

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. **CRA-S-1921-SB-2011**

DATE OF DECISION: SEPTEMBER 18, 2015

SANJAY @ SANDEEP ...APPELLANT

VERSUS

STATE OF HARYANA ...RESPONDENT

2. **CRA-S-1669-SB-2011**

VICKY @ VIKAS ...APPELLANT

VERSUS

STATE OF HARYANA ...RESPONDENT

CORAM: HON'BLE MR. JUSTICE M. JEYAPPAUL.

1. Whether the judgement should be reported in the digest? Yes

PRESENT: MR. YASHPAL, ADVOCATE FOR THE APPELLANT
IN CRA-S-1921-SB-2011.

MR. PANKAJ BALI, ADVOCATE FOR THE APPELLANT
IN CRA-S-1669-SB-2011.

MR. GAURAV JINDAL, ADDL.A.G., HARYANA.

M. JEYAPPAUL, J.

1. Accused Sanjay @ Sandeep, Pardeep and Vicky @ Vikas faced the trial before the Additional Sessions Court, Panipat. Accused Pardeep was acquitted of the charges framed against him, whereas accused Sanjay @ Sandeep and Vicky @ Vikas were convicted under Section 366 and 376(2)(g) IPC and were each sentenced to undergo 5 years R.I. and to pay a fine of ₹5000/- each and in default, to undergo a further R.I. for 6 months under Section 366 IPC and 10 years R.I. and to pay a fine of ₹10,000/- each and

in default, to undergo a further R.I. for 1 year under Section 376(2)(g) IPC.

2. Sanjay @ Sandeep has challenged the above judgement of conviction and sentence passed by the trial Court in CRA-S-1921-SB of 2011 and accused Vicky @ Vikas in CRA-S-1669-SB-2011.

3. The following testimony for the prosecutrix projects the entire case of the prosecution:-

i) On 27.3.2010 at about 11.00 a.m., she had been to her college to take her roll number for final examination. At about 12 noon on that day when she came out from the college and was standing in front thereof, accused Vicky @ Vikas asked her whether she was going to her house. When she replied in the positive, he having promised to drop her at her house took her on his motorcycle and brought her to Panipat. Accused Vicky @ Vikas made a telephone call to accused Sanjay @ Sandeep, who came over there. Both the accused took her to an abandoned place at Sanoli Road, Panipat. They threatened her to take drinks. Thereafter, she became unconscious. She was taken to a lonely place near bus stand, Samalkha. Both the accused laid her on the ground and raped her. She lost her consciousness and did not know what happened during the night thereafter. The next day morning on 28.3.2010 at about 5.00 a.m. both the accused took her to Haridwar in a bus. They kept her for about 2 or 3 days at a lonely place in the hilly area at Haridwar and raped her there as well.

ii) On 31.3.2010, both the accused took her to village Sheikhpura, District Karnal and kept her in fields. Accused Sanjay Sangwan called his brother Pardeep Sangwan over telephone. On 31.3.2010, all the accused took her to bus stand, Panipat and left her near

the toilet where her father and the police officials were present. Her father identified her and accused Vicky @ Vikas. The police apprehended all the three accused and recorded her statement.

4. PW4 Dr.Naveen, Civil Hospital, Panipat medico-legally examined the prosecutrix and opined that the possibility of rape cannot be ruled out. Her clothes were recovered and taken into possession.

5. PW8 Ram Niwas, the father of the prosecutrix, lodged a complaint that her daughter was taken away by the accused. The prosecutrix suffered statement under Section 164 Cr.P.C. (Ex.P7) before the learned Judicial Magistrate. PW9 Inspector Suresh Kumar spoke about the investigation conducted by him including the arrest of the accused.

6. Accused Vicky has submitted in his statement under Section 313 Cr.P.C. that the prosecutrix who lived in his neighbourhood prior to the occurrence had a love affair with accused Sanjay @ Sandeep who was working as a cable operator at Samalkha. Accused Sanjay used to visit the house of the prosecutrix in connection with the cable service. Accused Sanjay informed him that the prosecutrix wanted to marry him. The prosecutrix was a major at the time of occurrence. A false case had been foisted upon him.

7. Accused Sanjay @ Sandeep in his statement under Section 313 Cr.P.C. contended that he and the prosecutrix had a love affair with each other. The prosecutrix had gone with him on her own sweet will. She herself came to his village Shekhupura. He had not kidnapped her. He had

been falsely implicated by the police.

8. On the side of the defence, DW1 Ajay Mohan Paliwal, Handwriting Expert was examined. He has deposed that the love letters Mark DA to DC had been written by the prosecutrix.

