

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.2169/2014

KULDIP SINGH

Appellant(s)

VERSUS

STATE OF PUNJAB

Respondent(s)

O R D E R

1. This Appeal calls in question the judgment rendered by the High Court of Punjab and Haryana dismissing the appellant's appeal which in turn laid challenge to the order passed by the Sessions Court on 21.11.1994 by Additional Sessions Judge, Jalandhar in Sessions Case No. 100 of 1993 convicting the appellant for committing offences under Sections 366 and 376 of the Indian Penal Code, 1860 (for short, "the IPC") and has been sentenced to undergo rigorous imprisonment (for short, "R.I.") for 7 years for offence under Section 376 of the IPC and R.I. for 6 months under Section 366 of the IPC.

2. As per the prosecution's case, on 25.07.1993, a complaint was made to the concerned Police that the prosecutrix is missing after 21.07.1993. She had gone to attend her classes in the school but did not return home. She was recovered on 02.08.1993, when she was moving along with appellant-Kuldip Singh. Both were taken into custody and after completion of the investigation, a charge-sheet

was filed.

3. Basing on the evidence of the prosecutrix and other material, the Trial Court convicted the appellant as stated supra and the said conviction and sentence has been affirmed by the High Court.

4. It is argued that in the School Certificate, the date of birth of the prosecutrix was mentioned as 01.04.1977. Therefore, as on the date of occurrence, she was more than 16 years of age and as such, the appellant could not have been convicted for committing offence under Section 376 of the IPC in view of abundance of evidence showing the consent of the prosecutrix. It is also argued that as per Dr. Subash Chander (PW-2) smegma was present on the penis of the appellant when he was medically examined on 03.08.1993. Therefore, it can be presumed that the appellant has not committed any sexual intercourse with the prosecutrix.

5. *Per contra*, the learned counsel for the State would submit that the consent of the prosecutrix pales into insignificance as it is proved by birth certificate that she was less than 16 years of age.

6. Having heard learned counsel for the parties, we are of the concerned view that the Appeal has no substance. We have seen the original record of the Trial Court containing the original birth certificate (Ex.PX) issued by the Additional District Registrar, Birth and Death, Jalandhar, showing the date of birth of the prosecutrix as 28.11.1977 and the date of registration as 10.12.1977. Thus, her birth was informed to the registering

authority within 12 days, and a certificate was issued immediately. As against this, the accused has produced the school admission certificate wherein her date of birth is mentioned as 01.04.1977. In this regard, the accused had examined Vijay Kumar as DW-1, who was the headmaster of the school, and is said to have signed the said certificate. However, the Trial Court and the High Court as well have opined that when the school admission certificate carrying date of birth of the prosecutrix is contrasted with the birth certificate issued by the competent statutory authority, the birth certificate has more evidentiary value and unless there are compelling reasons, the said date of birth mentioned in the birth certificate cannot be ignored.

7. We are in agreement with the findings reached by the Trial Court and the High Court in this regard. More so, in the statement of DW-1, it is stated that the admission form was submitted by the guardian of the prosecutrix. However, the identity of the said guardian remains unknown. Furthermore, there is no indication if DW-1 himself had filled the admission form of the prosecutrix apart from affixing his signature on the same. Even if we assume that he had filled in the admission form of the prosecutrix, there is absolutely nothing on record as to indicate that DW-1 has derived the knowledge of date of birth of the prosecutrix from her parents or a person having special knowledge about her birth.

8. Since it is evident that there is an anomaly regarding the date of birth of the prosecutrix, we find that the Trial Court and the

High Court have rightly relied on the birth certificate issued by the Additional District Registrar, Birth and Death, Jalandhar. In this regard, we find it apposite to refer to the decision of this Court in *Birad Mal Singhvi vs. Anand Purohit*¹ wherein it was held as follows:

"15. Section 35 of the Indian Evidence Act lays down that entry in any public, official book, register, record stating a fact in issue or relevant fact and made by a public servant in the discharge of his official duty specially enjoined by the law of the country is itself the relevant fact. 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 the entry regarding 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. The courts have consistently held that the date of birth mentioned in the scholar's register or secondary school certificate has no probative value unless either the parents are examined or the person on whose information the entry may have been made, is examined."

