

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Criminal Appeal No. D-770-DB of 2013 (O&M)

Date of decision : 24.04.2015

Sukhwinder Kaur and othersAppellants

Versus

State of Punjab and othersRespondents

Present: Mr. Atul Jain, Advocate
for the appellants.

Ms. Manjari Nehru Kaul, Additional AG, Punjab.

Mr. Rakesh Kumar, Advocate
for respondent No. 2.

Criminal Appeal No. 838-SB of 2013(O&M)

Jasmeet @ Jassi @ Pathar ...Appellant

versus

State of Punjab ...Respondent

Present: Mr. Rakesh Kumar, Advocate
for the appellant.

Ms. Manjari Nehru Kaul, Additional AG, Punjab.

Mr. Atul Jain, Advocate
for the complainant.

**CORAM:- HON'BLE MR. JUSTICE HEMANT GUPTA
HON'BLE MRS. JUSTICE LISA GILL**

LISA GILL, J.

This judgment shall dispose of Criminal Appeal No. D-770-DB of 2013 (Sukhwinder Kaur and another versus State of Punjab and others) and Criminal Appeal No. 838-SB of 2013 (Jasmeet @ Jassi @ Pathar versus State of Punjab), which arise out of judgment and order dated 13.02.2013 passed by the learned

Additional Sessions Judge, Kapurthala.

Jasmeet @ Jassi @ Pathar - appellant in Criminal Appeal No. 838-SB of 2013 has been convicted for the offence punishable under Section 376 and sentenced to undergo imprisonment for 7 years besides a fine of ₹5000/- and in default of payment of fine to undergo further imprisonment for one year and for the offence punishable under Section 363 IPC, he is sentenced to undergo imprisonment for 2 years besides a fine of ₹3000/- and in default of payment of fine to undergo further imprisonment for three months.

Aggrieved therefrom he has filed the above mentioned appeal.

Criminal Appeal No. D-770-DB of 2013 has been preferred by Sukhwinder Kaur – complainant and appellant No. 2 prosecutrix praying for enhancement of the sentence imposed upon the accused as well as for his conviction under Section 366A IPC and for award of compensation under Section 356 Cr.P.C.

Proceedings were set in motion on registration of FIR No. 37 dated 07.02.2010 under Sections 363, 366-A, 376 IPC (Ex. PW6/C) on the basis of statement of Sukhwhinder Kaur (Ex.PA), mother of the prosecutrix. Sukhwinder Kaur stated that her husband Ajit Singh was living in England for the last five years. She had two children, a son Hardeep Singh and a daughter Navjot Kaur, aged about 15 years, who was a student of Class 10th at Senior Secondary School, Dudwindi. Her daughter left for school on 06.02.2010 at about 6.00 a.m. but did not return. Complainant and her son Hardeep Singh made efforts to locate her and she came to

know that her daughter has been kidnapped by the accused Jasmeet @ Jassi on the pretext of marrying her. Above said FIR was lodged on this statement made on 07.02.2010.

Prosecutrix was recovered from the bus stop of village Tashpur along with the accused on 11.02.2010. He was arrested and custody of the prosecutrix (EX. PB) was handed over to her mother Sukhwhinder Kaur and she was medico legally examined at Civil Hospital Sultanpur Lodhi.

Statement of Navjot Kaur under Section 164 Cr.P.C. was recorded on 15.02.2010 before the Sub Divisional Judicial Magistrate, Sultanpur Lodhi. She revealed that she was going on foot to school which is 1 km away from her village on 06.02.2010 at about 8.45 a.m. Accused who studied in the same school in +2 class, came on a motorcycle and asked her to sit beside him as she was getting late. He said he would take her to school. She sat beside him but he turned the motorcycle towards Mothanwala instead of going to school on the pretext that he has some work there and will proceed to school thereafter. He took her to Chintpurni where tea was offered to her. She fell drowsy after taking tea and did not know what the accused did with her thereafter. Accused took her to Jawalaji and other places for 2-3 days. He left the motorcycle on the way on 11.02.2010 and was coming back on bus with her for dropping her at her village. He told her that he would go back after dropping her. At the bus stop near village Tazpur they were both identified by the police, who apprehended them. She was sent with her parents and accused was arrested. She is residing with her parents since then.

Prosecutrix was medically examined by PW3 Dr. Rupinderjit Kaur on 11.02.2010. Her age is recorded as 14 years and 9 months as per certificate No. B-07-kpt-S.683400. Presence of Spermatoza was detected and evidence of sexual intercourse was found. PW3 opined that victim could be subjected to forcible sexual intercourse by single person as she was a minor. No mark of injury was found.

On completion of investigation, challan/report under Section 173 Cr.P.C. was presented. Charged was framed against the accused for the offences punishable under Sections 363, 366A, 376 IPC to which he pleaded innocence and claimed trial.

