

Madhya Pradesh High Court

Relsingh vs The State Of Madhya Pradesh on 10 May, 2022

Author: Satyendra Kumar Singh

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Cr.A. No.835/2017

IN THE HIGH COURT OF MADHYA PRADESH AT INDORE

BEFORE

HON'BLE SHRI JUSTICE SATYENDRA KUMAR SINGH

ON THE 10TH OF MAY, 2022

CRIMINAL APPEAL No.835 OF 2017

Between: -

RELSINGH S/O NAVSINGH

AGE : 24 YEARS

OCCUPATION : LABOURER

R/O VILLAGE RAIKHED

DISTRICT : BARWANI (MP)

.....APPELLANT

(BY SHRI PANKAJ AJMERA, ADVOCATE)

AND

THE STATE OF MADHYA PRADESH

STATION HOUSE OFFICER

THROUGH POLICE STATION PANSEMAL

DISTRICT : BARWANI (MADHYA PRADESH)

.....RESPONDENTS

(BY SHRI AKASH SHARMA, GOVERNMENT ADVOCATE FOR  
STATE)

This appeal coming on for orders this day, Hon'ble Shri Justice  
Satyendra Kumar Singh passed the following:

#### JUDGEMENT

The appellant has preferred this appeal under Section 374(2) of the Code of Criminal Procedure, 1973 (2 of 1974) [in short "Cr.P.C."] against the judgement dated 19.04.2017 passed by the Court of 2nd Additional Cr.A. No.835/2017 Sessions Judge, Sendhwa, District Barwani (M.P.) in S.S.T No.64/2015, for the offences punishable under Sections 363, 366-A and 376(2)(n) of the Indian Penal Code (in short "IPC") and under Section 3/4 of the Protection of Children from Sexual Offences Act, 2012 (in short "POCSO Act") and in view of provisions of Section 4 of the POCSO Act, sentenced him as follows :-

S. No.	Conviction	Imprisonment	Sentence Fine	Additional
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			amount	imprisonment in default of payment of fine
1	363 of IPC	1 year RI	Rs.1,000/-	1 month RI
2	366-A of IPC	1 year RI	Rs.1,000/-	1 month RI
3	376(2)(n) of IPC	10 years RI	Rs.3,000/-	2 months RI

2. Prosecution story, in brief is as follows :-

(i) The appellant and complainant's minor daughter prosecutrix, aged about 12 years both were residents of same village Raikhed, Police Station Pansemal, District Barwani (MP) and were having love affair with each other. On 16.05.2015, at about 10.00 AM, when prosecutrix was going towards her school, appellant came there and forcefully got her seated on his motorcycle and took her to Shahada (Maharashtra), kept her there captivated in a room and committed rape upon her repeatedly.

(ii) On the same day, when the complainant returned home and found his minor daughter prosecutrix went missing, he searched for her at nearby places and came to know that prosecutrix had eloped with the appellant. Thereafter, on 28.05.2015, he informed the police about the incident, on the basis of which, on the same day, at about 19.50 hours, Cr.A. No.835/2017 missing person's report and at about 20.05 hours, FIR (Exhibit-P/7) was lodged at Police Station Pansemal, District Barwani against the appellant for the offence punishable under Sections 363 and 366-A of IPC. On the same day, SHO Police Station Pansemal Antarsingh recorded the statements of the complainant. On the next day, i.e. on 29.05.2015, he went to the place of occurrence, prepared spot-map (Exhibit-P/8), recovered the prosecutrix from the possession of the appellant as per Dastyabi Panchnama (Exhibit-P/3) and recorded the statement of the prosecutrix. Thereafter, vide letter (Exhibit-P/10) sent the prosecutrix to Government Hospital, Sendhwa for her medical examination, where on the same day, at about 3.30 PM, Dr. Gayatri Pandit medically examined her and prepared MLC report (Exhibit- P/11) wherein she observed as under :-

Secondary sexual characters well developed.

Dentition 7 / 7

(iii) Dr. Gayatri Pandit opined in her MLC report (Exhibit-P/11) that as no injury detected on the private part or all over the body of the prosecutrix therefore, opinion regarding recent sexual activity cannot be given. She prepared prosecutrix's vaginal smear slide, preserved and sealed the same alongwith her pubic hair and clothes and handed over the same to the lady constable Priyanka Damar, who brought her to the hospital.

