

In the High Court of Punjab and Haryana at Chandigarh

CRA-D- 646-DB of 2014 (O & M)

Date of Decision: 20.8.2015

N_____

---Appellant

versus

State of Haryana and others

---Respondents

Coram: Hon'ble Mr. Justice S.S.Saron
Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Sukhdeep Parmar, Advocate
for the appellant.

S.S.Saron, J.

This appeal has been filed by the prosecutrix 'N' against the judgment and order dated 10.12.2013 passed by the learned Additional Sessions Judge, Karnal whereby respondents No. 2 to 4 have been acquitted of the offences punishable under Sections 120-B, 363, 366-A and 376 of the Indian Penal Code ('IPC' - for short), besides, Section 4 of the Protection of Children From Sexual Offences Act, 2012 ('POCSO Act' - for short) and also Section 3 (i) (xi) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 ('SC/ST Act' - for short).

We have heard learned counsel for the appellant and with his assistance perused the learned trial Court record that was requisitioned.

FIR (Ex.P23) in the case has been registered on the basis of a typed application dated 24.01.2013 (Ex.P4) submitted by Kapura Ram son

of Sh. Ruliya Ram resident of Village Kheri Sarfali, Tehsil Asandh, District Karnal before the SHO, Police Station Asandh, Karnal. The complainant Kapura Ram is the father of the prosecutrix and is a member of the scheduled castes. He died during the trial. According to the complaint Kapura Ram, he has three sons and seven daughters. One of his daughters is 'N' (the prosecutrix) (PW-1) is aged 16 years. She was a minor and unmarried. The other children were all married. During the night on 22.01.2013, it is stated that Satnam Singh (respondent No. 4) son of Sh. Gurbachan Singh, a member of the scheduled castes, resident of village Sagra, District Patiala enticed his daughter (prosecutrix) and made her run away with him. He (Satnam Singh) was working in their village as a foreman on the Combine (harvester) of Ranjit Kaur. Baj Singh (Gurbaj Singh) (respondent No.2) son of Gurbachan Singh (sic. son of Darbara Singh), a non-scheduled caste person and Deepu (respondent No.3) son of Shri Pom (Om Parkash) a member of the scheduled castes residents of village Sagra were also working on the same Combine (harvester). They had helped Satnam Singh (respondent No.4) in enticing his daughter. The mobile number of Satnam Singh is mentioned. Till the time of submission of the application (Ex.P4), it is stated that they were on their own inquiring about his daughter from their relatives. Appropriate legal action was asked to be taken against the accused.

Police proceedings were recorded by ASI Ramesh Chand Police Station Asandh (PW-14) to the effect that on 24.01.2013 he along with EHC Satyawar (PW-7) in connection with patrolling and checking of crime were present at the Jind Chowk (crossing). At that time, Kapura Ram

(complainant) met him (PW-14) and submitted an application (Ex.P4). From the contents of the application, offences under Sections 363, 366-A and 120-B IPC were found to be made out. An endorsement (Ex.P10) was made by ASI Ramesh Chand at Jind Chowk (crossing), Karnal on 24.01.2013 at 6.15 pm for registration of a case. The application (Ex.P4) was sent to the Police Station through EHC Satyawar (PW-7). ASI Ramesh Chand himself along with the complainant Kapura Ram proceeded to his house for investigation.

At the Police Station, FIR No.48 of 2013 dated 24.01.2013 (Ex.P23) was registered by SI Sube Singh for the offences under Sections 363, 366-A and 120-B IPC in pursuance of DDR No.17 dated 24.01.2013. A copy of the FIR as also the original writing was sent to the ASI investigating the case through the EHC who had brought the file. SI Sube Singh made his endorsement (Ex.P12) on the application (Ex.P4). Special reports through e-mail were sent to the Senior Officers through the medium of internet of Police Station, Asandh.

ASI Ramesh Chand (PW-14) reached the house of the complainant and inspected the spot. He recorded the statement of Smt. Roshni Devi (PW-2), the mother of the prosecutrix under Section 161 of the Code of Criminal Procedure ('Cr.P.C.' - for short). Then he (PW-14) on 29.01.2013 along with EHC Satyawar (PW-7) was present at Jind Chowk, Asandh for patrolling where Gurpreet Singh resident of village Thal met him and he produced accused Deepu (respondent No.3) and Gurbaj (respondent No.2) before him. They were interrogated and arrested in this case. During interrogation, they made disclosure statements Ex.P23 and

Ex.P24 respectively regarding commission of the offences. The admissibility of the said disclosure statements was objected to.

