

***IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.***

Crl. Appeal No.S-851-SB of 2001

Date of Decision: 27.01.2015

Krishan Lal

....Appellant

Versus

State of Haryana

....Respondent

Crl. Appeal No.S-884-SB of 2001

Dharamveer alias Kalu

....Appellant

Versus

State of Haryana

....Respondent

BEFORE :- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

- 1. Whether reporters of local newspapers may be allowed to see the judgment ?**
- 2. To be referred to reporters or not ?**
- 3. Whether the judgment should be reported in the Digest ?**

Present:- Mr. R.K. Gupta, Advocate
for the appellant
in ***Crl. Appeal No.S-851-SB of 2001.***

Mr. B.S. Bedi, Advocate
for the appellant
in ***Crl. Appeal No.S-884-SB of 2001.***

Mr. Sandeep Moudgil, Addl. A.G., Haryana
for the respondent-State.

DAYA CHAUDHARY, J.

By this judgment, two criminal appeals bearing No.***CRA No. S-851-SB of 2001*** as well as ***CRA No.S-884-SB of 2001*** shall be disposed of as both the appeals arise out of the same judgment of

conviction and order of sentence passed by the trial Court. However, for the sake of convenience, the facts are being derived from ***Criminal Appeal No.S-851-SB of 2001.***

Complainant-Ram Lal made a complaint regarding kidnapping of his daughter on 22.08.1996. He has stated that his wife was away to Karnal to see her ailing mother and his daughter, who was about 15 years of age, left for her school along with his son-Mahesh Kumar. In the evening, when his daughter did not turn up from school, he made all efforts to search her in the neighbourhood and with relatives but in vain. Accused Krishan Lal, who was residing in a nearby house on rent, was also found to be missing. Complainant suspected that his daughter has been enticed away by said Krishan Lal. On the basis of written complaint, FIR under Sections 363 and 366-A of the Indian Penal Code was registered at Police Station Thanesar. The daughter of the complainant was apprehended by the police at Sonapat on 25.08.1996. Statement of daughter of the complainant under Section 161 Cr.P.C was recorded, wherein, it was stated by her that accused Krishan Lal used to tease her on her way to school and she was sexually assaulted under threat to life about a month ago. On 18.08.1996, accused Krishan Lal allured her to marry with him saying that his parents were also ready to accept her. Thereafter, daughter of the complainant reached the room of accused-Krishan Lal along with her luggage. On 19.08.1996, when she was going to school, she was taken to Bus Stand, Thanesar by accused-Krishan Lal under the threat to her life and thereafter to Pipli in a three-wheeler. Accused Dharamveer @ Kalu, a friend of accused-Krishan Lal met them at Pipli Bus Stand and both of them took the prosecutrix to Delhi and then to Village Ajmera in Mathura District, where, the sister of Dharamveer @ Kalu was residing. They stayed at Mathura on Monday and reached Village Ajmera on Tuesday. Rape was

committed upon her on the nights of Tuesday and Wednesday. Thereafter, accused-Krishan Lal took her to Delhi on Thursday and returned to Village Ajmera on Friday. Again she was raped by both the accused on the nights of Friday and Saturday. From there, they returned to Sonapat on Sunday and were apprehended by the police.

On the basis of statement of prosecutrix, Sections 368, 376 and 506 of the Indian Penal Code were added. The prosecutrix was medically examined at L.N.J.P. Hospital, Kurukshetra on 26.08.1996. Thereafter, her statement under Section 164 Cr.P.C was recorded before the Chief Judicial Magistrate, Kurukshetra on 27.08.1996. Accused Dharamveer @ Kalu was arrested on 30.08.1996 and was also medically examined. Accused Krishan Lal had absconded. After completion of all the necessary formalities of investigation, accused Krishan Lal was declared proclaimed offender on 20.10.1997. Thereafter, final report under Section 173 of the Code was submitted against accused Dharamveer @ Kalu. Accused Krishan Lal was arrested on 13.11.1997 and was also medically examined. Subsequently, the challan was presented against accused Krishan Lal also. Prima-facie, case under Sections 366, 376(2)(g) and 506 IPC was made out against both the accused and both of them were charge-sheeted on 13.02.1998. The contents of charge were read over and explained to the accused in Hindi, to which, they pleaded not guilty and claimed trial.

The prosecution, in order to substantiate its allegations against the accused, has examined as many as 17 witnesses i.e PW1-Dr. Surinder Kumar, PW2- Mukesh Kumar, PW3- ASI Daya Nand, PW4-Sewa Singh, PW5-Punnu Ram, PW6-Dharam Pal, PW7-Dalbir Singh, PW8- Inder Kanta, PW9-Shri A.K. Raghava, PW10-Dr. Sushma Saini, PW11-SI Raj Kumar, PW12-Ram Lal, PW13-Dr. S.P.S. Bhatia, PW14-Asha Rani, PW15-

Krishan Lal, PW16-SI Kalu Ram and PW17-SI Ajmer Singh.