(iv) On the same day, i.e. on 29.05.2015, I.O. Antarsingh arrested the appellant as per arrest memo (Exhibit-P/4). Vide letter (Exhibit-P/13) sent him to the Government Hospital, Pansemal for medical examination where Dr. Rajesh Dhole medically examined him and found him capable of

doing sexual activities as per MLC report (Exhibit-P/9). He collected and prepared his semen slide and sealed the Cr.A. No.835/2017 same alongwith his pubic hair and underwear and handed over the same to the constable, who brought him to the hospital. I.O. Antarsingh got the statement of prosecutrix recorded under Section 164 of Cr.P.C. He obtained letter/certificate (Exhibit-P/1) alongwith copy of scholar register entry (Exhibit-P/2) from Shaskiya Utkrisht Prathamik Vidyalaya, Bhosle, Phalya, Raikhed, about the age of prosecutrix wherein her date of birth is written as 15.08.2003. Vide letter (Exhibit- P/16) sent the seized articles to the Forensic Science Laboratory, Rau, District Indore for chemical examination. Obtained FSL report (Exhibit-P/17) and after completion of investigation, filed the charge- sheet before the Court of 2nd Additional Sessions Judge, Sendhwa, District Barwani.

3. Learned Trial Court considering the material prima-facie available on record, framed the charges under Sections 363, 366-A and 376(2)(n) of IPC and Section 3/4 of the POCSO Act against the appellant, who abjured his guilt and prayed for trial. In his statement recorded under Section 313 of Cr.P.C., the appellant pleaded his false implication in the matter. In support of his defense, he did not examine any witness.

4. Learned Trial Court after appreciating the oral as well as documentary evidence available on record, convicted the appellant for the offence punishable under Sections 363, 366-A and 376(2)(n) of IPC and Section 3/4 of POCSO Act and sentenced him to suffer as mentioned in para-1 of this judgement. Being aggrieved with the said judgement of conviction and order of sentence, appellant has preferred this appeal for setting aside the impugned judgement and discharging him from the charges framed against him.

5. Learned counsel for the appellant submits that learned Trial Court has committed a legal error while appreciating the evidence available on record. The prosecution has produced school scholar register entry (Exhibit-P/2) with regard to age of the prosecutrix but nothing has been produced on record on Cr.A. No.835/2017 the basis of which her date of birth was written therein as 15.08.2003. On bare perusal of the aforesaid scholar register entry (Exhibit-P/2), it is apparent that manipulation has been done therein about date of birth of prosecutrix. The ocular and medical evidence are not consistent. Prosecutrix herself admitted in her cross-examination that there was prior enmity between her father-complainant and appellant's father, due to which, this false and fabricated case has been registered. Prosecutrix's statements are not consistent about the incident. There are material contradictions and omissions in the statements of other prosecution witnesses also. Prosecution could not prove the guilt of the appellant beyond reasonable doubt. In the aforesaid circumstances, Trial Court has committed error in holding the appellant guilty for the offences punishable under Sections 363, 366-A and 376(2)(n) of IPC and Section 3/4 of POCSO Act. Therefore, the impugned judgement of conviction and order of sentence may be set aside and appellant may be acquitted from the charges framed against him.

6. Per contra, learned Public Prosecutor for the respondent-State, while supporting the impugned judgement of conviction and order of sentence submits that the judgement was passed by the Trial Court after proper appreciation of evidence available on record. The same is well reasoned establishing the guilt of the appellant beyond reasonable doubt. Therefore, confirming the

impugned judgement of conviction and order of sentence, the appeal filed by the appellant may be dismissed.

7. I have heard learned counsel for the parties at length and perused the record.

8. Perusal of the record reveals that on 28.05.2015, at about 20.05 hours, prosecutrix's father-complainant (PW-5) lodged an FIR (Exhibit-P/7) at police station on Pansemal, District Barwani against the appellant stating therein that his minor daughter prosecutrix aged about 12 years had eloped with the appellant and went missing since 16.05.2015. Prosecutrix was recovered on Cr.A. No.835/2017 29.05.2015 i.e. after about 12 days of the incident, as per Dastabi Panchanama (Exhibit-P/3). In her statement recorded under Section 164 of Cr.P.C. prosecutrix has stated that on the date of incident, at about 11.00 AM, when she was going towards her school, appellant came there and forcefully got her seated on his motorcycle, took her to Shahada (Maharashtra), kept her there captivated in a room as his wife and also slept with her against her will.