ASI Ramesh Chand (PW-14) then received secret information on 08.03.2013 and he along with lady Constable Sushila (PW-5) and EHC Satyawar (PW-7) as also Sher Singh (PW-3), an uncle of the prosecutrix, reached Railway Station village Teek District Kaithal. A train reached the Railway Station from Kurukshetra at about 5.15 pm. The prosecutrix got down from that train and was identified by her uncle Sher Singh (PW-3). She was taken in police custody vide memo Ex.P5. Her statement under Section 161 Cr.P.C. was recorded. Thereafter, the offences under Section 376 IPC and Section 4 of POCSO Act were added in the case. The prosecutrix was then taken to the house of Mrs. Mini Mehta, Advocate, Legal Aid Counsel, Karnal for counselling. Mrs. Mehta recorded the statement of the prosecutrix, which was signed by Lady Constable Sushila (PW-5) as a witness. The prosecutrix was then taken to General Hospital, Karnal and an application was filed for her medico legal examination. After her medical examination, the doctor handed over to ASI Ramesh Chand a parcel containing clothes of the prosecutrix to him, which were taken in possession vide recovery memo Ex.P7. The prosecutrix did not want to go her parents. She was, therefore, taken to Nari Niketan, Karnal and lodged there. ASI Ramesh Chand deposited the case property with the SHO (sic. MHC) and also apprised the SHO of the facts of the case.

The prosecutrix was then taken from the Nari Niketan, Karnal to the Court Complex on 09.03.2013. Her statement under Section 164 Cr.P.C. was got recorded from Smt. Natasha Sharma, learned Sub

Divisional Judicial Magistrate (SDJM - for short), Asandh (PW-11) by moving an application Ex.P18 in this regard. The learned SDJM made oral inquiries from the prosecutrix and found her fit to make a statement. The statement Ex.P2 of the prosecutrix was then recorded by the learned SDJM. The prosecutrix signed her statement after admitting it to be correct. The learned SDJM appended her certificate Ex.P20 regarding recording of the statement and handing over her custody to her mother. The statement was then sealed in an envelope Ex.P21, which bears the signatures of the learned SDJM. The learned SDJM passed orders for handing over the prosecutrix to her parents. She was then handed over vide memo Ex.P6 to her uncle Sher Singh (PW-3).

ASI Ramesh Chand on the same day along with EHC Satyawar (PW-7) and Lady Constable Sushila (PW-5) reached Jind Chowk, Asandh for search of accused Satnam Singh (respondent No.4). From there, they went to Kaithal and at the Bus Stand, Kaithal, secret information was received that Satnam Singh (respondent No.4) was sitting in the Hanuman Vatika, Kaithal. Then they reached there and apprehended him. He was interrogated and arrested in the case. He was taken to General Hospital, Asandh and got medico legally examined by moving an application. After his medical examination, the doctor handed over sealed parcels containing his clothes etc. to ASI Ramesh Chand, which were taken in possession by the police. He was then taken to Police Station, Asandh and then to the Court complex. He was produced in Court and two days police remand was obtained. Satnam Singh (respondent No.4) then led the police to the house of the prosecutrix in village Kheri Sarfali and got demarcated the place

where he committed rape on the prosecutrix. He also got demarcated the wall, which was scaled by him and the prosecutrix taken. Then they returned to the Police Station, Asandh where Satnam Singh was lodged in the police lock up. Rough site plan Ex.P25 of the place of occurrence was prepared by ASI Ramesh Chand on the same day. Thereafter, on 11.03.2013 a scaled site plan Ex.P26 of the place of occurrence was got prepared by ASI Ramesh Chand from EHC Veer Shakti Singh.

The accused Satnam Singh (respondent No.4) on the same day led the police party to village Bateri and got recovered the motorcycle that was used in the commission of the crime from the 'veranda' of the house of Saravjit Singh. It was taken in possession vide recovery memo Ex.P9 along with its registration copy, which was recovered from the motorcycle. The case property on return to the Police Station was deposited with the MHC. Sher Singh (PW-3) an uncle of the prosecutrix on 19.03.2013 produced caste certificate Ex.P28 of the prosecutrix before ASI Ramesh Chand. It was taken in police possession vide recovery memo Ex.P29. Before that on 12.03.2013, the case file was produced before Shri Sham Lal, DSP Asandh (PW-13), who after going through the file had added the offences under Sections 3 and 4 of the SC/ST Act in the case.

After completion of investigation in the case, the police report ('challan') was prepared by Mohd. Jamal, Inspector/SHO on 25.03.2013 and filed in the Court of learned SDJM, Asandh on 30.03.2013 against Gurbaj Singh, Deepu and Satnam Singh (respondents No.2 to 4). The learned SDJM vide her order dated 22.05.2013 from the prosecution allegations coupled with the statements of the prosecution witnesses held that a case

exclusively triable by the Court of learned Sessions Judge, Karnal was made out. Accordingly, the case was committed to the said Court.

The case was received by entrustment in the Court of learned Additional Sessions Judge, Karnal on 27.05.2013 who from the police report under Section 173 Cr.P.C. and other accompanying documents observed that a prima facie case for the offences punishable under Sections 120-B, 363 read with Section 120-B, 366, 366-A read with Section 120-B and Section 376 IPC; besides, Section 4 of the POCSO Act and Section 3 (i) (xii) of the SC/ST Act was made out against the accused (respondents No.2 to 4). Some of the prosecution witnesses were summoned for 16.07.2013 for giving evidence.