After examination of prosecution witness, statements of both the accused under Section 313 Cr.P.C were recorded, wherein, they pleaded false implication and innocence. However, both the accused did not produce any defence evidence.

On appraisal of evidence on record and after hearing both the parties, both the accused were found to be involved in the offence and accordingly were held guilty for offences punishable under Sections 366, 376(2)(g) and 506 of the Indian Penal Code. Both the accused, namely, Dharamveer @ Kalu and Krishan Lal were sentenced to undergo rigorous imprisonment for a period of seven years and to pay a fine of Rs.5,000/- each and in default thereof, to further undergo rigorous imprisonment for a period of one year for offence punishable under Section 366 of the Indian Penal Code. They were also sentenced to undergo rigorous imprisonment for a period of ten years and to pay a fine of Rs.5,000/- each and in default thereof, to further undergo rigorous imprisonment for a period of one year for the offence under Section 376(2)(g) of the Code. However, both the sentences were ordered to run concurrently.

The said judgment of conviction and order of sentence dated 11.07.2001 passed by the Additional Sessions Judge, Kurukshetra is subject matter of challenge in these two criminal appeals filed by both the accused separately.

Learned counsel for both the appellants raised various grounds and submitted that there are serious contradictions in consistency of the statement of witnesses and the conviction is not based on proper appreciation of evidence. The prosecutrix was never kidnapped and abducted but she herself went with the accused and it was a case of consent. It has also been argued that in absence of charge of criminal

intimidation and by recording a finding that the prosecutrix had left the lawful custody of guardian of her own, the trial Court has exceeded its jurisdiction while convicting and sentencing the accused appellants. Learned counsel also submits that the accused appellant Krishan Lal was a student of 11th standard and was residing in the neighbourhood of the complainant. He was not more than 18-19 years of age at the time of alleged occurrence.

Mr. R.K. Gupta, learned counsel appearing for the appellant-Krishan Lal submits that hand written letters Exhibit D-1 to D-6 have duly been proved by the trial Court, on reading of those letters, it is apparent that it was a case of consent as there was love affair between the prosecutrix and Krishan Lal and as such, no offence under Sections 366, 376(2)(g) is made out. Learned counsel also submits that the prosecutrix was between 19-21 years of age at the time of alleged occurrence and no ossification test was conducted to assess her age. It is also the argument of learned counsel for the appellants that as per oral evidence, the age of the prosecutrix was between 19-21 years. Without considering the same, the accused-appellants have been convicted. The prosecutrix was a consenting party and no offence under Section 376(2)(g) IPC is made out and it cannot be a case of gang rape.

Mr B.S. Bedi, learned counsel for the accused-appellant Dharamveer @ Kalu has also reiterated the same arguments as have been raised by Mr. Gupta. Apart from those submissions, Mr. Bedi submits that the accused-appellant Dharamveer @ Kalu has been implicated being friend of Krishan Lal. There was friendly relationship of the prosecutrix with Krishan Lal as is clear from exchange of letters between them. He also submits that the prosecutrix and accused-Krishan Lal had decided to marry and subsequently they eloped together. Learned counsel also submits that

the version of the prosecutrix is not worth believing. The allegation of commission of rape at the house of sister of accused-Dharamveer @ Kalu was not proved on record as there was no evidence except the oral statement of the prosecutrix. The document showing the date of birth was issued on 24.08.1996 mentioning the date of admission as 20.07.1986, whereas, the date of leaving the school was shown to be 24.08.1996. The period of presence during current session was from 01.04.1996 to 24.08.1996. The presence presumed during current session was given as 56, whereas actual presence was 40. As per statement of PW-8 Inder Kanta, Principal of the School, the prosecutrix was admitted in the school on 20.07.1986 as a provisional student but later on in cross-examination, she has stated the date of admission as 20.07.1996. In the original school leaving certificate, the date of birth was written as 20.07.1996. Learned counsel also submits that there was cutting and over-writing on the school leaving certificate, which creates doubt with regard to statement of PW-8. As per Medico Legal Report, the age of the prosecutrix was 16½ years and as per statement of father of the prosecutrix, who has appeared as PW-12, the age of the prosecutrix was about 20 years at the time of alleged occurrence.

Mr. Bedi, counsel for the accused-appellant Dharamveer @ Kalu also submits that even as per statement of the prosecutrix, there is no allegation against Dharamveer @ Kalu. The only allegation against him was that he accompanied the prosecutrix and Krishan Lal. None of the witnesses has stated about the involvement of accused-Dharamveer @ Kalu.

