

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA,
CHANDIGARH

CRA-D-208-DB-2014 (O&M)
Date of Decision : 07.07.2015

Ramesh Kumar

.....Appellant

Vs.

Sunil @ Monu and Others

.....Respondent

CORAM : HON'BLE MR.JUSTICE S.S.SARON
HON'BLE MR.JUSTICE RAMENDRA JAIN

Present:- Mr.Inder Pal Goyat, Advocate for the applicant/appellant.

RAMENDRA JAIN, J.

The present appeal has been preferred by appellant-complainant against the judgment dated 19.09.2013 passed by Ms.Manisha Batra, Additional Sessions Judge, Special Court, Sonipat, acquitting the respondents-accused in Sessions Case No.37 dated 03.10.2011 arising out of FIR No.25 dated 21.01.2011 under Sections 363, 366-A, 109 and 376 IPC, Police Station, Ganaur.

Brief facts of the case, relevant for decision of this appeal are that on 21.01.2011, complainant-Ramesh Kumar S/o Bhane Ram an agriculturist aged 46 years r/o Village Gumar Distt. Sonapat, met ASI Satbir Singh at Khubru Bus Stand, Ganaur, where he was present alongwith Constables Pawan Kumar and Rakesh for patrolling. He got recorded his statement Ex.PC that he had for children i.e. two sons and two daughters. His elder daughter Puja was married, younger to her was his son and then his daughter i.e. prosecutrix aged around 16 years and his youngest son was Jitender. The prosecutrix was

studying in 11th class in Government School of his village. Around 9:00 a.m., on that day as usual she had gone to school. However, when she did not return home even after closing of the school at 3:00 p.m., they made her search, but did not find any clue. He had full suspicion that accused Sunil @ Monu son of Krishan Kumar residents of his own village had enticed away/kidnapped his daughter i.e. prosecutrix. His daughter may kindly be got traced and legal action may be taken against the aforesaid accused.

On the aforesaid statement of the appellant complainant-Ramesh Kumar, initially a case under Section 363 and 366 was registered in Police Station, Ganaur vide FIR No.25 dated 21.01.2011. Police swung into action. On 15.06.2011, prosecutrix and the respondent-accused moved a joint petition No.CRM-M No.18936 of 2011 before this Court to provide them police protection which was accepted. In compliance of the order of this Court, they were kept in protection home at Police Line, Sonipat. On 18.06.2011, the statement of the prosecutrix under Section 164 Cr.P.C. was got recorded before the Judicial Magistrate Ist Class, Sonipat. She was also got medico-legally examined. The supplementary statement of PW5 Rajesh, resident of village Gumar, Distt. Sonipat under Section 161 Cr.P.C. was recorded. On the basis thereof, Section 109 IPC was added. In compliance of the direction of this Court, on 12.07.2011 the prosecutrix and respondent-accused were produced before this Court. Since the prosecutrix desired to go with her parents, so her custody was handed over to them and consequently their protection petition was dismissed. Fresh statement of the prosecutrix was recorded wherein, she alleged her kidnapping and rape by the respondent-

accused. Hence, Section 376 IPC was added. On 13.07.2011 respondent-accused Sunil @ Monu was arrested. He was got medico legally examined. On 15.07.2011 respondent-accused No.3 Ram Kumar and 16.07.2011 respondent-accused No.2 Krishan Kumar were arrested. On 16.08.2011 accused Neeraj was arrested. Necessary investigation was conducted. The site plan of the place of occurrence was prepared. The case property sent to the Forensic Science Laboratory. After completion of investigation challan under Sections 363, 366A, 109, 376 IPC was filed against the respondents-accused before the Court of Sub Divisional Magistrate, Ganaur by submitting a report under Section 173 Cr.P.C. Copies of challan as envisaged under Section 207 Cr.P.C. were supplied to the accused. Since the offences committed by the accused were exclusively triable by the Court of Sessions, therefore, the case was committed to the Court of Sessions by learned Sub-Divisional Magistrate vide order dated 21.09.2011.

After hearing learned counsel for the parties, learned trial Court vide its order dated 17.10.2011, charge-sheeted the respondents-accused under Sections 363, 366A, 376 and 109 IPC, to which they pleaded not guilty and claimed trial.

