



1 CRA-9715-2022
IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR
BEFORE
HON'BLE SMT. JUSTICE ANURADHA SHUKLA
ON THE 14th OF AUGUST, 2024
CRIMINAL APPEAL No. 9715 of 2022

LALIT LAUVANSHI
Versus
THE STATE OF MADHYA PRADESH AND OTHERS

Appearance:

Shri Shreesh Agrawal - Advocate for the appellant

Ms. Priyanka Mishra - Government Advocate for the State

WITH

CRIMINAL APPEAL No. 6562 of 2023

THE STATE OF MADHYA PRADESH
Versus
LALIT LOUWANSHI

Appearance:

Ms. Priyanka Mishra - Government Advocate for the State-appellant.

Shri Shreesh Agrawal - Advocate for the respondent.

Reserved on : 08.08.2024

Pronounced on: 14.08.2024

JUDGMENT

These are cross criminal appeals arising out of common judgment delivered by Special Judge, Protection of Children from Sexual Offences Act (for short, "POCSO Act")/Second Additional Sessions Judge, Itarsi, district Narmadapuram, on 28.9.2022 in Sessions Trial No. 25/2019. Criminal Appeal No.9715/2022 has been filed by appellant (hereinafter referred to as



“accused”) who was convicted for the offence of Section 363 IPC and sentenced to three years rigorous imprisonment along with fine of Rs.500/-, of Section 376(2) IPC and sentenced to ten years rigorous imprisonment and fine of Rs.1,000/- and of Section 3/4 of POCSO Act and sentenced to ten years rigorous imprisonment and fine of Rs.1,000/- with a further direction to undergo rigorous imprisonment of two months, three months and three months for respective defaults in payment of fine. The other Criminal Appeal No.6562/2023 has been filed by the State against the accused challenging his acquittal under the offence of Section 366 IPC.

2. Brief facts relevant for the decision of these criminal appeals are that on the date of incident i.e. 21.12.2018 the prosecutrix, who was below 18 years of age, went missing from her house regarding which a missing person’s report was lodged by her father on 22.12.2018 against an unknown person; it was informed in that report that the prosecutrix had taken her birth certificate and the Aadhar card along with her; on the basis of missing person report, an FIR under Section 363 IPC was registered and the matter was investigated; the prosecutrix was recovered on 5.1.2019 from the custody of accused; she was medically examined; the remaining investigation was completed and thereafter the charge-sheet was filed against the accused; the trial was held before the Special Court which culminated into the impugned judgment holding the accused guilty and punishing him as discussed earlier. He was acquitted of the charge of Section 366 IPC.

3. The grounds raised in Criminal Appeal No.9715/2022 are that the impugned judgment deserves to be set aside for the reason that the learned



court below failed to see that there was no evidence available on record to hold the accused guilty; the prosecutrix was a consenting party and a false FIR was lodged by her; the age of prosecutrix was seriously disputed; there was no document to show that the age of prosecutrix was recorded in school on any authentic basis; there was no external or internal injuries found on the person of prosecutrix; the statements of prosecution witnesses were contradictory to each other and also had inherent contradictions; no independent witness supported the prosecution case. It was, therefore, prayed that the appeal should be allowed and the accused should be acquitted.

4. In Criminal Appeal No.6562/2023 the State has taken the grounds that the learned trial court while holding the accused guilty of offence of Sections 363 and 376(2) IPC and Section 3/4 of POCSO Act wrongly acquitted the accused of the offence of Section 366 IPC. It was established that the accused had kidnapped a minor girl and then established sexual relationship with her. Thus, acquittal of accused under Section 366 IPC was not justified as it was the result of misreading the evidence. It was, therefore, prayed that the appeal should be allowed and the accused should be convicted and sentenced for the offence of Section 366 IPC.

