

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Criminal Appeal No. S-16-SB of 2004

Date of Decision : February 04, 2015

Sunil Kumar

.....Appellant

VERSUS

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE T.P.S.MANN

Present : Mr. Salil Bali, Advocate.

Mr. Munish Dev Sharma, Assistant A.G., Haryana.

T.P.S. MANN, J.

The appellant was charged for offences under Sections 363/366A and 376 IPC, while Naveen Kumar and Manoj Kumar under Section 216 IPC. Vide judgment and order dated 30.10.2003, the Additional District and Sessions Judge (Ad hoc), Jhajjar acquitted Naveen Kumar and Manoj Kumar of the charges against them. The appellant was convicted under Section 376 IPC and sentenced to undergo rigorous imprisonment for four years and to pay a fine of Rs. 5,000/-. In default of payment of fine, he was ordered to undergo further rigorous imprisonment for six months. He was also convicted under Section 366A IPC and sentenced to undergo rigorous imprisonment for three years and to pay a fine of Rs.3,000/- and in default of payment of fine, to undergo further rigorous imprisonment for three months. However, no separate

conviction under Section 363 IPC was recorded qua the appellant. Both the substantive sentences were ordered to run concurrently. Hence, the present appeal.

It was Shamsheer Singh, father of the prosecutrix, who submitted written complaint Ex.PE before ASI Pohap Singh, Incharge, Police Post Kulana. He stated therein that he was having two sons and a daughter. His daughter, who was 12 years of age, was studying in a private school. On 12.2.2002, when he had gone for collecting the milk, his wife Jagmati was present in the house, alongwith the children. At about noon time, when the complainant returned home, he was told by his wife about their girl leaving the house in the morning for going to the school. Later on, it was found that her books were lying in the house. Accordingly, the complainant went to the school and learnt that his daughter had not reached the school that day. The complainant and other members of his family kept on searching for the girl but all in vain. On 13.2.2002, one Inder Singh apprised the complainant that he had seen his daughter at noon time going on foot with the appellant towards village Machroli. Both the complainant and Inder Singh continued searching for his daughter but she could not be found. Then they went to the house of the appellant but he too was not present at his house. The complainant became suspicious about his daughter having been taken away by the appellant by

making misrepresentation. Accordingly, he left for reporting the matter to the police. At about 11.30 a.m., when he reached Kulana Chowk, he came across ASI Pohap Singh, to whom he submitted written complaint.

On the basis of the complaint submitted by the complainant, FIR No.65 dated 13.2.2002 came to be registered at Police Station Jhajjar under Sections 363/366A IPC. During the investigation of the case, the statements of the witnesses were recorded. Rough site plan was also prepared. On the basis of statements suffered by Suresh Kumar and Risal Singh, offence under Section 216 IPC was added against Naveen Kumar and Manoj Kumar accused. On 17.2.2002, SI Pohap Singh arrested the appellant from Kuldeep Chowk, Badli Road, Jhajjar and the daughter of the complainant, hereinafter referred to as 'the prosecutrix', recovered. The statement of the prosecutrix was recorded, who stated that she had met the appellant on 10.2.2002 in the street, who told her that a film was being shot at Jhajjar and young girls were being offered roles in the same. In case she would go to Jhajjar, she would also be given some role. On 12.2.2002, when she was going towards her school, the appellant again met her and suggested her to accompany him to Jhajjar for the role in the film. She left her bag at her house and accompanied the appellant, who took her towards the fields where he committed sexual intercourse with her against her

wishes. When she raised an alarm, he threatened her with dire consequences. She was kept in a room near that field upto 16.2.2002. During that period he would take her to some city or town but during the night he would commit sexual intercourse with her forcibly. His brother-in-law Manoj Kumar and brother Naveen Kumar had been coming for providing them with food and money. She wanted to be taken to her house but it had no effect on all of them. On 17.2.2002, when she was taken to a bus stand for going to Delhi, the police arrested the appellant. Accordingly, offence under Section 376 IPC was also added to the FIR. The prosecutrix subjected to medical examination.

