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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRA-S-1810-SB-2012
Date of Decision : October 28th, 2015

Kuldeep Appellant

Versus

State of Haryana
..... Respondent

CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN.

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

Present Mr. Amit Khatkar, Advocate,
for the appellant.

Mr. Tanuj Sharma, AAG, Haryana
for the respondent-State.

SHEKHER DHAWAN, J.

Present appeal is directed against the judgment of conviction dated 14.2.2012 and order of sentence dated 15.02.2012 passed by learned Sessions Judge, Hisar whereby the appellant was convicted under Sections 363, 366 and 376 IPC and was sentenced as under:-

Under Section	Sentence	In default
363 IPC	To undergo rigorous imprisonment for a period of three years and to pay fine of Rs.3000/-	To further undergo imprisonment for a period of one and a half month.
366 IPC	To undergo rigorous imprisonment for a period of Five years and to pay fine of Rs.5000/-	To further undergo imprisonment for a period of three months.

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Under Section	Sentence	In default
376 IPC	To undergo rigorous imprisonment for a period of Seven years and to pay fine of Rs.10,000/-	To further undergo imprisonment for a period of six months.

2. Relevant facts of the case, that 4.9.2010, Mahabir alias Bhura Ram reported to the police that his daughter i.e. Prosecutrix [Name of the prosecutrix is intentionally not being disclosed] studied upto 7th standard. On 3.9.2010, at about 11.00 AM, she had gone to the courtyard [Bara] for storing the cow-dung cakes, but she did not return and since then she was missing. Complainant suspected that Kuldeep son of Ram Kumar, [present appellant] had enticed/allured his daughter with an intention to marry her. Initially, FIR No. 245 dated 4.9.2010 was registered under Sections 363 and 366 IPC against the appellant at Police Station Adampur. During investigation, appellant Kuldeep as well as prosecutrix were intercepted at Railway Station, Adampur and they were produced before the Medical Officer for medico legally examination. Appellant – Kuldeep was medically examined whereas, the prosecutrix refused to submit herself for medical examination and made a statement before the Medical Officer to this effect. Thereafter, Section 376 IPC was added.

3. After completion of investigation challan was presented in the Court for trial.

4. Charge for commission of offence punishable under Sections 363, 366 and 376 IPC was framed to which the accused-appellant pleaded not guilty and claimed trial. During trial, learned trial Judge completed various proceedings of trial including recording of statements of the prosecution witnesses and examination of accused under Section 313 Cr.P.C. Prosecution mainly relied upon the testimony of PW-6,

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Prosecutrix, PW-8 Bhura Ram, PW-9 Om Parkash, ASI, Investigating officer and documentary evidence including statement of prosecutrix Ex. P7, recorded under Section 164 Cr.P.C.

5. Learned trial Judge, after considering the prosecution and defence version held the appellant-accused guilty for commission of offence under Sections 363, 366 and 376 IPC and sentenced him thereunder.

6. Aggrieved of passing of judgment of conviction and order of sentence, the appellant is before this Court by way of present appeal.

7. Learned counsel for the appellant submitted that the prosecution case is not proved against the appellant in any way. Prosecutrix remained with the appellant for about two weeks with her free consent. Thereafter, she refused for her medical examination as per her statement before the Judicial Magistrate Ist Class, Hisar dated 17.9.2010 [Ex. P7]. Thereafter she had an opportunity to depose before the Magistrate on 17.9.2010 and she deposed that she had left her parental home on 3.9.2010 and also deposed that she wanted to perform marriage with Kuldeep and she wanted to live with Kuldeep only. She had also made statement that she was not want interested to go to her parents. FIR in this case was recorded against Kuldeep only on the basis of suspicion. The prosecutrix was of the age of 16 years and she had gone in the company of the accused-appellant with her consent and that is the first version made available before learned Judicial Magistrate Ist Class, Hisar. Thereafter, the custody of the prosecutrix was handed over to complainant Bhura Ram on 11.10.2010 after obtaining production warrant at the address of Nari Niketan.