(emphasis supplied)

9. From the above discussion, it is clear that in the present case, the birth certificate issued by the public authority holds more evidentiary value when juxtaposed with the school certificate of the prosecutrix.

10. Coming to the second argument about presence of smegma over the penis of the appellant, suffice it would be to state that the

¹ 1988 SCC OnLine SC 449

appellant and the prosecutrix were recovered on 02.08.1993. As per the prosecution's case, they stayed together from 21.07.1993 till 02.08.1993 i.e., for about 12 days. There is no evidence on record as to the date on which sexual intercourse was committed for the last time. Even otherwise, presence or absence of smegma is not conclusive proof of commission of sexual intercourse. A beneficial reference in this regard would be made to Modi's Medical Jurisprudence and Toxicology, wherein it was opined that:

"If the accused is not circumcised, the existence of smegma around the corona glandis is considered by some to be proof against sexual intercourse, since it is rubbed off during the sexual act. Nevertheless, the presence of smegma as proof against sexual intercourse is not of any medico-legal value, as legally, if the penis touches the vulva, it is enough to constitute rape. So in a case of rape of this character, it is unlikely that smegma will be rubbed off. The smegma accumulates if no bath is taken for 24 hours."²

(emphasis supplied)

11. It is seen from the above, that smegma can be formed on the penis if the person goes on without bathing for 24 hours. Be that as it may. The presence of smegma over the penis of the appellant does not constrain him from committing coitus, and even mere penetration into the vulva also constitutes rape. Admittedly, the appellant was subjected to medical examination on 03.08.1993 i.e. one day after he was taken into custody. It is also admitted that the appellant stayed with prosecutrix for a period of 12 days, i.e.

² Modi, A Textbook of Medical Jurisprudence and Toxicology, 26th Edition at pages 828-829

from 21.07.1993 till 02.08.1993. As already observed, we are completely oblivious of the actual date of commission of coitus. In these circumstances, discrediting the whole commission of sexual intercourse solely on the basis of presence of smegma on the day of examination, is not warranted.

12. Learned counsel for the appellant would next argue that the offence was committed on 21.07.1993 i.e. more than 32 years back and the appellant is now a married man aged about 50 years, therefore, he may be released by reducing the sentence to the period already undergone.

13. As on the date of occurrence, the minimum sentence provided under section 376 of the IPC was seven years, therefore, it is not possible to reduce the sentence to less than minimum sentence provided under the statute.

14. Accordingly, the Appeal stands dismissed.

15. The appellant is on bail. He is granted four weeks' time to surrender, failing which, he shall be taken into custody.

.....J.
[PRASHANT KUMAR MISHRA]

.....J.
[VIPUL M. PANCHOLI]

NEW DELHI;
DECEMBER 04, 2025

ITEM NO.110

COURT NO.17

SECTION II-B

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Criminal Appeal No(s). 2619/2014

KULDIP SINGH

Appellant(s)

VERSUS

STATE OF PUNJAB

Respondent(s)

Date : 04-12-2025 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE PRASHANT KUMAR MISHRA
HON'BLE MR. JUSTICE VIPUL M. PANCHOLI

For Appellant(s) : Mr. Subhasish Bhowmick, AOR
Mr. Dinesh Verma, Adv.
Mr. Prabhoo Dayal Tiwari, Adv.
Mr. Rajat Sharma, Adv.

For Respondent(s) :

Mr. Karan Sharma, AOR

UPON hearing the counsel the Court made the following
O R D E R

The Criminal Appeal stands dismissed in terms of the signed
order which is placed on the file.

(PRIYANKA MALIK)
SENIOR PERSONAL ASSISTANT

(MRS. CHETNA BALOONI)
COURT MASTER (NSH)