Upon completion of the investigation and presentation of challan, followed by commitment of the case, the appellant was charged for offences under Sections 363, 366-A and 376 IPC, whereas Naveen Kumar and Manoj Kumar were charged under Section 216 IPC only. All of them pleaded not guilty and claimed trial.

In support of its case, the prosecution examined PW1 Dr. P.K. Paliwal, who medically examined the appellant on 18.2.2002 and found him fit for committing sexual intercourse. PW2 Dr. Surender Rathi also deposed to the same effect. PW3 Dr. Manju Lata, deposed that she medico-legally examined the prosecutrix on 17.2.2002 and observed as under :-

"She was conscious, well oriented and pulse was

72 p.m. There was no injury on any part of the body. Breast and pubic hair were well developed. Menstrual history 17.2.2002 first day bleeding from vaginal and it was regular.

P/V :- Hymen partially ruptured, vagina admits one finger, bleeding was present. Two vaginal swabs taken which were stained with blood and sent for chemical examination for the presence of spermatozoa. No injury mark on vulva, vagina and perineum."

PW4 MHC Ved Parkash stated that the sealed parcels of the clothes of the girl, vaginal swabs and underwear of the accused were entrusted to him for keeping them in safe custody. PW5 Shamsheer, the father of the prosecutrix, reiterated the version which he had mentioned in the complaint Ex.PE. The prosecutrix was examined as PW6 and she supported the case of the prosecution. The mother of the prosecutrix was examined as PW7. She testified about her daughter leaving the house on 12.2.2002. However, later on, she found her books lying in the school bag. She informed her husband who went to the school for making enquiry. She also deposed about one Inder meeting her husband on the next day and telling him about seeing the prosecutrix going with the appellant. PW8 Lekh Ram deposed that on 17.2.2002, he met the police party at Kuldeep Chowk, Jhajjar. He also deposed about the appellant and the prosecutrix coming from the side of Badli Road,

identifying the prosecutrix and the appellant, pursuant to which, the police arrested the appellant and took the prosecutrix in custody. PW9 Raje Ram, Patwari proved scaled site plan Ex.PH of the place of occurrence. PW10 Constable Anoop Singh deposed about taking of the sealed parcels to the Forensic Science Laboratory, Madhuban. PW11 Shoba Sharma proved certificate Ex.PK, in which the date of birth of the prosecutrix was mentioned as 15.1.1990. PW12 SI Sumer Singh proved formal FIR Ex.PN, which he had recorded on the basis of complaint of the complainant. PW13 ASI Pohap Singh testified about the various steps taken by him during the investigation of the case. PW14 Suresh, uncle of the prosecutrix, testified that after coming to his village he found the appellant not present at his house and rumours were afloat that he had abducted the prosecutrix. He further deposed that he and his father Risal Singh, thereafter, left in search of the prosecutrix and met Naveen Kumar, younger brother of the appellant, who was having meals with Manoj Kumar accused. Enquiries were made from Naveen Kumar and Manoj Kumar regarding the prosecutrix but they stated nothing in that regard. PW15 Constable Darshan Kumar deposed about the delivery of the special report. PW16 Constable Sajjan Singh stated about collecting of sealed parcel of clothes of the prosecutrix from the lady doctor, who had medico-legally examined the prosecutrix.

Finally, the prosecution tendered in evidence report Ex.PQ of

the Forensic Science Laboratory.

When examined under Section 313 Cr.P.C., all the three accused pleaded innocence. The appellant further pleaded that he was falsely involved in the case, as a month prior to the case, a quarrel had taken place between him and the brother of the prosecutrix. Accordingly, false case was planted upon him in collusion with the secret informer and the brother of the prosecutrix. He also denied that he had ever taken the prosecutrix or raped her.

After hearing learned counsel for the parties and going through the evidence available on the record, the trial Court acquitted Naveen Kumar and Manoj Kumar of the charge under Section 216 IPC. However, the appellant was convicted and sentenced for the offences under Sections 376 and 366A IPC.