During trial of the case, an application under Section 216 Cr.P.C. was filed by the learned Public Prosecutor for amendment/alteration of the charges. The learned counsel appearing for the accused (respondents No.2 to 4) stated that they had no objection if the application was allowed. They had also endorsed 'No Objection' on the application itself.

Accordingly, the application was allowed by the learned Additional Sessions Judge, Karnal on 04.12.2013 and amended charges for the offences under Sections 120-B, 363/120-B, 366, 366-A and 376 IPC, Section 4 of the POCSO Act and Section 3 (i) (xi) of the SC/ST Act were framed against the accused to which they pleaded not guilty and claimed trial.

The learned Public Prosecutor made a statement that he did not want to recall any of the witnesses already examined in the case for further examination in chief and that the evidence already led be read as a whole

after amendment of the charge. The learned counsel for the defence made a joint statement that they did not want to recall any of the prosecution witnesses already examined by the prosecution for further cross-examination after amendment/alteration of the charge. As such the prosecution evidence was taken as over.

According to the charge-sheet framed on 04.12.2013 after amendment/alteration of the charge, the respondents No.2 to 4 were charged on the allegations that on 22.01.2013 in the night in the area of village Kheri Sarafali, they all hatched a criminal conspiracy in order to kidnap the prosecutrix and thereby committed an offence punishable under Section 120-B IPC within the cognizance of the Court.

Secondly, on the same date, time and place, they all being members of criminal conspiracy kidnapped the prosecutrix from the lawful guardianship of her parents without their consent and thereby committed an offence punishable under Section 363 read with Section 120-B IPC within the cognizance of the Court.

Thirdly, on the same date, time and place, Satnam Singh (respondent No.2) kidnapped the prosecutrix, a minor girl, with the intent that she might be compelled to marry him against her will or that she might be forced or seduced to illicit intercourse and thereby committed an offence punishable under Section 366 IPC within the cognizance of the Court.

Fourthly, on the same date, time and place, Gurbaj (respondent No.2) and Deepu (respondent No.3) being members of criminal conspiracy induced the prosecutrix, a girl below 18 years of age, to go from her village Bal Rangran to Madhya Pradesh with an intent that she may be forced or

seduced with Satnam Singh (respondent No.4) and thereby committed an offence punishable under Section 366-A read with Section 120-B IPC.

Fifthly, from 22.1.2013 to 8.3.2013, Satnam Singh (respondent No.4) at different places repeatedly committed rape upon the prosecutrix and thereby committed an offence punishable under Section 376 IPC.

Sixthly, from 22.1.2013 to 8.3.2013, Satnam Singh (respondent No.4) repeatedly committed penetrative sexual assault on the prosecutrix, a child, against her wishes thereby committed offence punishable under Section 4 of the POCSO Act.

Seventhly, at different places, Satnam Singh (respondent No.4) forced the prosecutrix, a member of a Scheduled caste to exploit her sexually, she was not otherwise agree, thereby committed an offence punishable under Section 3 (i) (ix) of the SC and ST Act.

The charges were read over and explained to respondents No. 2 to 4 to which they pleaded not guilty and claimed trial.

The prosecution in order to establish its case examined as many as 14 witness, besides, tendered documents including the FSL report Ex.P1/A in evidence. The statements of the accused (respondents No.2 to 4) in terms of Section 313 Cr.P.C. were recorded and the circumstances appearing against them were put to them. Gurbaj Singh, Deepu and Satnam Singh (respondents No. 2 to 4) in their respective statements stated that they were innocent and had been falsely implicated.

The respondents No.2 to 4 in their defence examined Sh. Mahavir Parshad Kaushik, Advocate Notary Public, Asandh (DW-1). He proved affidavits Ex.DB and Ex.DC which were attested by him on the

identification of Durlabh Singh Ex-Sarpanch of Village Kheri Sarphali (DW-2). He made an entry regarding attestation of the affidavit of Kapura Ram (complainant) at serial No.141 dated 26.02.2013. The entry had the thumb impression of the deponent Kapura Ram (complainant).

The affidavit Ex.DC was deposed by Suresh Kumar son of the complainant Kapura Ram. An entry regarding attestation of this affidavit was at serial No.140 dated 26.02.2013. It had the thumb impressions of the deponent Suresh Kumar. Besides, Durlabh Singh (DW-2) Ex-Sarpanch of Village Kheri Sarphali was examined. He deposed that he had seen the affidavits Ex.DB and Ex.DC. He had identified the deponents of these affidavits before the Notary Public, Asandh. The affidavits it is stated, bear his signatures as the person who identified the deponents. These affidavits (Ex.DB and DC) were given by Kapura Ram and his son Suresh before a Panchayat convened at Asandh by the villagers. The affidavits were furnished by the deponents in the Panchayat without any pressure on them.