The prosecution in support of its case examined as many as 22 witnesses namely PW1 prosecutrix and PW2 her father and complainant-Ramesh Kumar, PW3 Beer Mati, PW4 Attar Singh, PW5 Rajesh, PW6 Hari Ram, Inspector SP Office, Sonapat, PW7 Rajbir Singh ASI MHC, Police Line, Sonapat, PW8 Dr.Ashwani Kumar, Senior Medical Officer GH, Sonapat, PW-9 Dr.Vikas Dental Surgen GH Sonapat, PW-10 Dr.Sanjay Kaushik, PW-11 HC Kuldeep Singh, PW12

Inspector Kaptan Singh SHO P.S.City, Gohana, PW13 EHC Rajesh Kumar Draftsman SP Office, Sonapat, PW14 Pawan Kumar, CJM Sirsa, PW15 Dr.Pushpa Punia, MO GH, Sonapat, PW16 Vikas Sehrawat CRA, Civil Surgeon Office, Sonapat, PW17 ASI Bali Ram, P.S.Sadar, Gohana, PW18 Constable Ashok Kumar, P.S.City, Bahadurgarh, PW19 ASI Satbir Singh, PS Ganaur, PW20 ASI Saroj Devi, P.S. City Sonipat, PW21 HC Pardeep Kumar, P.S Sadar, Sonapat and PW22 SI Inder Singh, RR Incharge CIA II, Sonapat. The prosecution also relied upon initial complaint Ex.PC, police proceedings Ex.PC/3, Endorsement of ASI Bali Singh regarding recording of FIR Ex.PC/2, FIR Ex.PC/1, statement of prosecutrix under Section 164 Cr.P.C. dated 18.06.2011 before JMIC, Sonapat Ex.PA, her Affidavit dated 20.07.2011 Ex.PB, application moved by SI Hari Ram for medical examination of the prosecutrix Ex.PD, recovery memo of parcel containing underwear of the prosecutrix handed over by doctor after her medical examination to the police Ex.PE, application moved by SI Hari Ram for ossification test of the prosecutrix before the Dental Surgeon, Government Hospital Ex.PF, report of Dental Surgeon Ex.PF/1, rapat roznamcha DDR No.65 dated 12.07.2011 regarding handing over the custody of the prosecutrix in compliance of the direction of this Court Ex.PG, DDR No.63 dated 15.06.2011 Ex.PH, site plan of the occurrence Ex.PW13/A, application moved by SI Hari Ram before JMIC Sonapat for recording statement of prosecutrix under Section 164 Cr.P.C. Ex.PW14/A, the Order dated 18.06.2011 passed by Judicial Magistrate Ist Class, Sonipat Ex.PW 14/B and Ex.PW 14/C, statement of prosecutrix under Section 164 Cr.P.C. dated 18.06.2011 Ex.PW 14/D Ex.PA and order dated 18.06.2011 passed by JMIC, Sonapat Ex.PW

14/E, report regarding determining the age of prosecutrix in between 18 to 19 years Ex.PI, birth certificate of Meenu daughter of complainant Ramesh Ex.PW16/A, recovery memo of parcel containing underwear of appellant-accused handed over by doctor to the police PW21/A, confessional statements of respondent-accused Sunil @ Monu and Krishan Ex.PW21/B and Ex.PW21/C respectively, application moved by the police to Medical Officer for medical examination of appellant-accused Sunil @ Monu Ex.PW22/A, rough site plan of place of occurrence PW22/B, MLR of the accused-appellant Sunil @ Monu Ex.PW9/B and that of prosecutrix Ex.PW 15/B.

Thereafter statement of the accused under Section 313 Cr.P.C. was recorded to which they denied and pleaded their false implication. In their defence, they examined Constable Rakesh Kumar DW1, MHC Pawan Kumar DW2, Sandeep Kumar, Assistant, Office of Chairman, State Police Complaint Authority, DW3, Jagat Singh, Superintendent of Police, Palwal, DW4, ASI Mahender Singh, Complainant Branch, SP Office DW5 and relied upon love letters allegedly written by prosecutrix to the respondent-accused Sunil @ Monu Mark-A to Mark-D, FIR Ex.DX, letter written by Inspector General of Police, Rohtak Range, Rohtak to Superintendent of Police, Sonipat dated 13.04.2012 Ex.D2, FIR No.143 dated 13.05.2011 Ex.D3, Order of suspension of SI Inder Singh passed by Chairman, State Police Complaint Authority, Haryana Ex.D4, complaint written by Prem Singh of Village Gumad to IGP, Range Rohtak, Rohtak Ex.D5, and his statement recorded by the police Ex.D6, letter No.2908-PD dated 11.11.2011 written by Superintendent of Police to IGP, Rohtak Range, Rohtak Ex.D7.

After conclusion of trial and hearing the learned PP and learned defence counsel, all the respondents-accused were acquitted vide impugned judgment dated 19.09.2013.

Aggrieved with the same, the complainant-Ramesh has preferred the present appeal.

We have heard learned counsel for the appellant-complainant.