9. The questions which fall for consideration of this Court are that firstly, whether the prosecutrix was minor at the time of incident and secondly, whether the prosecutrix was a consenting party?

10. Regarding the admissibility of the documents proved in support of age of the prosecutrix and their probative value, the Hon'ble Supreme Court in the case of Satpal Singh Vs. State of Haryana, (2010) 8 SCC 714, has held as under :-

19. So far as the issue as to whether the prosecutrix was a major or minor, it has also been elaborately considered by the courts below. In fact, the school register has been produced and proved by the Headmaster, Mohinder Singh (PW 3). According to him, Rajinder Kaur (PW 15), the prosecutrix, was admitted in Government School, Sharifgarh, District Kurukshetra on 2-5-1990 on the basis of school leaving certificate issued by Government Primary School, Dhantori. In the school register, her date of birth has been recorded as 13-2- 1975. The question does arise as to whether the date of birth recorded in the school register is admissible in evidence and can be relied upon without any corroboration. This question becomes relevant for the reason that in cross-examination, Shri Mohinder Singh, Headmaster (PW 3), has stated that the date of birth is registered in the school register as per the information furnished by the person/guardian accompanying the students, who comes to the school for admission and the school authorities do not verify the date of birth by any other means.

20. A document is admissible under Section 35 of the Evidence Act, 1872 (hereinafter called as "the Evidence Cr.A. No.835/2017 Act") being a public document if prepared by a government official in the exercise of his official duty. However, the question does arise as to what is the authenticity of the said entry for the reason that admissibility of a document is one thing and probity of it is different.

21. In *State of Bihar v. Radha Krishna Singh* 6 this Court dealt with a similar contention and held as under:

"40. ... Admissibility of a document is one thing and its probative value quite another--these two aspects cannot be combined. A document may be admissible and yet may not carry any conviction and weight or its probative value may be nil. ... (SCC p. 138, para 40)

53. ... where a report is given by a responsible officer, which is based on evidence of witnesses and documents and has a statutory flavour in that it is given not merely by an administrative officer but under the authority of a statute, its probative value would indeed be very high so as to be entitled to great weight. (SCC p. 143, para 53)

145. (4) The probative value of documents which, however ancient they may be, do not disclose sources of their information or have not achieved sufficient notoriety is precious little. (SCC p. 171, para 145)"

22. Therefore, a document may be admissible, but as to whether the entry contained therein has any probative value may still be required to be examined in the facts and circumstances of a particular case. The aforesaid legal proposition stands fortified by the judgments of this Court in *Ram Prasad Sharma v. State of Bihar*; *Ram Murti v. State of Haryana* *Dayaram v. Dawalatshah*; *Harpal Singh v. State of H.P.*; *Ravinder Singh Gorkhi v. State of U.P.*; *Babloo Pasi v. State of Jharkhand*; *Desh Raj v. Bodh Raj* and *Ram Suresh Singh v. Prabhat Singh*. In these cases, it has been held that even if the entry was made in an official record by the official concerned in the discharge of his official duty, it may have weight but still may require corroboration by the person on whose information the entry has been made and as to whether the entry so made has been exhibited and proved. The standard of proof required herein is the same as in other Cr.A. No.835/2017 civil and criminal cases. Such entries may be in any public document i.e. school register, voters list or family register prepared under the rules and regulations, etc. in force, and may be admissible under Section 35 of the Evidence Act as held in *Mohd. Ikram Hussain v. State of U.P.* and *Santenu Mitra v. State of W.B.*

23. There may be conflicting entries in the official document and in such a situation, the entry made at a later stage has to be accepted and relied upon. (*Vide Durga Singh v. Tholu.*)

24. While dealing with a similar issue in *Birad Mal Singhvi v. Anand Purohit*, this Court held as under: (SCC p. 619, para 15) "15. ... To render a document admissible under Section 35, three conditions must be satisfied, firstly, entry that is relied on must be one in a public or other official book, register or record; secondly, it must be an entry stating a fact in issue or relevant fact; and thirdly, it must be made by a public servant in discharge of his official duty, or any other person in performance of a duty specially enjoined by law. An entry relating to date of birth made in the school register is relevant and admissible under Section 35 of the Act, but entry regarding to the age of a person in a school register is of not much evidentiary value to prove the age of the person in the absence of the material on which the age was recorded."

