

h'

Crl.A.No. 405 OF 1998  
ITEM No.104

Court No.9

SECTION IIA

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.405 of 1998

Mahesh Kumar Appellant.

VERSUS

State of Punjab Respondent.

Date : 27/04/2004: This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE K.G. BALAKRISHNAN  
HON'BLE MR. JUSTICE B.N. SRIKRISHNA

For Appellant (s) Mr. H.L. Agrawal, Sr. Adv.  
Mr. L.S. Chauhan, Adv.  
Mr. R.C. Kohli, Adv.

For Respondent (s) Mr. Ajay Bansal. Adv.  
Ms. Sunita Pandit, Adv.  
Mr. Bimal Roy Jad, Adv.

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

Heard learned counsel for the parties for thirty five minutes.  
The appeal is disposed of in terms of the signed  
order.

(R.K. DHAWAN) (VEERA VERMA)  
COURT MASTER COURT MASTER

(Signed order is placed on the file)

IN THE SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTION  
CRIMINAL APPEAL NO.405 OF 1998

Mahesh Kumar.... Appellant.

Versus

O R D E R

The appellant was found guilty of offence punishable under Sections 376 and 366 IPC. On both counts the appellant was sentenced to undergo rigorous imprisonment for five years each with a fine of rupees one thousand, in default, further rigorous imprisonment for one year. The case against the appellant was that he took away the daughter of his neighbour from the lawful custody of her parents and took her to various places and that she was subjected to sexual intercourse. Though the prosecutrix tried to escape from the custody of the appellant, she was prevented from doing so. After few days, the appellant was arrested by the police and the statement of the prosecutrix was recorded by the police. The Sessions Judge held that at the time of incident, the prosecutrix age was less than 16 years and the medical evidence also show that the appellant had committed rape on her. Accordingly, Sessions Judge convicted him as stated above. This finding was confirmed by the High Court.

...2/-

-2-

We heard learned counsel for the appellant and counsel for the State. The main contention urged by the appellant counsel is that the age of the prosecutrix in any way must have been more than 16 years and the school record and other evidence should not have been relied on by the Court. As per the school record, the prosecutrix is alleged to have been born on 1st May, 1969, and incident happened on 13.1.1985, and as on the date of the crime the prosecutrix must have been less than 16 years. The prosecutrix was examined by a doctor immediately after the arrest of the accused and this doctor stated that prosecutrix to be around 16 years of age. PW-7, Dr. Jatinder Pal Singh carried X-ray examination for determination of the age and on the basis of X-ray examination, he opined that prosecutrix must be of age between 13 to 16/1-2 years. The counsel for the appellant pointed out that PW-8, the father of the prosecutrix when examined as witness deposed that he had married at the age of 17/18 years and on the date of his examination he was 41 years and he further stated that the prosecutrix was his first child and she was born two years after his marriage and thus calculating the age of the prosecutrix based on the statement of PW-8, the counsel submitted that the prosecutrix age must have been about 21 years at the time of incident.

...3/-

-3-

We do not find any basis on this calculation. PW-8 was giving only the approximate year of his marriage. Apart from his statement, there is no evidence to show that his age is 41 years. The school record show that the prosecutrix was born on 1-8-1969. This entry in the school record is on the ground that the entry must have been made on the basis of the information given by her father that by itself is not sufficient to discard the evidentiary value of the admission register of the school. The admission register of the school record is certainly a document prepared in the official discharge of the school authority and the courts can rely on this document unless it is proved erroneous or having some inherent defect. So also the X-ray examination conducted by the doctor also proved that the prosecutrix was a minor at time of the incident. In this background, we are not inclined to interfere with the conviction and sentence of the appellant. The appeal is disposed of accordingly.

.....J  
(K.G. BALAKRISHNAN)

.....J  
(B.N. SRIKRISHNA)

NEW DELHI;  
APRIL 27, 2004.