

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO(S).1395/2015

RAJAK MOHAMMAD . . . APPELLANT(S)

VERSUS

**THE STATE OF HIMACHAL
PRADESH** . . . RESPONDENT(S)

ORDER

1. The accused appellant has been acquitted by the learned trial Court of the charges under Sections 363, 366 and 376 of the Indian Penal Code, 1860 ("IPC" for short). In appeal by the State the order of acquittal has been reversed and an order of conviction recorded by the High Court following which he has been sentenced to suffer rigorous imprisonment for four (04) years, five (05) years and seven (07) years respectively for the offences under Sections 363, 366 and 376 IPC. All the sentences are directed to run concurrently.

The accused appellant has been in custody for nearly three and half years.

2. The evidence of PW 6 - the prosecutrix with regard to the incident of abduction and commission of rape stands contradicted by her previous statement in writing recorded under Section 161 of the Code of Criminal Procedure, 1973 ("Cr.P.C." for short) with which she was confronted (Exhibits PW18/F and PW18/G].

3. Apart from the above, from the evidence of Bimla Devi (P.W.7) it appears that the prosecutrix has remained with the accused appellant for about two days in Kullu in the house of P.W.7 and that there were about 60-70 houses in the village. The materials on record also indicate that the prosecutrix remained in the company of the accused appellant for about 12 days until she was recovered and that she had

freely moved around with the accused appellant in the course of which movement she had come across many people at different points of time. Yet, she did not complain of any criminal act on the part of the accused appellant.

4. In view of the above, the focal point for decision would be the age of the prosecutrix in order to determine as to whether she was a major so as to give her consent.

5. In this regard, we have considered the evidence and materials on record. The age of the prosecutrix has been sought to be proved by the prosecution by bringing on record the School Admission Form (Exhibit PW5/A) and the certificate (Exhibit PW5/B) issued by one Jasdeep Kaur (P.W.5), JBT Teacher of Government School Dungi Plate. P.W.5 in her deposition has stated that the

writings in the School Admission Form (Exhibit PW5/A) are in her handwriting and the signature affixed is that of the mother of the prosecutrix.

In cross-examination, P.W.5 had stated that the details mentioned in Exhibit PW5/A have been obtained from the School Leaving Certificate issued by the Government Primary School, Tambol. The certificate issued by the Government Primary School Tambol on the basis of which the details in the Admission form (Exhibit PW5/A) was filled up by P.W.5 has not been exhibited by the prosecution.

Nothing hinges on the document exhibited by the prosecution as Exhibit PW5/B as that is the consequential certificate issued on the basis of the entries in Exhibit PW5/A. The mother of the prosecutrix who had allegedly signed

Exhibit PW5/A has not been examined by the prosecution.

6. On the other hand, we have on record the evidence of Dr. Neelam Gupta (P.W.8) a Radiologist working in the Civil Hospital, Nalagarh who had given an opinion that the age of the prosecutrix was between 17 to 18 years.

7. While it is correct that the age determined on the basis of a radiological examination may not an accurate determination and sufficient margin either way has to be allowed, yet the totality of the facts stated above read with the report of the radiological examination leaves room for ample doubt with regard to the correct age of the prosecutrix. The benefit of the aforesaid doubt, naturally, must go in favour of the accused.

8. We will, therefore, have to hold that in the present case the prosecution has not succeeded in proving that the prosecutrix was a minor on the date of the alleged occurrence. If that is so, based on the evidence on record, already referred to, we will further have to hold that the possibility of the prosecutrix being a consenting party cannot be altogether ruled out.

9. We will, therefore, have to conclude that the accused appellant deserves to be acquitted on the benefit of doubt. We, consequently, set aside the order of the High Court and the conviction recorded as well as the sentence imposed and acquit the accused appellant of the offences alleged. We further direct that the accused appellant be released from custody forthwith unless his custody is required in connection with any other case.

10. The appeal is allowed in the above terms.

....., J.
(RANJAN GOGOI)

....., J.
(NAVIN SINHA)

....., J.
(K.M. JOSEPH)

NEW DELHI
AUGUST 23, 2018

ITEM NO.101

COURT NO.2

SECTION II-C

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

CRIMINAL APPEAL NO(S). 1395/2015

RAJAK MOHAMMAD

APPELLANT(S)

VERSUS

THE STATE OF HIMACHAL PRADESH

RESPONDENT(S)

Date : 23-08-2018 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE RANJAN GOGOI
HON'BLE MR. JUSTICE NAVIN SINHA
HON'BLE MR. JUSTICE K.M. JOSEPH

For Appellant(s)

Mr. M. C. Dhingra, AOR

For Respondent(s)

Mr. Manish Kumar, Adv.
Mr. Abhinav Mukherjee, AOR
for Mr. Ajay Marwah, AORUPON hearing the counsel the Court made the following
O R D E R

The appeal is allowed in terms of the signed order.

[VINOD LAKHINA]

AR-cum-PS

[ASHA SONI]

BRANCH OFFICER

[SIGNED ORDER IS PLACED ON THE FILE]