

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

**Criminal Appeal No.S-2680-SB of 2010**

Date of Decision : May 27,2015

Balwinder Singh

.....Appellant

**VERSUS**

State of Punjab

.....Respondent

**CORAM: HON'BLE MR. JUSTICE T.P.S.MANN**

Present : Mr. C.S. Rana, Advocate

Mr. Vikram Bishnoi, Assistant Advocate General, Punjab

**T.P.S. MANN, J.**

The appellant was tried for offences punishable under Sections 363, 366 and 376 IPC for kidnapping the prosecutrix aged about thirteen years and seven months from the lawful custody of her father with an intent that she may be forced to marry against her will or have illicit intercourse and, thereafter, subjecting her to sexual intercourse against her wishes and consent. Vide judgment and order dated 28.7.2010, learned Additional Sessions Judge, Ferozepur convicted him for the aforementioned offences and sentenced him as follows:-

- (i) rigorous imprisonment for a period of seven years and to pay a fine of Rs.1000/- under Section 363 IPC and in default of payment of fine, to suffer further rigorous imprisonment for one month;
- (ii) rigorous imprisonment for a period of ten years and to pay a fine of Rs.2000/- under Section 366 IPC and in default of payment of fine, to suffer further rigorous imprisonment for two months; and

- (iii) rigorous imprisonment for a period of ten years and to pay a fine of Rs.2000/- under Section 376 IPC and in default of payment of fine, to suffer further rigorous imprisonment for two months.

All the substantive sentences of imprisonment were ordered to run concurrently. The period of detention already undergone by him during the trial of the case was ordered to be set off against the substantive sentence of imprisonment.

According to the prosecution, on 9.3.2008, complainant Des Singh got recorded his statement before ASI Ranjit Singh that he had three daughters and two sons. The prosecutrix, who was his youngest daughter, was aged about thirteen years and seven months. The appellant, who was a barber by profession had taken his shop situated in his house on rent about six months back. The appellant had developed relations with his family and sometimes he used to take meals and then sleep at the complainant's house. On 28.2.2008, the appellant slept in the courtyard of his house while the complainant alongwith his wife slept in the room. On the following morning at about 5.00 a.m. when complainant woke up, he found that the prosecutrix and the appellant were not on their cots. The complainant awakened his wife and with her, searched for the prosecutrix and the appellant but could not find them. He called his relatives and alongwith them also, searched for the prosecutrix and the appellant but still he was unable to locate them. The complainant suspected the involvement of the appellant in enticing away his daughter in order to forcibly marry her without her consent. Accordingly, the complainant sought taking of action against the appellant.

It is further case of the prosecution that on 9.3.2008, FIR No.86 under Sections 363, 366 and 120-B IPC was registered at Police Station Sadar, Fazilka on the basis of aforementioned statement of complainant Des Singh. ASI Ranjit Singh visited the spot and conducted investigation. He took into possession 5<sup>th</sup> class certificate of the prosecutrix. The appellant was arrested on 14.3.2008 and the prosecutrix recovered from his custody. Both, the appellant and the prosecutrix, were got medico-legally examined. The prosecutrix was produced before the Ilqa Magistrate, who recorded her statement under Section 164 Cr.P.C. Offence under Section 376 IPC was added. The statements of the witnesses were also recorded. After completion of the investigation and other formalities, final report under section 173 Cr.P.C. was presented against the appellant. This was followed by commitment of the case to the Court of Sessions where the appellant was charged for the offences under Sections 363, 366 and 376 IPC, to which he pleaded not guilty and claimed trial.

In support of its case, the prosecution examined complainant Des Singh, father of the prosecutrix as PW1, the prosecutrix as PW2, Dr. Renu Dhuria, Medical Officer, Civil Hospital, Fazilka, who had medico-legally examined the prosecutrix, as PW3, Dr. Hans Raj, Medical Officer, Civil Hospital, Fazilka, who had medically examined the appellant as PW4, HC Balwinder Singh as PW5, HC Jaswinder Singh as PW6, Shri Jarnail Singh, Judicial Magistrate 1<sup>st</sup> Class, Fazilka, who had recorded the statement of the prosecutrix under Section 164 Cr.P.C. as PW7 and ASI Ranjit Singh, who was the Investigating Officer as PW8.

