent with the case of the prosecution qua the accused. There should not be any prevarication in the version of such a witness. The witness should be in a position to withstand the cross-examination of any length and howsoever strenuous it may be and under no circumstance should give room for any doubt as to the factum of the occurrence, the persons involved, as well as, the sequence of it. Such a version should have correlation with each and everyone of other supporting material such as the recoveries made, the weapons used, the manner of offence committed, the scientific evidence and the expert opinion. The said version should consistently match with the version of every other witness. It can even be stated that it should be akin to the test applied in the case of circumstantial evidence where there should not be any missing link in the chain of circumstances to hold the accused guilty of the offence alleged against him. Only if the version of such a witness qualifies the above test as well as all other similar such tests to be applied, it can be held that such a witness can be called as a 'sterling witness' whose version can be accepted by the Court without any corroboration and based on which the guilty can be punished. To be more precise, the version of the said witness on the core spectrum of the crime should remain intact while all other attendant materials, namely, oral, documentary and material objects should match the said version in material particulars in order to enable the Court trying the offence to rely on the core version to sieve the other supporting materials for holding the offender guilty of the charge alleged."

24. Analysis of the testimony of the victim in the light of these principles laid down by the Supreme Court makes it crystal clear that her testimony suffers from material inconsistencies. The victim in her statement recorded under Section 164 Cr.P.C. (Ex.P3), had categorically stated that on 20.08.2020, she had left her home 'to roam around with respondent No.2', and she did so, of her own accord and free will. She had further stated that they had stayed in a dharmashala at Naraingarh, then in a room at Ambala and she did not want any action in the matter. However, her statement under Section 161 Cr.P.C. to the police was to the contrary. In her examination-in-chief, she stated that the respondent No.2 had threatened her and out of pressure and fear, she

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had given a statement in favour of the accused before the magistrate. She then contradicts herself, and states that she gave the statement in favour of the accused due to police pressure.

25. In her cross-examination, she further admitted that she and the accused had been in touch via mobile phone for some time and he had called her around 1:00 am on the alleged date of occurrence. She had accompanied respondent No.2 out of her own free will to solemnise their marriage. In Ambala, they had stayed under a bridge near the railway station for about ten days and the area was bustling with passersby. She also deposed that when she was produced before the police, she opted to stay in the Bal Ashram and did not want to stay with her sister and after two days she never met any police official which suggests that the rough sketches of site plans were made in her absence.

26. Furthermore, the victim had refused to give her consent for the medical examination when she was produced before the doctor, which is reflected in the report of Dr. Himanshi (Ex.P4). She had further recorded in her report that the patient had come with *'the alleged history of running away on her own accord and with her consent'*.

27. It is also significant to note that there are material discrepancies in the testimony of the complainant as well. In her examination-in-chief, the complainant, in addition to other facts, had stated that respondent No.2 raped the victim in an open plot and also took her to Barara, whereas the victim had not stated anything about such plot and the place called Barara. Otherwise also, it is an admitted fact that the complainant is a 'hearsay' witness as she has



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stated whatever was allegedly told to her by the victim and the hearsay version of this witness ought not to be believed.

28. It is, thus, manifest that the judgement of acquittal dated 16.09.2021, is based upon proper appreciation of the evidence on record. The prosecution evidence is doubtful and the acquittal of respondent No.2 is justified.

29. It is trite that by an order of acquittal, the presumption of innocence of the accused is reinforced. Interference would be called for only when there is manifest illegality or perversity in the judgment resulting in a miscarriage of justice. Even if another view is possible while appreciating the evidence, the Appellate Court should refrain from interference in a judgment of acquittal. Reference can be made to the judgment of the Supreme Court in the case of **Chandrappa and others vs. State of Karnataka (2007) 4 SCC 415**.

The relevant extract thereof is reproduced hereunder:-

“42. From the above decisions, in our considered view, the following general principles regarding powers of appellate Court while dealing with an appeal against an order of acquittal emerge;

(1) to (3) xxxxxxxxx

(4) An appellate Court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.”



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30. In view of the above, we do not find any manifest illegality or perversity in the judgement of the Special Court acquitting the respondent No.2.

31. Consequently, the appeal stands dismissed.

**(ANUPINDER SINGH GREWAL)
JUDGE**

**(DEEPAK MANCHANDA)
JUDGE**

April 29, 2025
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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No