

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

CRA-S-756-SB of 2004.

DATE OF DECISION: February 19, 2015.

BALWANT SINGH AND OTHERS

....APPELLANTS.

VERSUS

THE STATE OF PUNJAB

....RESPONDENT.

CORAM : HON'BLE MRS. JUSTICE SNEH PRASHAR

Present: Mr. K.D.S. Hooda, Advocate for the appellants.

Mr. D.S. Mann, Assistant Advocate General, Punjab.

SNEH PRASHAR, J.

1. This is an appeal preferred by Balwant Singh, Surjit Singh and Rajinder Kumar, all residents of village Khaira Kalan, convicts-appellants, assailing the judgment of conviction and order of sentence dated 13.03.2004 recorded by learned Additional Sessions Judge, Mansa, in case bearing F.I.R. No.61 dated 05.06.2002 under Sections 376/363/366/342/120-B Indian Penal Code (for short "I.P.C.") registered at Police Station Sardulgarh.

2. Precisely, on a complaint dated 25.03.2002 given by Smt.

Ratto Bai widow of Tek Singh, resident of village Khaira Kalan, Police Station Sardulgarh, to some senior authorities, a First Information Report No.61 dated 05.06.2002 under Section 363/120-B of I.P.C. was registered on the directions of Senior Superintendent of Police, Mansa.

The allegation of the complainant was that her daughter "A" (real name withheld) born on 01.01.1989 had been kidnapped on 14.09.2001 by Balwant Singh in conspiracy with his maternal uncles Mohinder Singh and Jeeta Singh, two ladies Jeeto Bai & Taro Bai and one Rajinder Kumar son of Khana Ram of village Khaira Kalan. On 07.06.2002, Balwant Singh was arrested from Bus Stand, Sirsa (Haryana) and from his custody "A" was recovered. Statement of "A" was recorded. She as well as Balwant Singh were got medico legally examined at Civil Hospital, Mansa. On 08.06.2002, "A" was produced before the Magistrate before whom she made statement that she does not want to accompany her mother, on which she was sent to Nari Niketan, Jalandhar. On 22.06.2002, Surjit Singh and Rajinder Kumar were arrested. Sections 366, 376 and 344 of I.P.C. were added to the case. Rest of the persons named in the application were found to be innocent and were not arrested.

On completion of investigation, accused Balwant Singh, Surjit Singh and Rajinder Kumar were challaned and sent to the Court for trial.

3. The case was committed to the Court of Sessions by the learned Chief Judicial Magistrate, Mansa. A charge sheet for commission of offences under Sections 120-B, 363, 366, 376 and 344 of I.P.C. was

served upon appellant Balwant Singh whereas appellants Surjit Singh and Rajinder Kumar were charge-sheeted under Sections 363 read with Section 34 and 120-B of I.P.C.

4. To substantiate its allegation, the prosecution examined PW1 Dr. Monika Singla, who medico legally examined prosecutrix; PW2 "A" prosecutrix; PW3 Ratto Bai, complainant; PW4 Balkar Singh, Head Teacher; PW5 Head Constable Prem Kumar; PW6 Sub Inspector Malkiat Singh, the Investigating Officer; PW7 Bagra Ram, Sarpanch; PW8 Constable Madan Lal; and PW9 Rai Singh Parihar.

After closure of evidence of the prosecution, statement of appellants under Section 313 of the Code of Criminal Procedure (for short "Cr.P.C.") was recorded. All the appellants pleaded innocence. Balwant Singh added that prosecutrix "A" was 21 years old and she herself had enticed him to elope with her. Same was the stand taken up by his father Surjit Singh. Appellant Rajinder Kumar stated that he had no connection with Balwant Singh and Surjit Singh. He added that he had contested the election of Sarpanch against Bagra Ram, PW7 and had been falsely implicated by the complainant on the instigation of Bagra Ram.

In their defence, the appellants examined DW1 Balwant Singh and they tendered in evidence Ration Card of Ratto Bai Ex.DA and certified copy of statement of prosecutrix "A" Ex.DA/5.