The learned Additional Sessions Judge, Karnal after considering the evidence and material on record, acquitted respondents No. 2 to 4. The prosecutrix feeling aggrieved against the said order of their acquittal has filed the present appeal.

Learned counsel for the appellant has contended that the learned trial court has gravely erred in acquitting the respondents No. 2 to 4. It is submitted that the prosecution has established and proved its case beyond shadow of reasonable doubt. It is contended that the date of birth of the prosecutrix is 07.06.1995, which has been proved from the birth certificate (Ex. P14) which is from the school of the prosecutrix and it

shows that her date of birth is 07.06.1995. Therefore, it is submitted that allegations of rape against respondent No. 4 are made out and the consent of the prosecutrix cannot be said to be there and she was raped continuously from 22.1.2013 to 8.3.2013.

It may be noticed that the prosecutrix in her statement while appearing as PW-1 in Court stated that her brother Sham Lal was employed at the combine of Ranjit Kaur. The accused Gurbaj, Gurbachan (sic. Deepu) and Satnam (respondents No. 2 to 4) were also working on the said combine. They developed friendship with her brother and used to visit their house frequently and they also used to visit their house in the absence of her brother Sham Lal. It is stated that Satnam Singh (respondent No. 4) had promised to marry her and kidnapped her from her house during the night time on 22.1.2013 by enticing her on the pretext of marrying her. At that time her parents and other family members were sleeping in the house. Thereafter, all the three accused took her to Madhya Pradesh and there Satnam Singh (respondent No. 4) committed rape upon her against her wishes and consent. She came to know there that Satnam Singh (respondent No. 4) was already married and had two children, besides, his wife. She was medico legally examined in General Hospital, Karnal. She made her statement Ex. P1 before Legal Aid Counsel which bears her signatures. Her statement under Section 164 Cr.P.C. was also recorded by the learned Magistrate (SDJM) at Assandh. A sealed parcel containing her statement under Section 164 Cr.P.C. was opened and the contents were shown to the witness (PW-1). She stated that Ex. P2 was her statement under Section 164 Cr.P.C. which bear her signatures.

In cross examination, it is stated by the prosecutrix that she was the eldest child of her parents and was then married. In her previous statement made the Court she had stated that she was unmarried. She stated that she had a love affair with accused Satnam Singh (respondent No. 4) since one month prior to the registration of the case. It is accepted as correct that Satnam Singh (respondent No. 4) used to visit their house frequently with her brother. It is voluntarily stated that accused Satnam Singh (respondent No. 4) used to visit her house in the absence of her other family members. On the asking of learned counsel for the accused regarding identification of the accused, she identified Harcharan as Gurbaj and Gurbaj as Harcharan. She did not know whether any accused with the name of Deepu was involved in the present case. She in her statement before the police got recorded the names of Harcharan and Gurbaj as accused in this case. She was confronted with her statement recorded under Section 161 Cr.P.C. wherein the names of Harcharan and Gurbaj are not mentioned. It is stated that she got the names of these two accused recorded in her statement under Section 164 Cr.P.C. which was recorded by the learned Magistrate. She was confronted with her statement Ex.P2 wherein the names of these two accused are not mentioned. She did not make any plan for running from her house with the accused. She had accompanied the accused from her house through the main entrance when her mother and other family members were sleeping in the house. It is stated as wrong to suggest that she had accompanied the accused of her own volition. She did not raise any alarm when she was allegedly being taken forcibly by the accused. They had gone to Pehowa on a bike. She and Satnam Singh had

gone there on a bike. She had occupied the motorcycle easily and did not raise an alarm nor narrated the incident to anyone on the way to Pehowa. From Pehowa, they had gone to Ambala by train and from Ambala they went to Madhya Pradesh by train. Many passengers were present at the railway stations but she did not raise any alarm nor disclosed the incident to any body else. She voluntarily stated that she had disclosed the incident to some passengers in the trains. They stayed at Madhya Pradesh in a 'dera' of a relative of accused Satnam Singh. She did not disclose the incident to anybody else in the 'dera' nor tried to run away from there. It is stated as incorrect to suggest that if accused Satnam Singh had not already been married, she would have married him. The police had met her on the way to Madhya Pradesh but she did not make any complaint to the police against accused Satnam Singh. She did not know whether any Panchayat was convened in their village or that in the said Panchayat, her brother and father had sworn affidavits exonerating the accused from the commission of offence in this case. She and accused Satnam Singh returned by trains and buses but she did not disclose the incident to any person in the trains and buses. It is stated as wrong to suggest that accused Gurbaj Singh and Harcharan Singh were not accompanying them or that she did not see them with the accused Satnam Singh earlier. It is stated as incorrect to suggest that she had voluntarily accompanied accused Satnam Singh or that he never kidnapped her nor committed rape upon her against her wishes and consent. It is stated as wrong to suggest that she was more than 18 years or that she had a love affair with accused Satnam Singh or that she wanted to marry him. It is stated as wrong to suggest that she was deposing falsely.