Learned counsel for the complainant argued that the findings of the learned trial Court are based on surmises and conjectures. The prosecution has been well able to prove that the prosecutrix was minor on the date of occurrence. Therefore, her consent, if any, under duress and threat was immaterial or in fact no consent in the eyes of law. The prosecutrix as PW1 in the Court, has categorically deposed that she was repeatedly raped by the respondent-accused Sunil @ Monu forcibly. Hence, the learned trial Court has erred in acquitting him. The earlier statement of the prosecutrix under Section 164 Cr.P.C. had lost its evidentiary value, as soon as she appeared in the Court as PW1. The learned trial Court did not appreciate the fact that signatures of the prosecutrix were taken by the respondent-accused on some blank papers on the pretext of filing some petition before this Court. The remaining accused Nos.2 to 4 had abetted the commission of crime and thus learned trial Court ought to have convicted all of them.

After giving our thoughtful consideration to the submissions made by learned counsel for the accused and gone through the matter, we do not find any merit in this appeal for the

reasons to follow:-

(1) Admittedly the prosecutrix and respondent-accused Sunil @ Monu had filed a protection petition before this court i.e. Misc.No.18936 of 2011 on 15.06.2011 whereupon, they were provided police protection. Consequently, both of them went to protection home, Sonipat on 16.06.2011. On 18.06.2011, the statement of prosecutrix under Section 164 Cr.P.C. Ex.PA Ex.PW14/D was got recorded by the police before JMIC, Sonipat. Wherein, she categorically deposed that she had gone with accused-Sunil @ Monu on 21.01.2011 with her own free will and consent to Jammu. She had lived at Jammu with him in a rented room taken by accused-Sunil @ Monu. At around 11:00 p.m. on 16.06.2011, they had reached protection home, Sonipat, accompanying the police officials on the direction of this Court, upon their application for providing them protection. Now she was living with Sunil @ Monu in protection home, Sonipat as husband and wife. She wants to live as wife of accused-Sunil. She does not want to go with her parents as she apprehends danger to her life from them. She should be sent to protection home. On the same day, she was medico legally examined by the police vide MLR Ex.PW15/B.

(2) It is pertinent to mention that in her statement, under Section 164 Cr.P.C and at the time of her medico legally examination vide MLR Ex.PW15/B, the prosecutrix had disclosed her age as 18 years. On 18.06.2011 itself SI Hari Ram, CIA Branch, Rohtak, moved an application Ex.PD before Medical Officer, Government Hospital, Sonipat for ossification test of the prosecutrix, whereupon Dr.Ashwani Kumar, conducted her radiological examination to determine her age,

besides advising her X-Ray vide advice Ex.PF/1. He then conducted her ossification test and gave his report Ex.PI wherein he opined the age of the prosecutrix in between 18 to 19 years. Thus, it is evident on the record that prosecutrix was not minor on the date of alleged incident i.e. when she joined the company of the respondent-accused Sunil @ Monu on 21.01.2011. Dr.Vikas, Dental Surgeon, Government Hospital, Sonapat PW9 on receipt of application Ex.PF, also examined the prosecutrix for determining her age. He ascertained her age in between 15 to 17 years vide his report Ex.PF/1. By this time it is well settled that there is always a variation of 1 to 2 years in age on either side in the reports given on the basis of ossification test and the benefit of such variation has to be always given to the accused. As per report Ex.PI, when Dr.Ashwani Kumar has opined the age of the prosecutrix in between 18 to 19, therefore, the benefit of variation of 1 to 2 years in the age of the prosecution opined Dr.Vikas, Dental Surgeon, Government Hospital, Sonapat PW9, has to be given to the accused. More so, prosecutrix while appearing as PW1 in this case before the trial Court disclosed her age as 19 years on 04.07.2012, whereas the occurrence took place on 21.01.2011.

(3) Learned counsel for the appellant-complainant has strongly relied upon the birth certificate Ex.P16/A to show that prosecutrix was minor on the date of incident. In the said certificate, the date of birth of one Meenu is mentioned as 26.11.1993. However, it is needless to mention here that prosecutrix in the instant case is not Meenu rather than is of some other name. The prosecution has led no evidence to prove that the prosecutrix was also known as Meenu or her alias name was Meernu. Appellant-complainant Ramesh Kumar, father of

the prosecutrix too, while appearing as PW-2 did not utter even a single word that his daughter was also called/known as Meenu. Even the prosecutrix as PW1 did not try to prove that birth certificate Ex.PW16/A belonged to her or that she was also known as Meenu. Hence, the prosecution had miserably failed to prove on record before the learned trial Court that birth certificate Ex.P16/A was of the prosecutrix and of no one else. Even the prosecution did not examine any witnesses that who got recorded the said date of birth before the Registrar, Birth and Death, Sonapat. Hence, from any angle prosecutrix cannot be held to be minor on the date of incident. Consequently, findings of the learned trial Court treating the prosecutrix as major on the date of incident are hereby upheld.