5. Considering the evidence adduced by the prosecution as well as the appellants and the submissions made on their behalf, learned trial Court finding accused Balwant Singh guilty for commission of offences

under Sections 363, 366, 344 & 376 of I.P.C. and accused Surjit Singh and Rajinder Kumar for commission of offence under Section 363/34 of I.P.C. convicted them accordingly and sentenced them as under:-

“In the totality of the circumstances of the case and taking a humanitarian approach, Balwant Singh convict is sentenced to undergo Rigorous imprisonment for a period of seven years and to pay a fine of Rs.200/- or in its default, to further undergo RI for three months under Section 376 IPC; further he is sentenced to undergo Rigorous Imprisonment for a period of five years and to pay fine of Rs.200/- or in its default, to further undergo RI for three months U/S 363 IPC; further he is sentenced to undergo Rigorous Imprisonment for a period of seven years and to pay fine Rs.200/- or in its default, to further undergo RI for three months under section 366 IPC and further he is sentenced to undergo Rigorous Imprisonment for a period of three years and to pay fine of Rs.200/- or in its default to further undergo RI for three months, under Section 344 IPC. Surjit Singh convict is sentenced to undergo Rigorous Imprisonment for a period of two years and to pay fine of Rs.200/- or in its default to further undergo RI for three months, under Section 363/34 IPC. Rajinder Kumar convict is sentenced to undergo Rigorous Imprisonment for a period of two years and to pay fine of Rs.200/- or in its default to further undergo RI for

three months under Section 363/34 IPC. All the substantive sentences of Balwant Singh convict shall run concurrently. The period of detention undergone by the convicts during trial or inquiry of this case is ordered to be set off from the awarded sentence.”

6. Feeling aggrieved by the impugned judgment of conviction and order of sentence dated 13.03.2004 passed by learned trial court, the appellants preferred the instant appeal.

7. The submissions made by Mr. K.D.S. Hooda, learned counsel representing the appellants and Mr. D.S. Mann, Assistant Advocate General for the State of Punjab have been heard and record has been perused.

8. In nutshell the allegation of the prosecution was that appellant Balwant Singh with the help of appellants Surjit Singh and Rajinder Kumar had enticed and kidnapped prosecutrix “A” daughter of complainant Ratto Bai who was a minor girl aged 13 years. It was also the allegation that the prosecutrix was raped by Balwant Singh.

The prosecutrix, who appeared as PW2 was the star witness of the prosecution. A bare perusal of her deposition shows that she did not spell out a word incriminating against any of the appellants. She deposed that the house of Balwant Singh was adjoining to her parental house in village Khaira Kalan. They were in love for the last about two years but her parents were not happy with their relationship and they intended to marry her with some other person who appeared to be idle and of unsound

mind. She further categorically stated that neither Balwant Singh enticed her nor he ever committed rape upon her against her will and consent. She added that she had left her parental home on her own volition for living with Balwant Singh.

On request of learned Public Prosecutor that the prosecutrix PW2 was concealing the true facts, he was allowed to cross examine her. The entire contents of the complaint and the statement Ex.PD alleged to be of the prosecutrix recorded under Section 161 Cr.P.C., were put to her, but she denied all consistently. She admitted that she had left her village with Balwant Singh, but denied that she was kidnapped by him. It was also in her deposition that they had been enjoying sexual intercourse during the period they had stayed together, but she specifically deposed that Balwant Singh used to have sexual intercourse with her consent. Importantly, she disclosed that a daughter had born to her from the loins of Balwant Singh.

9. Learned trial Court held all the three appellants guilty for commission of offence of kidnapping the prosecutrix and appellant Balwant Singh of also having committed rape upon the prosecutrix on the ground that at the time of occurrence i.e. on 14.09.2001 the prosecutrix was a minor aged hardly 12 years, 8 months and 13 days, the date of birth of the appellant being 01.01.1989 as recorded in her school leaving certificate Ex.PG proved by PW4 Balkar Singh, Head Teacher, Government Primary School, Karandi. PW4 produced the register pertaining to admission and school leaving of the students of his school.

He stated that as per serial no.238 dated 10.05.1995 prosecutrix "A" was admitted in the school in class I. It was mentioned in the entry that her date of birth was 01.01.1989. She stopped attending the school and due to her long absence her name was struck off on 03.09.1997. Photostat extract of the relevant entry produced by him is Ex.PF. It was on the basis of the said entry that the school leaving certificate Ex.PG was issued on 08.04.2002, on which PW4 identified his signatures. He also stated that Ratto Bai, mother of the prosecutrix, had got her admitted in the School.