Roshni Devi (PW-2), mother of the prosecutrix did not support the prosecution case. She stated that the prosecutrix was her daughter. She was more than 18 years of age and she had since been got married. It is stated that about two months earlier i.e. two months earlier from the date of her deposition on 16.07.2013, all the family members were sleeping in their house after taking dinner. The prosecutrix used to sleep on a separate cot near her cot in a room of their house. On the next morning, when she (Roshni Devi) got up, her daughter i.e. the prosecutrix was missing from their house. They searched for her here and there, in the neighbourhood and in relations but all in vain. She stated that she did not know anything further. At the request of the learned public prosecutor, Roshni Devi was declared hostile and the learned public prosecutor was allowed to cross examine the witness. In the cross examination by the learned public prosecutor, she stated that it was correct that she made statement to the police. She had heard the her statement Ex.P-3 word by word. She was got confronted with her statement. It is stated as correct that her husband had lodged a complaint (Ex.P4) with the police but she did not know the contents of the same. The complaint had the thumb impression of her husband. In cross-examination by the learned counsel for all the accused, she stated that she did not know the accused present in the Court and she could not identify them on that day of her deposition. She did not know whether they kidnapped her daughter or not.

The other relevant witness is Dr. Sarika, Medical Officer, Kalpla Chawla Medical College and Hospital, Karnal (PW-4). She medico legally examined the prosecutrix on 08.03.2013 on an application filed by

the police. She tendered in evidence her duly sworn and verified affidavit Ex.P7 and also the medico legal report (Ex.P8) of the prosecutrix. A sealed parcel with the seals of FSL was opened and the contents shown to the witness who stated that Ex.MO1 was the 'salwar' which was the same. Another sealed parcel with seal of FSL was opened and she stated that Ex.MO2 and Ex.MO3 were the glass slides and Ex.MO4 was the vial containing pubic hair and these were the same. She had seen the FSL report Ex.PA/1 in Court on the date of her deposition and in view of the said report, it is stated that the possibility of sexual assault in the case could not be ruled out.

In cross examination, it is stated that the prosecutrix did not give the history of sexual assault to her (PW-4). She was brought by the police to the hospital. Sheri brother of the prosecutrix was accompanying her at that time. She could not say whether the prosecutrix was habitual to sexual intercourse or not. It is stated that the prosecutrix herself disclosed her age as 18 years and, therefore, she did not refer her for ossification test. It is stated as wrong to suggest that she had issued a false MLR at the instance of the police. It is also stated as wrong to suggest that she was deposing falsely.

In the affidavit Ex.P7 of Dr. Sarika (PW-4), it has inter alia been deposed that she examined the prosecutrix aged 18 years on 08.03.2013 at about 10.05 pm. The patient was brought by police of Police Station Asandh, Karnal. MLR dated 08.03.2013 (Ex.P8) was prepared. There was alleged history of sexual assault on 08.03.2013. It is stated that the patient had not taken bath neither changed her clothes. The patient was

wearing sea green coloured 'salwar'. On examination, the patient was conscious, cooperative, well-oriented to time, place and person. Her general condition was stable. In the affidavit (Ex.P7) which is on the basis of the MLR (Ex.P8) it is mentioned as follows:-

Menstrual history - LMP – 28.02.2013 as told by victim. Period are regular and moderate.

Per abdomen - Soft no external mark of injury seen.

Per Vulva - Hymen ruptured, pubic hair sent for examination.

Per Speculum - Cervix appear normal, two slides prepared from post fornices and sent for examination.

Per Vaginam - Two fingers passing easily, ut Anteverted, normal size, fornices NAD. No external mark of injury seen in perineum region.

The blood pressure is mentioned as 130/70, pulse rate 76 per minute, Chest-CVS it is mentioned, 'NAD'; besides, it is mentioned that no external marks of injury seen all over body. The sea green colour 'salwar' was sent for examination. The pubic hair, 'salwar' and two slides were sealed by her with seal of 'KS' and handed over to the police. Sealed envelope containing letter to FSL also handed over to the police.

The prosecutrix in her statement (Ex.P2) made on 09.03.2013 before the learned SDJM, Asandh under Section 164 Cr.P.C., stated that Satnam, whose father's name she did not know, resident of Saagra (Punjab) was a friend of her brother Sham Lal. He used to come to their house with her brother. She got in love with him. When no one was at home and when she was alone, then Satnam used to come to their house and used to do

wrong acts. He said that he would get married to her. He had done wrong acts with her at her home many a times. She did not disclose anything at her home. Then during the night on 22.01.2013 when her household people were sleeping, she ran away from the house with Satnam on his motorcycle. He took her to Madhya Pradesh. Then Satnam told her that he was married. He had continuously been committing wrong acts with her and had been assuring her that he would marry her but he had cheated her. Satnam left her with her sister Babli at Teek Stand at Kaithal. Her medical examination was conducted a day earlier on 08.03.2013. It is then stated by her that she did not want to say anything further and she be sent home with her mother Roshni Devi and her brother Suresh who had come with her.