25. A Constitution Bench of this Court, while dealing with a similar issue in *Brij Mohan Singh v. Priya Brat Narain Sinha*, observed as under: (AIR p. 286, para 18) "18. ... The reason why an entry made by a public servant in a public or other official book, register, or record stating a fact in issue or a relevant fact has been made relevant is that when a public servant makes it himself in the discharge of his official duty, the probability of its being truly and correctly recorded is high. That probability is reduced to a minimum when the public servant himself is illiterate and has to depend on somebody else to make the entry. We have therefore come to the conclusion that the High Court is right in Cr.A. No.835/2017 holding that the entry made in an official record maintained by the illiterate chowkidar, by somebody else at his request does not come within Section 35 of the Evidence Act."

26. In *Vishnu v. State of Maharashtra*<sup>20</sup> while dealing with a similar issue, this Court observed that very often parents furnish incorrect date of birth to the school authorities to make up the age in order to secure admission for their children. For determining the age of the child, the best evidence is of his/her parents, if it is supported by unimpeccable documents. In case the date of birth depicted in the school register/certificate stands belied by the unimpeccable evidence of reliable persons and contemporaneous documents like the date of birth register of the municipal corporation, government hospital/nursing home, etc., the entry in the school register is to be discarded.

27. Thus, the entry in respect of age of the child seeking admission, made in the school register by semi-literate chowkidar at the instance of a person who came along with the child having no personal knowledge of the correct date of birth, cannot be relied upon.

28. Thus, the law on the issue can be summarised that the entry made in the official record by an official or person authorised in performance of an official duty is admissible under Section 35 of the Evidence Act but the party may still ask the court/authority to examine its probative value. The authenticity of the entry would depend as to on whose instruction/information such entry stood recorded and what was his source of information. Thus, entry in school register/certificate requires to be proved in accordance with law. Standard of proof for the same remains as in any other civil and criminal case.

29. In case, the issue is examined in the light of the aforesaid settled legal proposition, there is nothing on record to corroborate the date of birth of the prosecutrix recorded in the school register. It is not possible to ascertain as to who was the person who had given her date of birth as 13-2-1975 at the time of initial admission in the primary school. More so, it cannot be ascertained as who was the person who had recorded her date of birth in the primary school register. More so, the entry in Cr.A. No.835/2017 respect of the date of birth of the prosecutrix in the primary school register has not been produced and proved before the trial court. Thus, in view of the above, it cannot be held with certainty that the prosecutrix was a major. Be that as it may, the issue of majority becomes irrelevant if the prosecution successfully establishes that it was not a consent case.

(emphasis supplied)

11. Thus, this Court is required to test the evidence produced by the prosecution on the anvil of the aforesaid dictum of the Supreme Court.

12. Regarding the date of birth of prosecutrix, the prosecution has produced letter/birth certificate (Exhibit-P/1) issued by the Principal, Shaskiya Utkrisht Prathamik Vidyalaya, Bhosle, Phalya, Raikhed, on the basis of his school scholar register entry (Exhibit-P/2), wherein prosecutrix's date of birth is written as 15.08.2003. Principal of the aforesaid school Champalal Chouhan (PW-1) in para-4 of his cross-examination deposed that complainant himself came to his school at the time of admission of prosecutrix and had told her date of birth as 15.08.2003. He in para-2 of his cross-examination admitted that there is an amendment in the scholar register entry (Exhibit-P/2) wherein date of birth of the prosecutrix was mistakenly written wrong by him which he had amended. It is apparent from the bare perusal of the aforesaid school scholar register entry (Exhibit-P/2) that the last digit of the year of birth of the prosecutrix i.e. 3 of 15.08.2003 written in number as well as in words both have been amended and appears to be written/added afterwards without initials of anyone. Complainant (PW-5) and his wife i.e. prosecutrix's mother (PW-6) both have admitted that they are illiterate. Prosecutrix's mother (PW-6) in para-4 of her cross-examination deposed that she is not aware about the date of birth of her children. Principal Champalal Chouhan (PW-1) has admitted that prosecutrix's father-complainant had not brought any document with regard to the age of prosecutrix at the time of her admission and had told her date of birth on the basis of assumption. In such Cr.A. No.835/2017 circumstances, the letter/birth certificate (Exhibit-P/1) issued by the Principal of Shaskiya Utkrisht Prathamik Vidyalaya, Bhosle, Phalya, Raikhed on the basis of his school scholar register and also scholar register entry (Exhibit-P/2) itself cannot be taken to be the best piece of evidence as per the decision rendered by the Apex Court in the case of Satpal Singh (supra).