(4) As per prosecution case, accused-respondent Sunil @ Monu had kidnapped/abducted the prosecutrix on 21.01.2011 and repeatedly raped her by taking her to several places. In the MLR Ex.PW15/B Dr.Pushpa Punia PW15 did not find any external and internal mark of injury on the person of the prosecutrix. Her vagina found to have been admitting two fingers easily, which means that she was habitually of sexual intercourse. The semen sample taken from her underwear was sent to Forensic Science Laboratory for detection of human semen, but the same does not help the prosecution in any way, because the semen and blood samples of the respondent-accused were not taken or sent for the purpose of DNA test. In the absence of any such test, it cannot be said that human semen found on the undergarment of the prosecutrix was of respondent-accused Sunil only. In her statement under Section 164 Cr.P.C., Ex.PA, the prosecutrix has categorically deposed before the

JMIC that she had gone with the accused with her own free will and consent. She wants to live with him as his wife. They had also lived at Jammu in a rented accommodation. The prosecutrix as PW1, also could not face the test of her cross-examination, which casts a serious doubt on the prosecution story. In her cross-examination, she admitted that accused-Sunil @ Monu had taken her on motorcycle from a little distance from her school. There were around 20 students in the extra class which she had attended. Those students also came out from the school with her. She did not cry for help, when accused-Sunil forced her to sit on his motorcycle, because he had threatened her with a knife. The children were at a little ahead, when respondent-accused threatened her with a knife. The above story put forth by the prosecutrix is a blatant lie, because it is not possible for a man to kidnap a person and take him on motorcycle single-handedly under some threat. A person can only be kidnapped by making him a sandwich in between, by two persons on a motorcycle. Hence, the above story put forth by the prosecution is completely false.

(5) Prosecutrix has further deposed that the respondent-accused Sunil parked his motorcycle in a house at village Sisana and from there they boarded a bus for Delhi. There were other passengers in the bus. She did not cry for help, nor disclose to any passenger. From Delhi, they had gone to Jammu by bus. Many buses were parked at bus stops from Delhi to Jammu, but she did not cry for help. Respondent-accused Sunil used to go out of the room and he used to work also. In his absence, she had not disclosed her abduction to their landlord or any other neighbour. Their landlord was Muslim. When accused-Sunil used to go out, then on one or two

occasions she had talked with the landlord. She used to prepare meals at Jammu. They came at Chandigarh in the morning and they stayed there from 13.07.2011 to 15.07.2011. They used to go to the High Court, when they stayed at Chandigarh. She and accused-Sunil had appeared before Hon'ble Justice of the High Court and Hon'ble Justice had enquired the fact from her personally. She voluntarily stated that since the parents of the Sunil had told her that her parents would kill her, so she has made request for police protection. She also stated that she and accused-Sunil stayed in police line, Sonapat, upto July, 2011. They have got police protection and there were police officials with them. She categorically admitted that she did not disclose her abduction to the police officials. She had moved an application for police protection to the Hon'ble High Court. They had stayed for about one months at police line. From her above deposition, it is evident that the prosecutrix had ample opportunities to narrate her woeful story to the Hon'ble Justice of this Court, the police and to the passengers in the bus from Sisana to Delhi and then from Delhi to Jammu. Even she had ample opportunities to narrate her alleged abduction by the respondent-accused Sunil to their landlord at Jammu. Her not doing so, requires to draw an adverse inference against her that she was a consenting party to the entire episode, otherwise, she would have definitely tried to get herself freed from alleged illegal custody of the respondent-accused Sunil @ Monu. Even otherwise long stay of the prosecutrix for about 5 months at Jammu itself speaks volumes about her consent of her living and sexual intercourse with the respondent-accused Sunil @ Monu. The prosecution has also miserably failed to prove the role of

any of the other co-accused under Section 109 IPC. There alleged confessional statements are inadmissible in evidence being given in the police custody.

(6) No other point was raised before us.

(7) We have gone through the judgment of the learned trial Court and found no illegality or perversity in the same. In view of the discussion above, the appeal fails and is hereby dismissed.

CRM Nos.4188-89 of 2014

Since the appeal has been dismissed on merits, the question regarding delay in filing the appeal and application regarding permission to place on record additional evidence are only academic, hence, the same are also dismissed.

(S.S.SARON)
JUDGE

(RAMENDRA JAIN)
JUDGE

07.07.2015
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