Affidavits Ex.DB and Ex.DC of Kapura Ram (complainant) father of the prosecutrix, and Suresh Kumar, brother of the prosecutrix respectively have been proved on record by Shri Mahavir Parkash Kaushik, Advocate Notary Public, Asandh (DW-1) and Durlabh Singh, Ex-Sarpanch, Village Kheri Sharfali District Karnal (DW-2), who is a witness to the affidavit. In the said affidavits Ex.DB and Ex.DC, it has been deposed by the complainant Kapura Ram and Suresh Kumar respectively that Kapura Ram had lodged one case FIR No.48 dated 24.01.2013 under Section 363, 366-A and 120-B IPC at Police Station, Asandh against Satnam Singh (respondent No.4) son of Gurbachan Singh, Baj Singh (Gurbaj Singh) (respondent No.2) son of Darbara Singh and Deepu (respondent No.3) son of Pom (Sh. Om Parkash) residents of village Saagra, Police Station Patran, District Patiala, Punjab. It is stated by both of them that from the Panchayat they were satisfied that in the incident of the daughter of Kapura Ram and

sister of Suresh running away from home, Baj Singh (Gurbaj Singh) and Deepu had no hand. It is further stated that on the date of the incident, they had come to the village but both of them did not know of the intention of Satnam Singh that he would make the daughter of Kapura and the sister of Suresh run away with him. They were satisfied that Deepu and Baj Singh had no connection with the incident and neither did they have any hand in her running away.

From the evidence that has been produced by the prosecution, it is to be noticed that the prosecutrix was in love with Satnam Singh (respondent No.4) and she had an affair with him. He used to come to the house of the prosecutrix when no one else was at their house and she was alone. According to the prosecutrix, he used to commit wrong acts with her when she was alone at home. Then it is also in evidence that the prosecutrix on her own had gone with Satnam Singh (respondent No. 4) on his motorcycle. She had left her home with Satnam Singh during the night on 22.01.2013. She had left her home by scaling over the wall of their house; however, in her cross-examination she stated that she had accompanied the accused from her house through the main entrance. They had travelled by trains and buses till as far as Madhya Pradesh. The police had also met the prosecutrix on the way to Madhya Pradesh but she did not make any complaint to the police against the accused. Besides, it may also be noticed that Roshni Devi (PW-2) mother of the prosecutrix does not support the prosecution case. Her husband Kapura Ram, who was the complainant in the case had died a month earlier from her deposition in Court which was made on 16.07.2013. Roshni Devi (PW-2) stated that the prosecutrix was

more than 18 years of age and she had been married also. Roshni Devi (PW-2) was got declared hostile and cross-examined by the learned Public Prosecutor but nothing could be brought out which would favour the prosecution. The prosecutrix then returned on 08.03.2013 and during this period she had been travelling in trains and buses; besides, staying in a 'dera' of the friend of Satnam Singh (respondent No.4). She did not raise any protest during this period although while appearing as PW-1 during her cross-examination she voluntarily stated that she had disclosed the incident to some passengers in the trains. However, there is no mention of particulars of the passengers to whom the incident was disclosed. The prosecutrix in fact had been quite categorical in her deposition that she did not raise any protest of her going with the accused Satnam Singh (respondent No.4).

Dr. Sarika (PW-4) who conducted the medical examination of the prosecutrix did not find any injury on any part of the body of the prosecutrix. It is on the basis of the FSL report (Ex.P1/A) that she (PW-4) stated that possibility of sexual assault in the case could not be ruled out. The FSL report Ex.P1/A mentions that human semen was detected on Exhibit 1 (salwar). However, semen could not be detected on the rest of the exhibits that are mentioned, which include, Exhibit 2a - two microscopic glass slides; Exhibit 2b – a small bunch of dark brown strands of hair kept in an airtight glass vial described as pubic hair; Exhibit 3 - one dirty black with white striped lower; Exhibit 4 - two cotton wool swabs without sticks kept inside airtight plastic container described as swab and Exhibit 5a - bunch of dark brown strands of hair kept in an airtight plastic container

described as pubic hair. Therefore, the said FSL report (Ex.P1/A) except for human semen being detected on the 'salwar' nothing else can be said of the same. Besides, Dr. Sarika (PW-4) has also stated in her cross examination that the prosecutrix had herself disclosed her age as 18 years and, therefore, she did not refer her for ossification test. It is to be noticed that Roshni Devi (PW-2) mother of the prosecutrix has stated that the prosecutrix was more than 18 years of age and was married. The prosecutrix herself also before Dr. Sarika stated her age as 18 years. However, learned counsel for the appellant has placed strong reliance on the birth certificate Ex.P14 in which the date of birth of the prosecutrix is mentioned as 07.06.1995.

