

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

CRA-S-518-SB of 2004

Date of decision : 10.02.2015

Ramesh

..... Appellant

Versus

State of Haryana

..... Respondent

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr. H.S.Jaswal, Advocate
learned counsel for the appellant.

Mr. Mukesh Kaushik, learned Deputy Advocate
General, for the State of Haryana.

- 1. Whether Reporters of local papers may be allowed to see the judgement?Yes**
- 2. To be referred to the Reporters or not?Yes**
- 3. Whether the judgement should be reported in the Digest?Yes**

DARSHAN SINGH,J

1. The present appeal has been preferred against the judgment of conviction dated 31.07.2002, vide which accused-appellant Ramesh @ Mahesha has been held guilty and convicted for the offence punishable under Sections 363, 366 and 376 the Indian Penal Code (hereinafter called IPC) and the order dated 02.08.2002 vide which he was sentenced as under:-

Under Section	Sentence
376 IPC	Rigorous imprisonment for seven years and to pay a fine of Rs. 3000/-. In default of payment of fine, to further undergo rigorous imprisonment for one year
366 IPC	Rigorous imprisonment for three years and to pay a fine of Rs. 1500/-. in default of payment of fine, to further undergo rigorous imprisonment for six months
363 IPC	Rigorous imprisonment for two years and to pay a fine of Rs. 1000/-. In default of payment of fine, to further undergo rigorous imprisonment for four months.

2. The brief facts of the prosecution case are that on 15.11.2002, PW-6 Smt. Jagti, the mother of the prosecutrix got recorded her statement Ex.PG to PW-9 ASI Om Parkash, Police Station Kalayat, District Kaithal alleging therein that her husband Inder Singh had died about 10-11 years back. She had no male child and was having only four daughters. Eldest one (Kavita) was married with Ashok resident of Sonapat. Younger to her was married to Vinod, the younger brother of Ashok. Next the prosecutrix, aged about 14-15 years was married with Sukhdev resident of Panipat and her youngest daughter was aged about 12 years and was residing with her at Sonapat. On 14.11.2000 at about 8:00 a.m., the prosecutrix had gone to Jaat Mohalla for collecting the amount of bangles. But, she did not returned. She made search for her daughter in her relations, but her whereabouts were not known. She stated that she had full belief that present appellant or his friend had kidnapped her daughter with bad intention. Appellant was also not present

in the village from that very time. On the statement of the complainant Smt. Jagti Ex.PG, the FIR Ex.PG/2 was registered and investigation started.

3. On 21.10.2000, ASI Om Parkash along with Pritam Singh, the maternal uncle of the prosecutrix left the police station in search of the accused and the prosecutrix. They first went to Narwana and then to railway station Jakhal, where the accused-appellant along with prosecutrix were found present on a bench on the platform near the water tank. Pritam Singh identified the prosecutrix. The prosecutrix was recovered from the custody of the appellant vide memo Ex.PJ. He prepared the place of recovery of the prosecutrix Ex.PM. Accused-appellant was arrested. The prosecutrix made the statement, wherein she disclosed about her forcible kidnapping by the appellant and having committed rape upon her. The accused was medico legally examined on the same day. However, as no lady doctor was present, the prosecutrix could not be medico legally examined and they returned to police station Kalayat. The mother of the prosecutrix also arrived in the police station Kalayat. The prosecutrix was kept in the police station under the care and custody of her mother and lady constable Ramandeep. On 22.11.2000, the prosecutrix was got medico legally examined from civil hospital, Kaithal.

After her medico legal examination, the lady doctor had handed over him the cloths of the prosecutrix, slides, swabs etc, which were taken into possession vide memo Ex.PO. Statement of the prosecutrix was got recorded under Section 164 Cr.P.C from the Magistrate and prosecutrix was handed over to her mother vide memo Ex.PH. The Investigating Officer got prepared scaled site plan of the place of occurrence and also obtained her school certificate with respect to her date of birth. On completion of the formalities of the investigation, the report under Section 173 Cr.P.C was presented in the Court.

4. The accused-appellant was charge sheeted for the offences punishable under Sections 363, 366 and 376 of IPC, to which the appellant pleaded not guilty and claimed trial.

5. In order to substantiate its case, prosecution examined as many as ten witnesses.

6. When examined under Section 313 Cr.P.C, accused pleaded false implication due to party faction in the village.

7. In the defence evidence, accused-appellant examined Smt. Rajiya Devi as DW-1. Thereafter, the appellant closed his defence evidence.