When examined under Section 313 Cr.P.C., the appellant denied all the allegations and claimed false implication. He stated that the prosecutrix was more than eighteen years of age at the time of the alleged occurrence. In defence, he examined Krishna, wife of complainant Des Singh as DW1, Harbhajan Kamboj, Notary Public, Jalalabad as DW2 and Sucha Singh as DW3.

After hearing counsel for the parties and perusing the evidence brought on the record, the trial court believed the prosecution version and convicted and sentenced the appellant, as mentioned above.

Having heard learned counsel for the appellant as well as the learned State counsel and on going through the evidence, this Court finds that the prosecution has been successful in establishing that the prosecutrix was less than fourteen years of age on the date of the occurrence. Right in the beginning when complainant Des Singh got recorded his statement Ex.P1 before ASI Ranjit Singh, he had stated that the prosecutrix was thirteen years and seven months old. When the prosecutrix was medico-legally examined by PW3 Dr.Renu Dhuria, the age of the prosecutrix was similarly noticed. It is true that considering the fact that the prosecutrix was minor, PW3 Dr. Renu Dhuria had referred her to SMO, Civil Hospital, Ferozepur for verification of her age and no such verification was made but PW8 ASI Ranjit Singh specifically deposed in his cross-examination that he did not feel the necessity of getting verified the age of the prosecutrix because he had taken into possession certificate Ex.PW8/5 of 5<sup>th</sup> class wherein the date of birth of the prosecutrix was mentioned as

16.7.1994 and, therefore, as on 28.2.2008, the prosecutrix was thirteen years, seven months and fourteen days of age on the date of the occurrence. The said certificate was issued on 22.3.2006 and the prosecutrix was shown to have passed the 5<sup>th</sup> standard examination conducted by the Education Department, Punjab. The names of the prosecutrix and her parents were clearly mentioned therein. When PW1 Des Singh deposed before the trial Court that the prosecutrix was aged about thirteen years and seven months, he was not cross-examined that he had wrongly recorded the date of birth of the prosecutrix while getting her admitted in the school. Only suggestion put to him was that he himself was 50/55 years of age and had wrongly given his age as forty years, while making statement in the Court. Towards the end of his cross-examination, it was suggested that the prosecutrix was of the age of nineteen years at the time of her leaving his house and he had given a wrong date in respect of her birth just to show her as a minor. Both these suggestions were specifically denied. While stepping into the witness box, the prosecutrix testified that her date of birth was 16.7.1994 and she had studied upto 5<sup>th</sup> standard. During her cross-examination, she stated that she had not noted down the date of birth which she had mentioned before the Court, in any of the diary. She denied that she was nineteen years of age at the time of leaving her house. On the other hand, the defence produced Krishna, mother of the prosecutrix as DW1, who deposed that the prosecutrix was born in the year 1988 when the floods came. She also stated that she had given her age less while getting the prosecutrix admitted in the school. She also stated that the prosecutrix was subjected to ossification test where her age was shown as twenty one years but the

police did not rely upon those papers and, accordingly, not made them part of the judicial file. In her cross-examination, she stated that she had no proof regarding age of the prosecutrix, who was her daughter.

From the statement of DW1 Krishna, it is made out that once the prosecution had recorded its entire evidence and even the appellant was examined under Section 313 Cr.P.C, some sort of compromise appeared to have been arrived at between the parties and it was under these circumstances that the mother of the prosecutrix stated that the prosecutrix was born in the year 1988 and, accordingly, she was about twenty years of age on the date of the occurrence. The stand taken by the defence during the recording of its evidence was not at all put either to the prosecutrix or her father Des Singh when they were in the witness box as PW2 and PW1, respectively. Thus, no reliance can be placed on the testimony of DW1 Krishna when she stated that the prosecutrix was twenty years of age on the date of the occurrence. On the other hand, there is reliable evidence on the record to show that the prosecutrix was less than fourteen years of age on the date of the occurrence.