The certificate Ex.P14 is dated 24.01.2013. It was, therefore, obtained after the incident had occurred on 22.01.2013. It is signed by the Head Teacher, GPS (Government Primary School) Kheri Sharfali, Asandh, Karnal. It is mentioned that the prosecutrix had studied in the said school till 31.03.2007 in the fifth class and had passed her examination for admission to the sixth class. In order to prove the said certificate, the prosecution examined Sh. Harjinder Singh, JBT Teacher, Government Primary School, Kheri Sharfali, District Karnal (PW-8). He stated that he had brought the summoned record i.e. admission and withdrawal register of Government Primary School, Kheri Sharfali, District Karnal. He had seen the school certificate Ex.P14 in respect of the prosecutrix and according to their record it was correct. The certificate was issued (sic.- entered) as per entry No.7943 dated 09.07.2001. The date of birth of prosecutrix as per the said certificate is 07.06.1995. The certificate bears the signatures of Smt. Kalwinder Kaur, Head Teacher of the School. She had since retired. He

(PW-8) identified her signatures. In cross examination it is stated as correct that when a child is admitted in a school, the signatures or thumb impressions of the guardian are obtained on the application as well as in their register against the relevant entry. It is stated as correct there were no signatures or thumb impressions of the guardian of the prosecutrix against the relevant entry. The certificate Ex.P14 was prepared by Smt. Taranjit Kaur who was still in service. The certificate did not bear his (PW-8's) signatures. It is also stated that no certificate of date of birth or affidavit of the guardian of the prosecutrix or any other supporting document was produced at the time of her admission. The date of birth of the prosecutrix it is stated was got recorded by her guardian without producing any record regarding her date of birth.

In the circumstances, not much reliance can be placed on the birth certificate Ex.P14 said to be maintained as per records of the school where the prosecutrix was stated to have studied. Sh. Harjinder Singh, JBT Teacher (PW-8) has mentioned that no certificate of date of birth or affidavit of the guardian of the prosecutrix or any other supporting document was produced at the time of her admission. The date of birth of the prosecutrix, it is stated, was got recorded by her guardian without producing any record regarding her date of birth. Therefore, there is no foundation or basis of the date of birth of the prosecutrix that is said to have been entered in the school records and on the basis of the same, the birth certificate Ex.P14 had been issued. The date of birth of the prosecutrix as entered in the certificate Ex.P14 is without any supporting document by way of affidavit of her parents, certificate from the Registrar of Births and

Deaths or a certificate from the village 'chowkidar', who maintains records of births and deaths in the village. As such, it cannot be said with firmness and certainty that the prosecutrix was less than 18 years of age on the date of occurrence i.e. 22.01.2013. Besides, keeping in view the age given by the prosecutrix herself before Dr. Sarika (PW-4), on account of which the prosecutrix was not subjected to ossification test, as also the age of the prosecutrix given by Roshni Devi (PW-2), mother of the prosecutrix who stated in Court that the prosecutrix was more than 18 years of age, it can indeed be said that she was more than 18 years of age.

The learned Additional Sessions Judge was of the considered view that the prosecutrix was a consenting party for sexual interaction with the accused and it seemed that it was a case of elopement rather than rape. Indeed in case the prosecutrix had gone with the accused Satnam Singh (respondent No.4) at different places and she remained with him from 22.01.2013 to 08.03.2013, then during this period in case there were sexual relations between them, in respect of which she did not object, it cannot be termed as rape and the sexual relations are to be taken with the consent of the prosecutrix.

The further question that would, however, require consideration is whether the sexual relations of Satnam Singh (respondent No.4) with the prosecutrix were on the pretext of marrying her. In this regard, it may be noticed that the prosecutrix while appearing as PW-1 in her deposition stated that accused Satnam Singh had promised to marry her and kidnapped her during the night on 22.01.2013 by enticing her on the pretext of marrying her. At that time her parents and other family members were

sleeping in their house. Then she was taken to Madhya Pradesh where rape it is stated was committed on her against her wishes and consent. She further states that she came to know there that Satnam Singh (respondent No.4) was already married and had two children; besides, his wife. It is stated that she had been kidnaped on the pretext of Satnam Singh marrying her and nothing more had happened with her. In cross examination she states that she was having a love affair with Satnam Singh (respondent No.4) for a month prior to the registration of the case. Besides, she also had sexual intercourse with him many a times when he came to her house while she was alone. It is to be noticed that the prosecutrix before she had left her home and gone with Satnam Singh (respondent No.4) had sexual relations with him. The prosecutrix made no complaint of being raped when Satnam Singh used to come to her home while she was alone. She remained with Satnam Singh for a period of more than a month and it is after her return that she stated that Satnam Singh had kidnapped her by enticing her on the pretext of marriage. The prosecutrix had indeed remained with the accused for more than a month. Except for the bald assertion of the prosecutrix that Satnam Singh was married, nothing else has been brought on record by the prosecution as to whether he was married. It is for this reason that the fact that Satnam Singh was already married was not put to him in his statement recorded under Section 313 Cr.P.C. In the statement of Satnam Singh (respondent No.4) recorded under Section 313 Cr.P.C. it was put to him that he had promised to marry the prosecutrix and kidnapped her during the night time on 22.01.2013 by enticing her on the pretext of marriage; however, it was not put to him that he was already married. Section 313

