

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRA No.D-832-DB of 2014
Date of decision : 06.08.2015

Krishan Kumar Shastri

..... Appellant

Versus

State of Haryana and another

.... Respondents

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

Present: Mr. Abhimanyu Singh, Advocate
for the appellant.

Mr.Sandeep Mann, Sr. DAG, Haryana.

Mr.Tarundeep Kumar, Advocate
for respondent No.2.

RAMENDRA JAIN, J.

The appellant-complainant has preferred the present appeal against the judgment dated 29.01.2014 passed by the learned Additional Sessions Judge, Gurgaon, acquitting respondent No.2 under Sections 363, 366A and 376 read with Section 34 of Indian Penal Code ('IPC' for short) and Section 4 of Protection of Children from Sexual Offences Act, 2012 ('POCSO' for short).

Brief facts relevant for decision of this appeal are that on 01.04.2013, the appellant-complainant presented an

application Ex.PB before Sub Inspector Harender Singh at Ghamroj turn, Sohna road, where he along with ASI Tara Chand and Constable Sube Singh, was present for checking of light motor vehicles. The complainant alleged that he was resident of Krishan Colony, Railway Road, Palwal. He had also a farm house in village Bhondsi, where his parents and younger brother Chander Bhan were residing. His daughter Nidhi aged 16 years studying in 11th class, after school hours had gone to his aforesaid farm house. However, she was found missing from there by his younger brother Chander Bhan since around 05.30 p.m. She had gone to the market to purchase some items. He had inquired about her by going to village Bhondsi, but did not find any clue of her. The appellant-complainant further stated that in December 2012, his daughter Nidhi had told him about her teasing by respondent-accused No.2 Sanju Dagar son of Tejveer Singh resident of Shiv Colony, Palwal on the way while she goes and comes back from her school. Hence, he had full suspicion that his daughter Nidhi was kidnapped and enticed away by respondent-accused No.2, with an intention to marry her. Legal action be taken against her.

Since from the contents of complaint, a case punishable under Sections 363 and 366-A was found to have been committed, therefore, Sub Inspector Harender Singh by making his endorsement Ex.PR sent the complaint to the police station for registration of a case whereupon formal FIR was registered.

Respondent-accused No.2 was arrested on 02.04.2013 and the prosecutrix was recovered from his possession. Thereafter, they were got medico-legally examined from General Hospital, Gurgaon. The statement of the prosecutrix was got recorded under Section 164 Cr.P.C. before the learned Judicial Magistrate First Class, Gurgaon. Since, the prosecutrix has leveled allegations of rape against respondent-accused No.2, therefore, the offences punishable under Section 376 IPC and Section 4 of POCSO Act were added. In his disclosure statement, the respondent-accused also named one Durgesh as his accomplice. Hence, he too was arrested on 03.04.2013. However, vide order dated 06.05.2013, he was declared juvenile and his case was sent separately for trial by Juvenile Justice Board. The statements of relevant witnesses were recorded. After completion of investigation, final report under Section 173 Cr.P.C. was filed in the Court of Illaqua Magistrate against the respondent-accused No.2 for his trial under Sections 363, 366-A and 376, besides Section 4 of POCSO Act.

Copies of challan as envisaged under Section 207 Cr.P.C. were supplied to the accused. Since, the offences were exclusively triable by the Court of Sessions, therefore, the case was committed to the Court of Sessions by the learned Judicial Magistrate First Class, Gurgaon vide order dated 13.05.2013.

Learned trial Court, after hearing both the sides and on finding a prima facie case, framed charges against the

respondent-accused No.2 under Sections 363, 366-A and 376 read with Section 34 IPC and Section 4 of POCSO Act, to which he pleaded not guilty and claimed trial.