10. In addition to the school leaving certificate Ex.PG, the prosecution had also proved birth certificate Ex.PR issued by the Registrar, Births and Deaths, Gram Panchayat Chuhadpur, District Alwar by examining PW9 Rai Singh Parihar. In the birth certificate Ex.PR, the date of birth of prosecutrix "A" was mentioned as 05.12.1988. As mentioned in Ex.PR, the said certificate was got prepared by complainant Ratto Bai on 31.05.2002, i.e. after she had given the complaint Ex.PE on the basis of which the instant case was registered. PW9 admitted in his cross-examination that there were certain loose papers in the file brought by him and that anything could be omitted or added in the file. There was no serial number or index of the file. For the said reasons, learned trial Court finding that no authenticity could be attached to the document had rightly ignored the same.

11. As far as the Ration Card Ex.DA/4 of complainant Ratto Bai is concerned, although the name of the children including daughters of complainant Ratto Bai were mentioned in the Ration Card, but

conspicuously the name of prosecutrix was missing among them.

Learned Assistant Advocate General argued that prosecutrix “A” was also known by the name of Gurpreet Kaur and the said name appeared among the children of Smt. Ratto Bai. The argument of learned Assistant Advocate General is devoid of merit since no evidence was led by the prosecution to prove that the prosecutrix was also known by the name of Gurpreet Kaur. Therefore, the Ration Card Ex.DA/4 was also of no help to the prosecution for proving the age of the prosecutrix.

12. The birth certificate Ex.PR and the Ration Card Ex.DA/4, being the documents not worth reliance, the only document left for consideration in the matter of age of the prosecutrix was the school leaving certificate Ex.PG proved by PW4 Balkar Singh, Head Teacher, Government Primary School, Karandi. Finding that PW4 was an independent witness being not related to either of the parties and the record produced by him was maintained in discharge of official duties and further that he had identified complainant Ratto Bai present in Court as mother of prosecutrix “A”, learned trial court accepted the school leaving certificate Ex.PG as a genuine document and as recorded in the same held that the date of birth of prosecutrix “A” is to be treated as 01.01.1989 and on that basis arrived at the conclusion that the prosecutrix was a minor aged 12 years, 8 months and 13 days on the date of occurrence i.e. 14.09.2001.

13. The question that crops up is whether the school leaving certificate Ex.PG could be taken as a conclusive proof for determining the

age of the prosecutrix. PW4 Balkar Singh, Head Teacher, in his cross-examination stated that the admission form of prosecutrix "A" available in the school record had right thumb impression of Rattan Kaur. Copy of the affidavit annexed with the admission form was tendered in evidence by him i.e. Ex.DA. He admitted that Rattan Kaur had not thumb marked on Ex.DA and also did not fill the admission form in his presence, but he stated that the words "RTI Rattan Kaur" adjoining to the thumb impression on Ex.DA was written by him. He further admitted that the right arm of complainant Ratto Bai present in Court was amputated. Though he stated that Ratto Bai was known to him since 1995, but he admitted that he did not notice if the right arm of Ratto Bai was amputated or not at the time he had written the words "RTI Rattan Kaur" adjoining to the thumb impression on Ex.DA. It is further in his statement that he did not certify the date of birth of prosecutrix "A" written in the admission form and also that he had never seen the husband of Ratto Bai.

14. The statement of PW4 Balkar Singh, Head Teacher revealed that he had no personal knowledge of the facts regarding which he had made statement. The statement made by him was also inconsistent in itself. On one hand, he stated that he had written "RTI Rattan Kaur" adjoining to the thumb impression on the affidavit Ex.DA and on the other he stated that thumb impression on Ex.DA were not appended by Rattan Kaur in his presence and that he did not even notice whether Ratto Bai had right thumb or not at the relevant time. Admittedly, when he identified Ratto Bai in the Court, she did not have a right thumb due to

amputation of her right arm. It has come in evidence that the right arm of Ratto Bai was amputated before her marriage, which means she did not have right thumb whereas affidavit Ex.DA was prepared and PW4 without knowing who had thumb marked Ex.DA, had written the name of Ratto Bai on the thumb impression. For the said reason, not only the testimony of PW4 becomes doubtful, the record produced by him can also not be relied upon.