8. On appreciation of the evidence brought on record

and the contentions raised by learned counsel for the parties, learned trial Court held guilty and convicted the appellant for the offences punishable under Sections 363, 366 and 376 of IPC and was sentenced as mentioned in the upper part of the judgment.

9. Aggrieved with the aforesaid judgment of conviction and order of sentence, the present appeal has been preferred.

10. I have heard Sh. H.S.Jaswal, Advocate, learned counsel for the appellant and Sh. Mukesh Kaushik, learned Deputy Advocate General, for the State of Haryana and have meticulously examined the record of the case.

11. Initiating the arguments, learned counsel for the appellant contended that the appellant has been falsely implicated in this case due to party faction in the village. He has not committed any offence of rape. He contended that even from the statement of the prosecutrix, it comes out that she accompanied the appellant at the public places. She traveled with the appellant to Ludhiana, Jakhal and other places in the public transport, but at any point of time she did not raise any hue and cry, which shows that she was a consenting party. He further contended that the prosecution has also not been able to adduce any cogent evidence to prove that the prosecutrix was below 16 years of

age on the date of occurrence. Thus, he contended that the conviction of the appellant has been wrongly recorded by the learned trial Court.

12. In the alternative, learned counsel for the appellant contended that at the time of this occurrence, the appellant was only about 18 plus years of age. He has been facing the trial since year 2000. Now, the appellant as well as the prosecutrix have respectively settled and had got married. The appellant has already undergone three years seven months and nineteen days of the sentence out of seven years awarded by the learned trial Court. He has also earned the remission for eight months and twenty nine days. Thus, he pleaded that the sentence of the appellant should be reduced to the imprisonment already undergone by the appellant. To support his contentions he relied upon cases **Balkar Singh Vs. State of Haryana, 2007(4) RCR (Criminal) 597, Ashok Kumar Vs. State of Haryana, 2007(4) RCR (Criminal) 610, Jagir Singh Vs. State of Haryana, 2003(4) RCR (Criminal) 138, Narender Singh Vs. State of Haryana, 2003(4) RCR (Criminal) 346, Karamvir Vs. State of Haryana, 2003 (4) RCR (Criminal) 331.**

13. On the other hand learned State counsel contended that the prosecutrix was less than fifteen years of

age on the date of occurrence, which is established from the school certificate Ex.PS. He further contended that from the statement of the prosecutrix, it comes out that the prosecutrix was forcibly kidnapped by the appellant and rape was committed under threat, which will clearly attract the offence of kidnapping and rape.

14. He further contended that the minimum sentence for the offence punishable under Section 376 IPC is seven years. Learned trial Court has already awarded the minimum sentence. The sentence less than the minimum sentence can only be provided in exceptional cases. The case in hand does not fall in that category. So, the appellant is not entitled for reduction of sentence. To support his contentions, he relied upon cases **State of Haryana Vs. Janak Singh & etc 2013(3) RCR (Criminal) 347, Parminder alias Ladka Pola Vs. State of Delhi, 2014 (4) RCR (Criminal) 682 and case State of Rajasthan vs. Vinod Kumar 2012(4) RCR (Criminal) 305.**

15. I have duly considered the aforesaid contentions.

16. Firstly, we are to determine the age of the prosecutrix on the date of occurrence. The prosecutrix at the time of making statement in the Court as PW-5 had got recorded her age as 14-15 years. As per the statement of PW-4 Dr. Neelam Kakker, Medical Officer, the prosecutrix

had disclosed her age to be 15 years at the time of her medico legal examination. PW-6, Smt. Jagti, mother of the prosecutrix has categorically stated that on the date of occurrence her daughter was 15 years of age and this version of PW-6, Smt. Jagti has gone totally unassailed in the cross examination. It is settled principle of law that if a witness is not cross examined on the facts stated by him/her in the examination in chief, that part of his/her statement is deemed to have been admitted by the opposite party. In the instant case also the version of PW-6, Smt. Jagti that on the date of occurrence, the prosecutrix was about 15 years of age has gone totally unchallenged.

17. The version of PW-6, Smt. Jagti on the point of age of the prosecutrix is fully corroborated from the school record. PW-10, Jai Parkash, Head teacher, Govt. Primary School, village Balu has appeared in the witness box along with school record and deposed that the prosecutrix was admitted in their school vide serial number 6671 dated 29.09.1993 and she left the school on 28.07.1998. Her date of birth has been recorded in the school register against the relevant entry as 20.09.1986. He proved the school certificate as Ex.PS issued and signed by him. He deposed that the said certificate is correct as per the original record. So, as per the school certificate, the date of birth of the

prosecutrix was 20.09.1986 and on the date of occurrence her age comes to fourteen years, one month and twenty four days.