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8. Learned counsel for the appellant mainly submitted that there was no allegation regarding “rape” of the prosecutrix and still learned trial Judge held the appellant guilty for commission of offence under Section 376 IPC as well, which is not proved in any way.

9. Learned State counsel, on the other hand, submitted that learned trial Judge has already appreciated the entire evidence which includes statements of prosecutrix as PW-6 and her version is duly supported by PW-8 Bhura Ram. As per statement of the prosecutrix [PW-6], Kuldeep raped her against her consent by giving false promise of marriage. This version is supported by PW-8, Bhura Ram. The medical evidence and statement of official witnesses, who had carried out the investigation, is also available against the appellant. So, the present appeal is without any merit and the same be dismissed.

10. Having considered the matter in its entirety, this Court is of the considered view that the prosecutrix was of the age of less than 16 years as her date of birth as per birth certificate [Ex.P-11A] is 1.11.1994. She was recovered from the custody of the appellant on 17.9.2010. On that day, she was less than 16 years of age. The allegations regarding commission of offence under Sections 363 and 366 IPC are duly proved on the file on the basis of statement of PW-6 and PW-8, Bhura Ram. As regards to her earlier statement made on the point, that she had gone on her own and with consent, that becomes immaterial and irrelevant keeping in view the tender age of the prosecutrix being less than 18 years. The defence version on this point does not find any support and learned trial Judge has rightly held the appellant-accused for commission of offence under Section 363 and 366 IPC. Thus, this Court upholds the conviction

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and sentence of the appellant under Sections 363 and 366 IPC.

11. As regards to commission of offence under Section 376 IPC is concerned, initially, the prosecutrix made statement before the Medical Officer on 17.9.2010 when she refused to submit herself for medical examination. Thereafter, she appeared before the Judicial Magistrate Ist Class, Hisar on 17.9.2010 itself and her statement under Section 164 Cr.P.C. was recorded and at that time, she had not made any allegation regarding forcible sexual intercourse with her by the appellant. Undisputedly, she was not medically examined at any stage to support and corroborate the allegations regarding commission of offence under Section 376 IPC. Evidence available on file is by way of statement of prosecutrix as PW-6 when she deposed for the first time on 15.2.2011 that Kuldeep raped her against her consent by giving false promise for marriage. However, she admitted in the cross-examination that she remained in the company of the present appellant from 3.9.2010 till 17.9.2010 when she was intercepted by the Police at Adampur Railway Station. At that time, she made contradictory statement over the earlier statement having been made before the Police as well as Judicial Magistrate Ist Class, Hisar under Section 164 Cr.P.C. During the period she remained in the company of appellant – Kuldeep from 3.9.2010 till 17.9.2010, she had ample time and opportunity to make a complaint if she was subjected to sexual intercourse at any stage. More so, allegations regarding rape are not specific about the time and place of rape. Simply levelling the allegation that the appellant-accused raped her on the promise of marriage is ill-founded, especially when the same was subsequently denied at the earliest opportunity available with her before the Judicial

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Magistrate Ist Class, Hisar on 17.9.2010. Moreso, she had refused to submit herself for medical examination and there is absolutely no medical evidence supporting the allegation of prosecutrix on the point of commission of offence under Section 376 IPC. Accused has specifically denied this allegation in his statement recorded under Section 313 Cr.P.C.. As such, offence under Section 376 IPC against the appellant is not proved in accordance with law and the appellant deserves to be acquitted qua the offence punishable under Section 376 IPC.

12. In view of the above, present appeal is partly accepted and judgment of conviction dated 14.2.2012 and order of sentence dated 15.2.2012 passed by learned Sessions Judge, Hisar for commission of offence under Section 376 IPC against appellant – Kuldeep is set-aside, whereas, his appeal against commission of offence under Sections 363 and 366 IPC is without any merit and is dismissed.

13. As regards to sentence awarded for commission of offence under Sections 363 and 366 IPC, learned trial Court has already taken a lenient view while awarding the minimum sentence and the same does not call for any interference in the present appeal by this Court.

(SHEKHER DHAWAN)
JUDGE

October 28th, 2015
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