15. Be that as it may, PW4 admitted that except for an affidavit no birth certificate of the child was taken at the time of admission. Meaning thereby that the date of birth written in the school leaving certificate Ex.PG was not based on any authentic document. It is well known that when there is no birth certificate of the child available, the intention of the parents at the time of admission of the child in the school is to get his/her lesser age recorded. For that reason, the date of birth of a child mentioned in the school record, which is not supported by some authentic document, cannot be accepted as correct at the face value.

16. It is further important to note that in the birth certificate Ex.PR of the prosecutrix, which was got prepared by complainant Ratto Bai after she had filed the complaint Ex.PE which formed basis of the First Information Report, she had got recorded the date of birth of prosecutrix "A" as 05.12.1988, whereas in the school leaving certificate Ex.PG the date of birth of the prosecutrix was mentioned as 01.01.1989. The variation in the date of birth of the prosecutrix in the documents prepared at the instance of the complainant herself proves that she had

been mentioning the date of birth just by imagination and the way it would suite her and therefore neither she nor her documents were worthy of credence.

17. After the prosecutrix was recovered on 07.06.2002, she was sent by the police for her medico legal examination to Civil Hospital, Mansa. PW1 Dr. Monika Singla medico legally examined her as stated by her and also mentioned in the medico legal report Ex.PA that the prosecutrix was 30 weeks pregnant. She stated that she had mentioned the age of the prosecutrix as 14 years in the medico legal report at the instance of the police and at the same time she had referred her for required test for determination of her age. Admittedly, the Investigating Officer did not get the radiological/ossification test of the prosecutrix done to get her age determined. In the circumstances when the prosecutrix was 30 weeks pregnant, her dental examination could have been got done to know her approximate age. In absence of said evidence, which was intentionally withheld, the prosecutrix can not be held to be a minor merely on the basis of the school leaving certificate which had no basis and was also in variation to the other documents. The prosecutrix firmly stated her age as 20 years and admitted that she had given birth to a daughter from the loins of Balwant Singh after she married him.

18. In any case, the prosecutrix deposed that she was a major girl and had accompanied appellant Balwant Singh on her own volition. She denied all allegations of the prosecution and firmly stated that neither appellant Balwant Singh had enticed her nor he had ever violated her

person against her will and consent. As stated by the prosecutrix, she was having a love affair with Balwant Singh for the last two years when she went with him and married him. They eloped on 14.09.2001 and were recovered on 07.06.2002. When the prosecutrix was produced before the Magistrate, she refused to go with her mother and was sent to Nari Niketan. At Nari Niketan she gave birth to a daughter.

During the course of arguments, learned counsel for the appellants produced certified copy of the order dated 28.01.2005 passed by Judicial Magistrate Ist Class, Mansa, on an application sent by prosecutrix "A" from the Protection Home. As per the order, prosecutrix "A" was called by the Magistrate and her statement was recorded wherein she reiterated that she had married Balwant Singh and wanted to live with her husband alongwith her minor child. Although at that stage also complainant Ratto Bai opposed the application but as mentioned in the order she admitted the factum of marriage between prosecutrix "A" and appellant Balwant Singh. The Magistrate further recorded in the other that from appearance prosecutrix "A" looked to be a major girl and even if she was minor the marriage was a valid marriage until and unless it was set aside. Accordingly, prosecutrix "A" was permitted to accompany appellant Balwant Singh and to live at her matrimonial home.

19. Learned counsel for the appellant submitted that the couple is since residing happily and has been blessed with three children. As stated by the prosecutrix, she was above 18 years of age when she accompanied appellant Balwant Singh, it was not her allegation that she was allured or

forcibly taken by any of the appellants. At every stage, she stated that she accompanied appellant Balwant Singh on her own volition and had married him. In the said circumstances, the allegation of the prosecution that the prosecutrix was kidnapped was not proved. Similarly, when it was not the allegation of the prosecutrix that she was ever raped by appellant Balwant Singh, the charge of rape can also not be held to be proved. No overt act was attributed either to Surjit Singh or Rajinder Kumar in the relationship of prosecutrix and appellant Balwant Singh or during the occurrence in which the prosecutrix and appellant Balwant Singh had left home and got married and had decided to have a family.

Resultantly, the appeal is allowed and all the three appellants are acquitted of the charges levelled against them.

(SNEH PRASHAR)
JUDGE

February 19, 2015.
jitender

Note: Whether to be referred to the Reporter or not? Yes/No.