Cr.P.C. has been enacted to enable an accused to explain any circumstances appearing in evidence against him. The fact that Satnam Singh was already married and for the said reason it could be said that the consent of the prosecutrix was taken by misrepresentation, then this fact was liable to be put to him in terms of Section 313 Cr.P.C. so as to enable him to explain the position. This would be a vital question and failure to put the same to Satnam Singh and except for the bald statement of the prosecutrix, there being no other evidence in this regard, the benefit of the same is to go to the accused i.e. there is no evidence to show that he was married when he had gone out with the prosecutrix.

As has already been noticed that the prosecutrix in fact had gone with the accused on her own either by scaling the wall of her house or through the main entrance of the house during the night on 22.01.2013 while her family members were sleeping and she remained with Satnam Singh (respondent No.4) for more than a month. As such it cannot be said to be a case of kidnapping; besides, she was 18 years of age or more than that, the offence under Section 366-A IPC also cannot be said to be made out.

It is also to be noticed that Satnam Singh (respondent No.4) was charge-sheeted on the allegation that he from 22.1.2013 to 8.3.2013, repeatedly committed penetrative sexual assault on the prosecutrix, a child, against her wishes thereby committed offence punishable under Section 4 of the POCSO Act. Besides, he at different places forced the prosecutrix, a member of a Scheduled caste to exploit her sexually, she was not otherwise agree, thereby committed an offence punishable under Section 3 (i) (ix) of the SC and ST Act.

Section 4 of the POCSO Act for which Satnam Singh (respondent No.4) was charged provides for punishment penetrative sexual assault. It is envisaged that whoever commits penetrative sexual assault shall be punished with imprisonment of either description for a term which shall not be less than seven years but which may extend to imprisonment for life, and shall also be liable to fine. Section 2 (f) of the POCSO Act states that 'penetrative sexual assault' has the same meaning as assigned to it in Section 3. Section 3 of the POCSO Act reads as under:-

“3. Penetrative sexual assault :

A person is said to commit "penetrative sexual assault" if—

(a) he penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a child or makes the child to do so with him or any other person; or

(b) he inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of the child or makes the child to do so with him or any other person; or

(c) he manipulates any part of the body of the child so as to cause penetration into the vagina, urethra, anus or any part of body of the child or makes the child to do so with him or any other person; or

(d) he applies his mouth to the penis, vagina, anus, urethra of the child or makes the child to do so to such person or any other person.”

A perusal of the above shows that it relates to a person penetrating his penis, any object other than penis etc. in a child. Section 2 (d) defines 'child' to mean any person below the age of 18 years. The prosecutrix as already noticed is above the age of 18 years, therefore, the offence under Section 4 of the POCSO Act is not made out.

The offence under Section 3 (1) (xi) of the SC/ST Act is also not made out. It may also be noticed that Satnam Singh (respondent No.4) according to the FIR Ex.P23 was himself a member of the scheduled castes, therefore, he cannot be tried for an offence under Section 3 of the SC/ST Act. The charge has been framed for the offence under Section 3 (1) (xi) of the SC/ST Act. The said Section reads as under:-

“3. Punishment for offences of atrocities.-

(1) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe.-

(xi) assaults or uses force to any woman belonging to a Scheduled Caste or a Scheduled Tribe with intent to dishonour or outrage her modesty;

shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to five years and with fine.”

A perusal of Section 3 (1) of the SC/ST Act shows that for punishment for offences of atrocities it is to be applied to whoever is not a member of a Scheduled Castes or Scheduled Tribes. Satnam Singh (respondent No.4) is himself being a member of the scheduled castes as is

stated in the FIR Ex.P23, therefore, the provisions of Section 3 of the SC/ST Act would not apply to him.

As regards respondents No. 2 and 3, it is to be noticed that the prosecutrix had identified Harcharan Singh as Gurbaj Singh and Gurbaj Singh as Harcharan Singh, as such, she failed to identify Gurbaj Singh and Harcharan Singh. About Deep Singh (respondent No.3), she stated that she did not know whether he was involved in the case or not. Besides, the affidavits Ex.DB and Ex.DC of the complainant Kapura Ram and Suresh Kumar, father and brother respectively of the prosecutrix have been deposed to state that they were not involved in the case.

In the circumstances, the learned Additional Sessions Judge has recorded cogent and convincing reasons for acquitting the respondents No.2 to 4 and merely because another view may be possible would not be a ground to upset the conclusions reached at by the learned Court below.

For the foregoing reasons, there is no merit in the appeal and the same is accordingly dismissed.

(S.S.Saron)
Judge

(Rekha Mittal)
Judge

20.8.2015

PARAMJIT/A.KAUNDAL