5. The rival parties have opposed these appeals contending that the judgment of trial court requires no interference.

6. Both the parties have been heard and the record of the trial court has been perused.

7. The prosecution has in this case relied upon the testimony of total 13 witnesses while the accused produced no oral evidence in his defence. The



witnesses examined are prosecutrix (P.W.1), her father (P.W.2), her uncle (P.W.4), Akash Borasi (P.W.3), the employer of accused, Vinod Kumar Sahu (P.W.5), the school teacher, Santosh Kewat alias Bunty (P.W.6) the neighbour of accused, Dr. Abha Dubey (P.W.11), Rameshwar Prasad Sharma (P.W.12), the landlord and other witnesses relating to the investigation proceedings. The documents produced in evidence are Exs.P-1 to P-38 and again no documentary evidence was produced in defence. It may be mentioned right here that the DNA report, Ex.P-38, based upon the examination of male DNA detected on the source of prosecutrix matched with the DNA profile of accused and the process of sampling for DNA profile was not challenged before the trial court nor has it been challenged before this court.

8. The prime emphasis of accused is that the prosecutrix was a major girl at the time of alleged offence and that she was a consenting party. To show her consent, the accused has relied upon the fact that prosecutrix went missing on the night of 21.12.2018 and she was recovered on 5.1.2019. According to the prosecutrix (P.W.1) herself, she was with the accused during this period. Although she has denied to be a consenting party but the statements of Akash Borasi (P.W.3) reveal that he had employed the accused in labour work and prosecutrix too worked there for 6-7 days. He has also stated that there were 15-20 labourers working on that site. Apparently, prosecutrix did not complain to any of them or to witness Akash Borasi about her sexual harassment by the accused. Neighbour Santosh Kewat alias Bunty (P.W.6) has stated that accused introduced himself and the prosecutrix as husband



and wife to him and, according to this witness, they were living happily. Similar are the statements of Rameshwar Prasad Sharma (P.W.12), who is the landlord of witness Santosh Kewat alias Bunty (P.W.6). These statements reflect that the prosecutrix had many opportunities to complain about the act of accused but she remained silent on every such occasion. She was neither denying her marital relationship with the accused nor was making complaints about her being sexually abused by the accused. This explicitly shows her consenting behaviour.

9. Now this court has to examine whether the prosecution has been able to prove that the age of prosecutrix was below 18 years at the time of incident and if it is found that the prosecution has failed to prove this important aspect then the consenting behaviour of prosecutrix would be sufficient to set aside the finding of conviction.

10. To prove the date of birth of prosecutrix, the prosecution has relied upon the mark-sheet of prosecutrix of Class X, Ex.P-3, and her birth certificate issued by the Registrar, Birth & Death, Ex.P-4. These two documents produced in evidence are not the original documents and they are merely the true copies prepared by the Thana Prabhari, Pathrota. The certified copy of a public document is admissible in evidence under Section 77 of Indian Evidence Act and what would be a certified copy of a public document, is defined in Section 76 of that Act. Evidently, the true copy issued with the signature of Thana Prabhari does not fall within the category of certified copy of the Class X mark-sheet and the birth certificate issued by Registrar, Birth & Death. Thus, both these documents are not the certified copies and,



therefore, do not fall into the category of primary evidence. Section 64 of the Indian Evidence Act requires that the documents must be proved by primary evidence except where the secondary evidence is permissible or permitted. Here, neither of the conditions applies. No permission was taken from the trial court to produce secondary evidence about these two documents which were definitely not the pieces of primary evidence. In the light of this observation, it is held that the learned trial court acted against the principles of Law of Evidence by relying upon these two true copies which were not at all admissible in evidence.

11. The prosecution has also relied upon the school record of prosecutrix to prove her date of birth and for this, the documents of Ex.P-20, P-20C and P-21 have been produced in evidence and the statements of teacher Vinod Kumar Sahu (P.W.5) have been relied upon. Now comes the question to what extent the prosecution has been able to prove the age of prosecutrix on the basis of these documents and the testimony of Vinod Kumar Sahu (P.W.5). It has been admitted by this witness that the relevant entry about the admission of prosecutrix in the school is not in his handwriting as he joined the school in the year 2013 while the said entry is of the year 2006-2007. He has also stated in his examination-in-chief itself that the document on the basis of which this entry was made is not available in the school, he therefore expressed his ignorance about the nature of document on the basis of which the date of birth of prosecutrix was written at the time of entry of year 2006.