18. The school certificate Ex.PS issued by PW-10, Jai Parkash, Head Teacher of the Govt. Primary School, village Balu would be admissible in evidence under Section 35 of the Evidence Act. In case **Balwan Singh Vs. State of Haryana, 2010 (3) RCR (Criminal) 734**, this court has laid down that the school certificate issued by the headmaster is a legal document having evidentiary value and should be given due weightage. Moreover, there is no rebuttal to the aforesaid evidence adduced by the prosecutrix on the point of age of the prosecutrix. Learned counsel for the appellant has also not been able to point out any ground to discard the school certificate Ex.PS. So, there is no escape from the conclusion that on the date of occurrence, the prosecutrix was below 15 years of age.

19. Learned counsel for the appellant has pleaded that as the prosecutrix has traveled with the appellant to various places in the public transport, she had no injury on her private parts or the body, she remained in the company of the appellant for a week and did not raised hue and cry at any point of time. So, she will be a consenting party. But, that plea is of no help to the appellant as the prosecutrix

was below 15 years of age at the time of occurrence.

20. **Section 375 IPC** defines the offence of rape. The relevant portion of **Section 375 IPC** reads as under:-

“375. Rape. - A man is said to commit 'rape' who, except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the six following descriptions:

Firstly.....

Secondly.....

Thirdly.....

Fourthly.....

Fifthly.....

Sixthly. -- With or without her consent, when she is under sixteen years of age.”

As per the aforesaid provision of law a person is said to commit rape who has sexual intercourse with a woman with or without her consent when she is below 16 years of age. In the instant case also the prosecutrix was below sixteen years of age at the time of occurrence. So, even if the prosecutrix was a consenting party but the sexual intercourse with her will constitute the offence of rape in view of clause Sixthly of Section 375. To support this view reference can be made to case **Iqbal Vs. State of Kerela, 2007(4) RCR (Criminal) 867 (S.C)**, In that case the prosecutrix was 13 years and 9 months of age. She went with the accused on her own accord and remained with him for 12 days. She was a consenting party to the intercourse. The Hon'ble Apex Court held that sexual intercourse with a woman with or without her consent when she is below 16 years of age amounts to rape. The same

legal position has been held in case **Abbas Ahmed Chaudhary Vs. State of Assam, (2011) 2 Supreme Court Cases (Criminal) 439.**

21. While appearing before the learned trial Court as PW-5, the prosecutrix deposed as under:-

.....On 14.11.2000 at about 8.00 or 9.00. a.m, she had gone to Mohalla of Jattan for taking payment of bangles. Accused-appellant Ramesh came there in a canter and he forcibly made her board that canter and he had taken her to Kalayat. From Kalayat, he had taken her to Narwana. In Kalayat, accused had taken her to a deserted poultry farm near Satsang Bhawan, Kalayat, where he committed rape her without her consent and against her will. From Narwana, accused had taken her to Ludhiana by train. Accused also committed rape upon her without her consent and against her will in the bathroom of coach of train against her will and against her consent. From Ludhiana they returned to Jakhal by train.....

The version of the prosecutrix is also corroborated from the report of FSL Ex.PR, wherein the semen has been found on her Salwar, lady's shirt and slide. In the medical evidence also the Hyman was found absent.

22. As already discussed, the prosecutrix was below 15 years of age on the date of occurrence and in view of the ratio of law laid down by the Hon'ble Apex Court in the cases referred above, the consent of the prosecutrix shall be

immaterial as the appellant has committed the sexual intercourse with the prosecutrix who was below 15 years of age on the date of occurrence that will constitute the offence of rape as well as kidnapping.