In the FIR itself, which was recorded on the basis of statement made by complainant Des Singh before ASI Ranjit Singh, suspicion was raised about the involvement of the appellant in the commission of the crime as on the morning of 29.2.2008 when the complainant woke up, he did not find the appellant and the prosecutrix on their respective cots. The appellant who was a barber by profession had taken a shop on rent from the complainant about six months before the occurrence. The appellant was able to win over the

confidence of the complainant and would take meals and even sleep in the house of the complainant. Even on the day of the occurrence, the appellant had slept in the courtyard of the house of the complainant. On the next morning neither the prosecutrix nor the appellant was on their respective cot. Similarly, the prosecutrix, while stepping into the witness box as PW2, testified that on 28.2.2008, the appellant had stayed in her house and in the morning of 29.2.2008, he took her forcibly with him to Amritsar, where they stayed in a rented room. She was forcibly subjected to sexual intercourse against her consent. In cross-examination, she stated that her parents and other family members were sleeping in the courtyard when she was taken away by the appellant. She raised no alarm as her mouth was closed. Then she stated that she did not try to open her mouth but volunteered that the appellant had caught hold of her. She further stated that both of them boarded the bus from village Ladhuka upto Ferozepur. In the bus many passengers were present and she had told them that she was being forcibly taken away by the appellant. She further testified that from Ferozepur they took another bus for Amritsar. At Amritsar they stayed near the bus stand. Then they went on Rickshaw to Basti Muradpura, which was at a distance of 1/1½ kms. from bus stand. In the house where they stayed, some other people were also residing. She used to converse with the ladies present in the house. However, on return journey she came at her own will alongwith the appellant.

As regards the affidavit Ex.DA, said to have been executed by the prosecutrix and witnessed by Balbir Singh, Sarpanch of village Hasta Kalan and Sucha Singh, Panch of village Chak Bajida, the

prosecutrix did identify her signatures on the same but she stated that

she was forcibly made to sign the same. The defence then changed the course of cross-examination by suggesting to the prosecutrix that she had left her house of her own and asked the appellant to provide her shelter as her parents were compelling her to marry Balkar Singh, aged about 30 years who would visit her house and his wife had left him. She admitted that she knew Balkar Singh, who was aged about 30 years. Further, said Balkar Singh had been visiting her house. However, she denied that she left her house of her own consent since her parents were compelling her to marry Balkar Singh. She also denied that in order to save her honour, she left her house and asked the appellant to provide her shelter. She further denied the suggestion that she was under any pressure from her parents against the appellant whom she wanted to marry. In a way the defence has practically admitted that the prosecutrix had stayed with the appellant as she did not want to marry Balkar Singh, with whom her parents wanted to marry her after taking consideration from him. However, the fact remains that the prosecutrix was less than fourteen years of age on the date of the occurrence and in such a situation she could not have consented to accompany the appellant from her house and, thereafter, being subjected to sexual intercourse by him.

In view of the above, this Court is of the considered view that the prosecution has been able to establish its case against the appellant beyond any reasonable doubt.

Coming to the quantum of sentence, this Court finds that the occurrence in question had taken place on the night intervening 28/29.2.2008. The appellant was arrested on 14.3.2008 and ever since

then he is behind the bars. As per the custody certificate produced by the learned State counsel, the appellant has undergone an actual sentence of five years, five months and twenty days. The appellant was about 19 years of age on 7.8.2008 when he was charge sheeted for facing the trial of the case. The appellant is not shown to be involved in any other criminal case. Even during his confinement in jail as a convict, he has earned remission of five months and twenty eight days. Taking into consideration the totality of the circumstances, this Court is of the considered view that the sentences of ten years' imprisonment imposed upon the appellant for the offences under Sections 366 and 376 IPC can be reduced to seven years.

Resultantly, the conviction of the appellant for the offences under Sections 363, 366 and 376 IPC is upheld. His sentence of imprisonment and fine, alongwith itself default clause, for the offence under Section 363 IPC is also maintained. However, the substantive sentence of rigorous imprisonment for a period of ten years for the offence under Section 366 IPC and similar sentence of imprisonment for the offence under Section 376 IPC are reduced to rigorous imprisonment for seven years each. The sentences of fine, alongwith their default clauses for the offences under Sections 366 and 376 IPC, are also maintained. All the substantive sentences of imprisonment shall run concurrently.

The appeal is partly allowed, to the extent indicated above.

May 27, 2015  
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**( T.P.S. MANN )**  
**JUDGE**