13. In this regard, observations made by the learned Sub-ordinate Courts at the time of recording of statements of the prosecutrix as well as observations made by Dr. Gayatri Pandit (PW-9) at the time of her medical examination are also relevant. Learned Judicial Magistrate First Class while recording her statement under Section 164 of Cr.P.C. observed her apparent age as 15 years whereas learned Trial Court while recording her statement during trial had observed her apparent age as 12-13 years. Dr. Gayatri Pandit (PW-9) in her MLC report (Exhibit-P/11) although observed prosecutrix's dentition as 7-7/7- 7, means her third molars, which usually erupts between 17 th to 25th years were not erupted. But she specifically stated therein that prosecutrix's secondary sexual characters were well developed. Admittedly, there is no other evidence available on record to demonstrate that the prosecutrix was below 18 years of age at the time of incident. In view of the aforesaid discussion, it is not safe to hold that prosecutrix was below 18 years of age and was minor at the time of incident.

14. So far as consent of the prosecutrix (PW-4) is concerned, she deposed that appellant on the pretext of marriage took her to Shahada (Maharashtra), kept her there captivated in a room and committed rape (khota kaam) upon her repeatedly. She in para-7 to 9 of her cross-examination admitted that in her community, there is a custom/practice wherein groom's party give dowry to bride's party. She also admitted that when appellant's father did not give Rs.30,000/- to her father, he broke up her engagement with the appellant. She also admitted that appellant and his father

themselves left her to her home.

15. Prosecutrix in paras-13 to 15 of her cross-examination admitted that Cr.A. No.835/2017 there is a dispute between her father and appellant's father that is why she is stating against the appellant. She has specifically denied the fact that appellant kidnapped/abducted her on the date of incident. As her age at the time of incident has not been found proved below 18 years and her statements with regard to commission of the offence of rape are also not specific, in such facts and circumstances of the case, this Court finds that prosecution has also failed to prove that there was no consent on the part of prosecutrix. Thus, this Court is of the considered opinion that the impugned judgement cannot be sustained in the eyes of law and facts on record and is liable to be set aside. Hence, conviction of the appellant cannot be upheld and the appeal filed by the appellant deserves to be allowed. Accordingly, this Court passes the following order :-

(i) Criminal Appeal No.835/2017 filed by the appellant - Relsingh stands allowed.

(ii) The impugned judgement of conviction and order of sentence dated 19.04.2017 passed by the Court of 2nd Additional Sessions Judge, Sendhwa, District Barwani in S.S.T. No.64/2015 by which appellant has been convicted under Sections 363, 366-A and 376(2)(n) of IPC and sentenced him as stated in para-1 of this judgement is hereby set aside.

(iii) Appellant be set at liberty forthwith, if he is not required in any other case. His bail bonds, if any, shall stand discharged.

(iv) Fine amount, if any, deposited by the appellant be refunded to him.

16. The Registry is directed to send back the Trial Court record forthwith alongwith copy of this judgement. Let a copy of this order be also sent to the concerned jail authorities for its speedy compliance and necessary action.

(Satyendra Kumar Singh) Judge gp GEETA Digitally signed by GEETA PRAMOD DN: c=IN, o=HIGH COURT OF MADHYA PRADESH BENCH INDORE, ou=HIGH COURT OF MADHYA PRADESH BENCH INDORE, postalCode=452001, st=Madhya Pradesh, 2.5.4.20=1dc3d93a178bbacdoe9485f9f6e99335499bddb3250185 PRAMOD oa4984b5b63f6d7a38, pseudonym=12F09B7BC77D4D3D96B764E8FA34B6FE3874D434, serialNumber=41554F8E701AEEB833278B4FDD900CBED72CCF299EA61E33BBE6175289BA0390, cn=GEETA PRAMOD Date: 2022.05.09 16:23:43 +05'30'