Both the counsel for the appellants submit that even if the allegations of the prosecution are presumed to be correct, even then, the prosecutrix never made any complaint to any person or raised any hue and

cry when she was taken away by the accused. She has visited different places and as per allegations, the rape was committed at the house of sister of Dharamveer @ Kalu which cannot be believed as no brother would commit rape with any girl in presence of his sister.

Learned counsel for the appellants have also relied upon the judgments of Hon'ble the Apex Court in cases ***Alamelu and another vs State Rep. By Inspector of Police 2011(1) RCR (Criminal) 499, Pardeep Kumar vs Union Administration, Chandigarh 2006(4) RCR (Criminal) 34, Hanuman Prasad and others vs State of Rajasthan 2009(1) RCR (Criminal) 267***, judgments of this Court in cases ***Satbir vs The State of Haryana 1999(2) All India Criminal Law Reporter 684, Harpool Singh vs State of Punjab 2000(1) RCR (Criminal) 491, Jagtar Singh vs State of Punjab 1996(2) RCR (Crl.) 566, Om Parkash @ Mitha @ Prem vs State of Haryana 1997(1) RCR (Crl.) 741, Satish Kumar vs U.T. Administration Chandigarh 1992(1) All India Criminal Law Reporter 307, The State of Punjab vs Darshan Singh 1992(2) All India Criminal Law Reporter 311, Salender vs State of Haryana 2000(1) RCR (Criminal) 562, Smt. Anita vs State of Haryana 2001(2) RCR (Criminal) 750 and Narinder vs State of Haryana 2000(2) RCR (Criminal) 305***, judgment of Bombay High Court in case ***Domnic Misquita and etc. vs The State 1996 Crl. L.J. 2799***, judgment of Andhra Pradesh High Court in case ***Kondapalli Laxman Rao vs State of A.P. 1999 Crl. L.J. 1928***, judgment of Himachal Pradesh High Court in case ***State of Himachal Pradesh vs Dharam Dass 1992(2) RCR (Crl.) 261***, judgment of Madhya Pradesh High Court in case ***Narendrasingh vs State of Madhya Pradesh 1996 Crl. L.J. 198***, in support of their arguments.

Learned counsel for the respondent-State submits that the judgment of trial Court is well reasoned and is based on proper

appreciation of evidence. The question of raising any hue and cry cannot be there, in case, any threat to life was there. Moreover, she was minor.

Heard the arguments of learned counsel for the parties and have also gone through the record placed on the file.

In order to prove the age of the prosecutrix, Inder Kanta-PW8, the Principal of Government Girls Senior Secondary School, Thanesar, proved School Leaving Certificate. She has stated that the prosecutrix was born on 17.03.1983 and she was admitted in the school in class 9th–B as provisional student vide entry No.5812 dated 20.07.1996. She has also stated in the cross-examination that father of the prosecutrix has signed the admission form at the time of admission of his daughter in the school. She also stated that the prosecutrix had passed 5th standard examination from Raj Siksha Niketan, Dhurala (Kurukshetra) and was admitted in her school in 6th standard. She studied in the school up to 8th standard and thereafter, she was granted provisional admission in 9th standard. It has also been stated by her that the date of birth of the prosecutrix was entered on the basis of certificate issued by Raj Siksha Niketan, Dhurala (Kurukshetra), which was a government recognized school. Similarly, complainant-Ram Lal, who is father of the prosecutrix, has stated that his daughter was about 13-13½ years and was studying in 9th standard in August, 1996. The prosecutrix, while appearing as PW-14, has stated that while going to school, accused-Krishan Lal met her on the way and asked her to go with him to his Village and marry him. Thereafter, she was taken to Pipli in a three wheeler. At Pipli bus stand, co-accused Dharamveer @ Kalu met him and from there, she was taken to Delhi. It has also been stated that she was threatened by the accused not to tell about the incident to anybody. From Delhi, she was taken to Mathura and stayed in a hotel. She was also taken to Village Ajmera, where, sister of Dharamveer @ Kalu was residing

and rape was committed upon her at the residence of sister of accused Dharamveer @ Kalu. She has specifically stated in her statement that both the accused forcibly committed rape upon her. While coming back when they were at Bus Stand, Sonapat, they were apprehended. The prosecutrix has also stated in her cross-examination that she was threatened by the accused, not to disclose about this incident to anybody, failing which, she would be killed. Although, she has admitted in her cross examination that she had written love letters about her intention to go with accused Krishan Lal because of assurance of marriage.