9. The trial Court having adverted to the evidence on record, came to the conclusion that the appellants had committed the above offences charged as against them.

10. It is the case of the prosecution that accused Vicky @ Vikas abducted her and thereafter, accused Sanjay @ Sandeep and Vicky @ Vikas committed rape upon her.

11. There is no dispute to the fact that the prosecutrix had crossed 18 years of age. Though Mark DA to DC, the love letters had not been exhibited, the evidence adduced by DW1 Ajay Mohan Paliwal, Handwriting Expert would go to establish that those love letters had been written by the prosecutrix to accused Sanjay @ Sandeep in her own handwriting. The story of love affair between accused Sanjay @ Sandeep and the prosecutrix projected by the defence is fortified by the admitted fact that the prosecutrix who was secured by the police in the very presence of her father, on production before the Judicial Magistrate, preferred to go to Nari Niketan instead of accompanying her father to her parental house. She remained at Nari Niketan for more than 10 days. PW8 categorically admitted that he and his wife proceeded to Nari Niketan and met their daughter about three times.

12. Learned counsel appearing for the appellants would vehemently

submit that if at all there was no love affair between the prosecutrix and accused Sanjay @ Sandeep, the prosecutrix who was allegedly gang-raped would have preferred to go to her parental house. It was not as if none of her parents was available at the time when she was secured by the police. It is the admitted case of the prosecution that PW8 was very much present at the time when the prosecutrix was secured by the police. Under such circumstances, a prudent girl who was subjected to gang-rape would have definitely accompanied her father to her parental home to receive consolation and comforts. Very strangely, she preferred to go to Nari Niketan rejecting the claim of her father to take her custody.

13. The very fact that she had chosen to go over to Nari Niketan instead of proceeding to her parental house completely corroborates the love affair projected by the accused through Mark DA to DC spoken to by DW1.

14. Men may lie, but circumstances do not. The prosecutrix had stated in her statement under Section 161 Cr.P.C. that accused Vicky @ Vikas having taken her from her college left her in the company of accused Sanjay @ Sandeep and thereafter, he went away. But quite unfortunately, with the tutoring of her parents at Nari Niketan she has come out with an improved version in her statement under Section 164 Cr.P.C. recorded by learned Judicial Magistrate that she was raped by both the accused. This marked improvement in the version of the prosecutrix from that of her statement under Section 161 Cr.P.C. cuts the very root of the case.

15. It is the version of the prosecutrix that she was taken to Haridwar on 28.3.2010 by bus and was raped when she stayed there with the

accused for 2 or 3 days. On 31.3.2010, she was taken to Shekhupura, district Karnal and thereafter she was taken to Panipat. It is very strange that the prosecutrix who had already crossed 18 years of age never raised an alarm to attract the attention of the public in order to save herself. Such a strange conduct of the prosecutrix goes to buttress the defence version that she was in fact a consenting party to the entire sequence of occurrence.

16. As rightly pointed out by learned counsel appearing for the appellants, there are two versions as regards the arrest of the accused. The prosecutrix has deposed that all the three accused were arrested near the toilet at Panipat bus stand. But her father who was admittedly present at the time when his daughter was secured by the police and PW9 Inspector Suresh Kumar depose that it was only accused Vicky and Pardeep who were arrested at Panipat bus stand. Such a contradictory version also exposes the contradictory stand of the prosecution as regards the presence of the accused and their arrest at the time when the prosecutrix was secured.

17. In view of the above facts and circumstances, I am of the considered view that the prosecutrix had in fact left from the college of her own accord alongwith accused Vicky and thereafter, willingly accompanied accused Sanjay having said good bye to accused Vicky who helped her to join accused Sanjay. Her consensual act was the culmination of her love affair with accused Sanjay as evidenced by the documents Mark DA to DC established through DW1 Ajay Mohan Paliwal. The artificial version that she had no occasion to attract the public when she was in the custody of the accused for so long a time throws ample doubt on the case of the

prosecution. Rather, the unnatural version put forth by the prosecutrix that she had not attracted the public during her travel along with the accused and the long stay with the accused completely falsify the theory of the prosecution that she was subjected to rape against her wishes.,

18. Therefore, I hold that the prosecution failed to adduce satisfactory evidence to prove the charges as against the accused-appellants. Both of them are entitled to acquittal. The judgement of conviction and sentence passed by the trial Court qua the appellants stand set aside and they are acquitted of the charges framed as against them. They be set at liberty forthwith, if their custody is not required in connection with any other case.

19. Consequently, both the appeals are allowed.

September 18, 2015
Gulati

(M. JEYAPPAUL)
JUDGE