Prosecution examined 10 witnesses to support its case. Accused while denying incriminating evidence put to him pleaded innocence and false implication in his statement under Section 313 Cr.P.C.

Learned trial Court on finding that the prosecution had succeeded in proving its case beyond reasonable doubt against the accused for the offences punishable under Sections 360, 376 IPC convicted him thereunder and sentenced him to imprisonment as mentioned above. Aggrieved therefrom, present appeals have been filed both by the accused as well as the complainant and prosecutrix.

Learned counsel for the appellant accused Jasmeet @ Jassi contends that both the accused as well as prosecutrix were teenagers and apparently prosecutrix had accompanied the accused out of her own free will and volition. It is submitted that she had submitted leave application Ex. DW1/A. She had not raised any

protest or objection while she was with the accused from 06.02.2010 till 11.02.2010. Therefore, there is no question of either kidnapping the prosecutrix or subjecting her to rape. He prays for acquittal of the accused in these circumstances.

Learned counsel for the State while supporting the impugned judgment dated 13.02.2013 submits that there is sufficient evidence on record to prove the commission of offences as alleged by the accused and she prays for upholding the impugned judgment and order.

Learned counsel for the appellants in Criminal Appeal No. D-770-DB of 2013 contends that undue leniency has been afforded by the learned trial Court. Accused has been sentenced only for a period of seven years though the offence qua him is clearly proved. Apart from enhancement of the sentence imposed upon the accused, adequate compensation should also be awarded to the victim in this case. No arguments were addressed on Section 366-A IPC being attracted in this case.

We have heard learned counsel for the parties and gone through the record carefully with the assistance of learned counsel.

It is not in doubt that the date of birth of the prosecutrix is 25.05.1995. There is no evidence on record to falsify the age as revealed in certificate dated 18.02.2010 issued by the Principal, Government Senior Secondary School, Dudwandi. No such suggestion regarding the date of birth being incorrect or false has even been put to the witnesses. It is, thus, clear that the prosecutrix was only 14 years and 9 months old at the time of alleged

occurrence on 06.02.2010. In view of the age of prosecutrix being less than even 15 years, question of consent or otherwise pales into insignificance.

Section 375 IPC is categoric in this respect. Relevant extract of Section 375 IPC as it stood in the year 2010 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:-

xxx

xxx

xxx

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

Thus, the plea of consent, if any, on the part of prosecutrix is of no avail to the accused. Complainant - Sukhwhinder Kaur as well as prosecutrix have given consistent versions, which could not be shattered despite the lengthy cross examination. Prosecutrix has clearly revealed the commission of offence under Sections 363 and 376 IPC by the accused. There is no evidence to disbelieve her or discredit her testimony.

Argument by learned counsel for the accused that prosecutrix did not give any details in her statement under Section 164 Cr.P.C. as are subsequently sought to be projected at the time of deposing before the trial Court thereby rendering her testimony unreliable is untenable. Prosecutrix has clearly implicated the accused in her statement under Section 164 Cr.P.C. It is not as if she has given an inconsistent version while deposing before the trial Court. Her statement before the trial Court is in consonance with her

statement under Section 164 Cr.P.C. Inconsistencies sought to be projected are not relevant and material in the facts and circumstances of the case.

Prosecution has, thus, successfully proved its case beyond a shadow of doubt against the accused for the offences punishable under Sections 363, 376 IPC.

In regard to the question of enhancement of sentence of imprisonment imposed upon the accused, learned counsel for the complainant submits that undue leniency has been afforded to the accused. Sentence of imprisonment should be increased and compensation should be awarded to the victim. On the other hand, Sh. Rakesh Kumar, counsel for the accused submits that the accused was a young boy at the time of the incident. He is not involved in any other case and sufficient punishment has been imposed.

In the peculiar facts and circumstances of the case, it is considered just and expedient to maintain sentence of 7 years imposed upon him. However, we consider it appropriate and proper to award compensation to the victim as envisaged under Section 357 Cr.P.C. It has been held by the Hon'ble Supreme Court in **Manohar Singh versus State of Rajasthan and others** 2015 (3) S.C.C. 459, that need to compensate a victim can now be taken to be integral to just sentencing. Considering the submissions made by the learned counsel, compensation to the tune of ₹1 lakh is awarded to the victim and in default thereof accused shall undergo rigorous imprisonment for two years. Amount of fine, as imposed by the trial Court, shall

remain the same.

Accordingly, Criminal Appeal No. 838-SB of 2013 is dismissed and Criminal Appeal No. D-770-DB of 2013 is partly allowed.

(Hemant Gupta)
Judge

(Lisa Gill)
Judge

April 24, 2015
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