Thereafter, the prosecution in support of its case examined as many as 17 witnesses i.e. PW1 complainant Krishan Kumar, PW2 Chander Bhan, PW3 and PW4 Head Constables Shish Ram nad Mahender Singh respectively, PW5 Lady Constable Monika, PW6 Constable Rajesh Kumar, PW7 Jitender, PW8 Dr. Pawan Kumar Chaudhary, PW9 Inspector Varun Dahiya, PW10 Dr. Naveen, PW11 Prosecutrix, PW12 Ms.Manvika Banswal, JMJC, PW13 Krishan Kumar, Principal Swami Vivekanand, Sr. Sec. School, Palwal, PW14 ASI Tara Chand, PW15 SI Harender Singh, PW16 Mrs. Vijay Luxmi and PW17 Ms. Poonam Rani and relied upon certain documents.

After closure of the prosecution evidence, statement of respondent-accused No.2 Sanju Dagar under Section 313 Cr.P.C. was recorded putting entire incriminating evidence brought on record against him by the prosecution, to which, he denied and pleaded his false implication. The respondent-accused No.2 Sanju Dagar stated that the prosecutrix was in love with him. Earlier also, she had forced him to take him to Sonapat. They had taken dinner in a restaurant at Haveli and returned back around 01.30 a.m. with his brother-in-law Satender Rathi who then left the prosecution to her house around 03.00 a.m. He further stated that his father had made

a call to the family members of the prosecutrix whereupon they came to his house and had a talk with his father. They used to meet with each other at Palwal, besides having talk on phone. On 01.04.2013, the prosecutrix forced him to take her at some place and when they were present at Inter State Bus Terminal ('ISBT' for short) at Delhi, Subhash, Asha and Puneet came there along with Delhi Police and apprehended them. They were taken to Police Post, Kashmiri Gate from where Subhash found parents of the prosecutrix, who came there along with Haryana Police and took them to Village Bhondsi. Upon asking of the appellant-complainant Krishan Kumar Shastri, Chander Bhan and other family members, a false case was registered against him under pressure. He did not commit any rape upon the prosecutrix on 01.04.2013. In his defence, respondent-accused No.2 examined DW1 Satender Rathi, DW2 Tejveer Singh Dagar and DW3 Constable Rakesh Meena.

Thereafter, after hearing learned counsel for the both the sides, the learned trial Court acquitted respondent-accused No.2 Sanju Dagar vide impugned judgment dated 29.01.2014.

We have heard learned counsel for both the parties and gone through the case file very carefully.

Learned counsel for the appellant-complainant argued that the impugned judgment of the learned trial Court is based on surmises and conjectures. Its findings are completely

erroneous. The learned trial Court has failed to appreciate that the prosecutrix on the date of occurrence was minor. Hence, her consent if any for sexual intercourse was immaterial. The prosecution in order to prove its case had examined as many 17 witnesses, who sufficiently proved guilt of the respondent-accused No.2, but the learned trial Court without appreciating their depositions, wrongly acquitted him. The ocular version of the prosecution was supported by the medical evidence.

We have given our thoughtful consideration to the submissions made by the learned counsel for the appellant-complainant Krishan Kumar Shastri.

The whole controversy in the instant case revolves around the fact that whether the prosecutrix on the date of incident was minor or major. The prosecution to prove this fact has relied upon certificates i.e. Transfer Certificate, copy of Admission and withdrawal register & Admission Form of Swami Vivekanand Sr. Sec. School, Palwal, Ex.PN/5, Ex.PO and PO/1, respectively, proved by PW13 Krishan Kumar, besides, transfer certificate Ex.PO/2, Admission form of Dharam Public School, Palwal, Ex.PU, affidavit of the appellant-complainant Krishan Kumar Shastri Ex.PU/1 and copy of admission and withdrawal register of Dharam Public School Palwal, Ex.PU/2.