12. The learned Judge of trial court has relied upon the decision of Apex Court in **Satpal v. State of Haryana (2010) 8 SCC 714** to come to the



conclusion that under the provision of Section 35 of the Indian Evidence Act, an entry about the date of birth in the school register is relevant. This observation reflects that the most important aspect of evidence law was missed by the court below. It could not differentiate between the two aspects i.e. relevancy and the proof. A fact or a document may be relevant but it requires to be proved on the legal parameters before any finding could be based upon it.

13. Next comes up the question “what should be the nature or standard of proof to prove the date of birth of a particular person recorded in his school record.” This question has been answered by the Apex Court in the case of **Birad Mal Singhvi v. Anand Purohit 1988 SCC (Supp.) 604**. The legal proposition laid down therein is as follows:

“The entries regarding dates of birth contained in scholar’s register have no probative value, if no person on whose information the date of birth of the candidate was mentioned in the school record, 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.”

14. The Apex Court in this judgment came to the conclusion that the documents relating to the age of person concerned were relevant and admissible but the vital piece of evidence about their proof was missing in the case as no evidence was placed before the court to show on whose information this date of birth was recorded in the aforesaid document. Neither the parents nor any other person having special knowledge about the date of birth of the person concerned were examined in that case. It was observed by the Apex Court that merely because the questioned documents were proved, it does not mean that the contents thereof were also proved.



15. Keeping in view the aforesaid legal principle, this court has the task to examine the evidence on whether the prosecution has been able to prove the identity of the person on whose information the date of birth of prosecutrix was recorded in the scholar register at the time of admission and whether that person has proved the date of birth of prosecutrix in the court.

16. The prosecution has examined the father of prosecutrix (P.W.2) and her uncle (P.W.4) in this case. The mother of prosecutrix has not been examined. The school teacher (P.W.5) has not been able to disclose the name of person on whose information the entry of date of birth was made. Therefore, these two close relatives were supposed to disclose the said information in their examination-in-chief but it is completely silent on this issue. In cross-examination the father has claimed that the date of birth mentioned in the birth certificate (Ex.P-4) was informed by him and not by the Gram Kotwar but again, he is silent about the entry of date of birth in the school register. He does not claim that he was instrumental for this entry in school. As discussed earlier, the birth certificate, Ex.P-4, is not an admissible piece of evidence. Hence, an oral evidence given about the contents of that document is also not admissible.

17. On the basis of foregoing discussion, it is concluded that the prosecution has failed to prove that prosecutrix was below 18 years at the time of incident. Her class X mark-sheet and birth certificate were not proved by producing the original documents in evidence or by seeking permission to prove them through secondary evidence. The entry of date of birth in scholar register was also not proved by any reliable evidence. The person who made



that entry or the person at whose behest that entry was made was not examined and if it was the father of prosecutrix who gave information about the date of birth of prosecutrix at the time of her admission in the school, then he failed to prove this important fact through his testimony. Accordingly, in the absence of any reliable piece of evidence to prove the age of prosecutrix merely relevance of a document under Section 35 of the Indian Evidence Act cannot be considered of any evidentiary value. Vigilance and the precautions that are required to be adopted in a case of a minor victim of sexual assault were completely missing in this case as evident from the fact that even inadmissible documents were allowed to be produced in evidence to prove the age of prosecutrix.

18. Consequently, the judgment and sentence challenged under Criminal Appeal No.9715/2022 are hereby set aside for the simple reason that the prosecution has failed to prove that the age of prosecutrix was below 18 years at the time of incident and it has already been discussed that her attitude was of willing and consenting partner. Accordingly, the accused is acquitted of the charges of Sections 363 and 376(2) IPC and also Section 3/4 of POCSO Act. For the same reasons, Criminal Appeal No.6562/2023 is hereby dismissed as the request made thereunder about holding the accused guilty of Section 366 IPC and punishing him cannot be allowed in the circumstances of the case.

19. The accused is in custody. He be immediately set at liberty, if not required in any other case.

20. The fine amount, if any, deposited by the accused be refunded to him.



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21. The record of the trial court be send immediately along with the copy of this judgment for information and necessary compliance and the Registry is directed to immediately supply a copy of this judgment to the accused free of cost. Another copy of the same be send to the concerned jail authority for ensuring the immediate release of accused in this case.

22. Accordingly, both the appeals are decided and disposed of.

(ANURADHA SHUKLA)
JUDGE

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