She has also very fairly stated that both the accused did not commit rape while they were staying in a hotel but the rape was committed upon her while they were staying in the house of sister of Dharamveer @ Kalu. She has also stated that she did not tell sister of Dharamveer @ Kalu about her abduction by the accused.

As per Statement of Dr. Surinder Kumar as well as Dr. S.P.S. Bhatia, both the accused were examined and they were found to be capable of performing sexual intercourse. Dr. Sushma Saini, PW-10 examined the prosecutrix and her following statement was recorded :-

“ There was blood in and around the vulva, labia majora and minora were healthy and developed and had no marks of injury on them. Hymen had healed tears at 2, 5 and 11-00 o’ clock positions. Two swabs were prepared from vulval secretion and sent for chemical examination. Vagina admitted two fingers cervix backwards uterus ante-verted, nully parious freely mobile fornices free. Bleeding was present. Two slides were prepared and sent for Chemical examination. We handed over to the police the copy of MLR No.SS/32/96 dated 26.8.1996 (ii) sealed parcel bearing two seals containing salwar and underwear of the girl and a box containing two voils, two swabs and two slides along with public hair. (iii) sealed envelope

bearing five seals containing copy of MLR No.SS 32/96 dated 26.7.1996, sample of seal used and a letter to Director of FSL (iv) sample of seal used.

Ex. PJ is the correct copy of the MLR. Asha Rani present in the court is the same girl, who was medico-legally examined by me.”

Doctor also stated that the age of the prosecutrix was mentioned as 16½ years which was on the basis of information given by the prosecutrix herself.

From the statement of the prosecution witnesses as well as the medical examination of the prosecutrix as well as other evidence on the file, it has been proved by the prosecution that the prosecutrix was less than 16 years of age at the time of alleged occurrence and rape was committed upon her by both the accused without her consent. She was constantly under threat by the accused for not disclosing the incident of rape to any person. The minor discrepancies are there in the statement of the complainant- the father of the prosecutrix regarding date of birth but on perusal of School Leaving Certificate issued by the school, it is apparent that the date of birth of the prosecutrix was 17.03.1983 and at the time of occurrence, she was in 9th standard as provisional admission was granted to her on 20.07.1996. She has also studied in that school from 5th standard to 8th standard. The School Leaving Certificate and date of birth certificate have duly been proved on the basis of statement of Inder Kanta-PW8, Principal of the Government School and the certificate issued, reflecting date of birth of the prosecutrix, has duly been signed by the Principal of that school. In presence of documentary evidence, oral statement cannot be relied upon. Sometimes the parents don't remember the date of birth of their children and they just mention it tentatively that they are having such number of children, hence, their age cannot be ascertained. In the

presence of School Leaving Certificate, which has been issued by a Government School, has duly been proved by Inder Kanta, the Principal of the school while appearing as PW-8, from where, it is clear that the age of the prosecutrix was less than 16 years. As far as writing of love letters by the prosecutrix is concerned, it appears that she was having interest in accused-Krishan Kumar because of false promise of marriage made by him. Qua another accused-Dharamveer @ Kalu, nothing has been mentioned, neither in the love letters nor in the statement of the prosecutrix. She has categorically stated in her statement that rape was committed upon her by both the accused.

As per statement of the complainant, the age of the prosecutrix was less than 16 years and even in the statement before the police, the age has been given to be 15 years. Ram Lal, father of the prosecutrix, has categorically stated that he cannot recollect the date of birth of his children and age of each child was only a guess work. Moreover, oral evidence cannot be relied upon, in case, some documentary evidence is there. In case, no documentary evidence is there, then, the statement given by the complainant can be relied upon. The date of birth mentioned in the School record is only on the basis of statement made by the parents at the time of admission of their child. The school also maintains its record of admission of the children as well as withdrawal at the time of leaving of school.

In the present case, the admission form of the prosecutrix was signed by her father and hence, there cannot be any reason for not relying upon the same. Moreover, the school is also a government school. As per School Leaving Certificate (exhibit PG), which has duly been proved, the date of birth of the prosecutrix is 17.03.1983. Thus, at the time of occurrence, she was 13 years and 05 months. Except School Leaving Certificate, no other documentary evidence has come on record to show

that she was more than 16 years of age. The documentary evidence is to be preferred to oral testimony.

In view of the facts as mentioned above, I am of the view that the prosecution has succeeded in proving its case beyond reasonable doubt and the judgment of the trial Court is based on proper appreciation of evidence. I do not find any ground to interfere with the judgment dated 11/12.07.2001 passed by the Additional Sessions Judge, Kurukshetra.

Accordingly, the appeal, being devoid of any merit, is hereby dismissed.

27.01.2015
gurpreet

(DAYA CHAUDHARY)
JUDGE