23. Learned counsel for the appellant has vehemently pleaded for reduction of the sentence awarded to the appellant on the ground that the appellant is facing the trial since the year 2000. He was only 18 plus years of age at the time of occurrence. Now, he is married and settled in life. The prosecutrix has also married. Learned trial Court has awarded rigorous imprisonment for a period of seven years to the appellant for the offence punishable under Section 376 IPC, which is minimum sentence provided for the offence punishable under Section 376 IPC. The proviso to Section 376 Sub section (1) provides that the Court may, for adequate and special reasons to be mentioned in the judgment, imposed a sentence of imprisonment for a term of less than seven years. The Hon'ble Supreme Court in case **State of Rajasthan Vs. Vinod Kumar (Supra)** relied upon by learned State counsel laid down that the reduction of the sentence less than minimum prescribed for the offence can only be ordered in exceptional cases for adequate and special reasons. The Hon'ble Supreme Court in case **State of Rajasthan Vs. Madan Singh 2008(1) RCR (Criminal)**

963 has laid down as under:-

“The measure of punishment in a case of rape can not depend upon the social status of the victim or the accused. It must depend upon the conduct of the accused, the State and age of the sexually assaulted female and the gravity of the criminal act. Crimes of violence upon women need to be severely dealt with. The socio-economic status, religion, race, caste or creed of the accused or the victim are irrelevant considerations in sentencing policy. Protection of society and deterring the criminal is the avowed object of law and that is required to be achieved by imposing an appropriate sentence. The sentencing Courts are expected to consider all relevant facts and circumstances bearing on the question of sentence and proceed to impose a sentence commensurate with the gravity of the offence. Courts must hear the loud cry for justice by the society in cases of the heinous crime of rape on innocent helpless girls of tender years, as in this case, and respond by imposition of proper sentence. Public abhorrence of the crime needs reflection through imposition of appropriate sentence by the Court. There are no extenuating or mitigating circumstances available on the record which may justify imposition of any sentence less than the prescribed minimum on the respondent. To show mercy in the case of such a heinous crime would be a travesty of justice and the plea for leniency is wholly

misplaced.”

24. The Hon'ble Apex Court in case **Pushpanjali Sahu Vs. State of Orissa and Anr. 2012(4) RCR (Criminal) 612** has laid down that sexual violence is not only an unlawful invasion of the right of privacy and sanctity of a woman but also a serious blow to her honour. It indelibly leaves a scar on the most cherished possession of a women i.e. her dignity, honour, reputation and not the least her chastity and had depreciated the reduction of sentence less than the minimum in the rape cases.

25. Again in case **State of Madhya Pradesh Vs. Munna Choubey & Anr. 2006(1) RCR (Criminal) 831**, the Hon'ble Apex Court has laid down that undue sympathy to impose inadequate sentence would do more harm to the justice system to undermine the public confident in the efficacy of law. It is the duty of every court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed. It has been further laid down in this case that the social impact of the crime, e.g. where it relates to offences against women, dacoity, kidnapping, misappropriation of public money, treason and other offences involving moral turpitude or moral delinquency which have great impact on social order, and public interest, can not be lost sight of and per se

require exemplary treatment. Any liberal attitude by imposing meagre sentences or taking too sympathetic view merely on account of lapse of time in respect of such offences will be result-wise counter productive. In this very authority, it has been further laid down that to impose a sentence less than the prescribed minimum the reason has not only to be adequate but also special. So, in view of the authorities relied upon by the learned State counsel as well as referred above by this Court, the reduction of sentence less than the minimum prescribed can only be in exceptional cases on account of the adequate and special reasons.

26. In the instant case, reasons set out by learned counsel for the appellant are that the appellant has been facing the trial for the year 2000, that he was about 18 years of age at the time of occurrence, that now he is married and prosecutrix is also married. In my opinion none of the ground mentioned above can be considered to be adequate much less the special reasons for the reduction of the sentence from the minimum prescribed as the trial of the case was concluded by the learned trial Court within two years and the remaining time has been spent on account of his appeal filed against conviction. The appellant as well as prosecutrix might have married with the passage

of time. Similarly, the young age of the appellant at the time of the commission of offence also can not furnish the adequate and special reason for the reduction of the sentence. So, no case is made out for reduction of the sentence less than the minimum as already awarded by the learned trial Court.

27. Thus, keeping in view my aforesaid discussion, I do not find any legal infirmity or impropriety in the impugned judgment of conviction and order of sentence and the same are hereby upheld and affirmed.

28. Resultantly, the present appeal has no merits and the same is hereby dismissed. The accused-appellant is on bail. His bail stand cancelled. He shall surrender within 15 days from the date of this judgment before the learned Chief Judicial Magistrate, Kaithal, who shall send him to jail to undergo the remaining part of their sentence. If, he fails to surrender, the learned Chief Judicial Magistrate, Kaithal, shall take coercive steps to secure his presence and send him to jail to undergo the remaining part of the sentence.

February 10, 2015

s.khan

**(DARSHAN SINGH)
JUDGE**