I have heard learned counsel for the parties and gone through the evidence with their able assistance.

The main issue which requires the attention of the Court is the age of the prosecutrix on the date of the occurrence i.e. 12.2.2002. In the school certificate Ex.PK proved by PW11 Shobha Sharma of the BHA Deep High School, Aheri, the date of birth of the prosecutrix was mentioned as 15.1.1990.

This information was taken from the admission record of the
aforementioned school. The admission register was also

produced before the trial Court for its examination. In cross-examination, PW11 Shobha Sharma admitted that the admission of the prosecutrix in the school was sought in the year 1995 and at that time, she was the Head Mistress of the school. However, the admission work was performed by some teacher or Clerk. She further deposed that the prosecutrix was got admitted by her father, who also stated her date of birth. No document was, however, obtained regarding date of birth of the prosecutrix and the same was mentioned as told by her guardian. Merely because no supporting document had been produced by the father of the prosecutrix in order to pin-point her exact date of birth is no ground to reject the school certificate Ex.PK. This assumes significance as during his cross-examination, PW5 Shamsher, who is father of the prosecutrix, was not asked even a single question that he had wrongly stated the date of birth of the prosecutrix as 15.1.1990 in order to make up the age so as to secure admission for his daughter. Similarly, the defence has not been able to refer to any contemporaneous document, like the date of birth register of the Municipal Corporation, Government Hospital/Nursing Home, etc. so as to belie the facts stated in the school register. The reliance by the learned defence counsel on the judgment in the case of Satpal Singh Vs. State of Haryana, 2010(3) RCR (Criminal) 777, is misplaced as the school certificate Ex.PK has been duly proved by the prosecution and there is no material to the contrary which may

indicate that the prosecutrix was born earlier or she was more than 16 years of age on the date of occurrence. On the other hand, the prosecution has been able to establish that the prosecutrix was born on 15.1.1990 and, therefore, she was 12 years and 1 month old on the date of the occurrence.

It is the consistent evidence of the prosecution that the appellant had lured the prosecutrix into accompanying him so as to provide her some role in the film. Instead of doing so, he took her to a field where he committed rape upon her. She was kept in a room, thereafter, for 4/5 days and at that place also, she was subjected to rape. The prosecutrix had tried to raise her voice but could not do so as she had been threatened with dire consequences in the event of her doing so. This is also indicative from the medical evidence as neither there is any struggle nor resistance offered by the prosecutrix to the act of forcible sexual intercourse. Semen was detected on the underwear of the prosecutrix as is apparent from the report Ex.PQ of the Forensic Science Laboratory. Absence of semen on the vaginal swabs could be due to the fact that the prosecutrix must have been passing urine. On the basis of the report of the Forensic Science Laboratory and the medical examination of the prosecutrix, PW3 Dr. Manju Lata has opined that the possibility of sexual intercourse with the prosecutrix could not be ruled out.

From the above, it stands proved that the appellant had kidnapped the prosecutrix and, thereafter, subjected her to rape. As such the appellant has been rightly convicted under Sections 366-A and 376 IPC.

Coming to the quantum of sentence, this Court finds that the appellant has already been dealt with leniency. For the offence under Section 376 IPC, the law requires imposition of minimum imprisonment for seven years. However, for adequate and special reasons, the Court can grant lesser sentence of imprisonment. The trial Court, after holding that the prosecutrix was a consenting party and her sex characteristics were fully developed though she was less than 16 years of age, found it appropriate to award imprisonment for four years for the offence under Section 376 IPC. No case is made out for any interference in the sentence of imprisonment imposed upon the appellant for the offences under Sections 366-A and 376 IPC.

The appeal is without any merit and, therefore, dismissed.

The appellant is on bail. He be taken into custody to serve the remaining sentence of imprisonment imposed upon him.

February 04, 2015
satish

(T.P.S. MANN)
JUDGE