In the aforesaid documents, the date of birth of the prosecutrix is shown as 02.03.1997. The date of occurrence is

01.04.2013. Meaning thereby, the prosecutrix on the date of occurrence was 16 years and one month old. However, the above evidence relied upon by the prosecution is to be discarded in toto, being manipulated and forged one on two following counts:

- (i) The above documents i.e. affidavit of the appellant-complainant, admission form and the copies of admission and withdrawal registers are not authenticate documents being of private schools and not of any Government School. They can be manipulated and forged at any time.
- (ii) As per own stand of the appellant-complainant and the prosecutrix, she was studying in 11th class. Meaning thereby that she had already passed matric. In the Matriculation Certificate, the date of birth is always shown. Hence, it was incumbent upon the prosecution to produce the same on the record to bring correct date of birth of the prosecutrix on record. Non production of the same requires to draw an inference against the prosecution and the appellant-complainant that the same has been intentionally and deliberately withheld with mala fide intention to illegally show that the prosecutrix was below 18 years of age on the date of incident.

In view of the discussion above, the finding of the learned trial Court that the prosecutrix on the date of incident was 16 years and one month old is set aside being patently wrong.

As per the deposition of the prosecutrix as PW11, she was raped forcibly by respondent-accused No.2 in a toilet at ISBT Delhi. However, the said story put forth by her is false on the face of it, because ISBT Delhi is the busiest place in the country. There is always a huge rush round the clock. Hence, it is impossible to commit any illegal activity such like rape at such a busiest place.

As per the alleged history disclosed by the prosecutrix to the Medical Officer at the time of her medico-legally examination, she had run away with the respondent-accused No.2 on 01.04.2013 around 05.30 p.m. from farm house, Bhondsi with her own sweet will as she was friendly with him since last one year. In her statement under Section 164 Cr.P.C., before the learned Judicial Magistrate First Class, Gurgaon on 11.04.2013 Ex.PN, the prosecutrix categorically deposed that on 01.04.2013 around 05.30 to 06.00 p.m., she along with the respondent-accused No.2 had gone from Gurgaon to Delhi. She was familiar with him for the last six/seven months and had met him earlier several times. He was living near her house at Palwal. On 01.04.2013, she along with him and one boy had gone to Badarpur Metro Station on

motorcycle. The said person left them there and went off. They came to Kashmiri Gate via Metro, where her maternal aunt (Maussi) met them and handed over their custody to the police. Her father had told to the police about them, because earlier in December also, they had ran away. She wanted to marry respondent-accused No.2 and for that reason she had ran away with him. Her father on coming to know of her relations with the respondent-accused No.2, had threatened her of dire consequences. Due to fear of her father, she had left the house.

More so, the prosecutrix in her statement Ex.DA before the police has stated that on 26.03.2013, she had come from her house at Palwal to the farm house near Maruti Kunj, Bhondsi (Gurgaon). On 08/09 March, she had disclosed above address to the respondent-accused No.2 on telephone and asked him to take her away from there. Thereafter, her father had snatched phone from her. At that time, her uncle had come and she was sent with him. Her uncle used to get done the entire household work from her. On that day, none was present at home, when she along with her brother Tejveer had gone out of the house. The respondent-accused No.2 was standing on the road. She went on the roof and then jumped from there and came out. One another boy was also standing there with motor-cycle. They came to Badarpur Metro Station. The said boy left them there. From Badarpur Metro Station,

they came to Delhi. When they were going to ISBT Delhi, her 'Maussi' Asha, her maternal uncle Subash and their son Puneet met them and brought her to police station Bhondsi. They had reached Badarpur at about 8.00/8.30 p.m.

The above statement Ex.PN under Section 164 Cr.P.C. of the prosecutrix before Magistrate, besides, her statement before the doctor while conducting her medico-legally examination vide MLR Ex.PM and her statement Ex.DA before the police, completely falsify the entire prosecution story that she was kidnapped and enticed away by the respondent-accused No.2, forcibly without her consent, rather it is evident on record that the prosecutrix accompanied the respondent-accused No.2 on her own sweet will and consent.

As far as the commitment of rape of the prosecutrix by respondent-accused No.2 is concerned, the same is also not proved on the record, because as per the FSL report, no semen was detected on her underwear or upon her vaginal swabs.

From the above factual position, it is evident on record that it was not the respondent-accused No.2, who had kidnapped and enticed away the prosecutrix, rather it was the prosecutrix, who being in love with him took him to Badarpur Metro Station and then to Delhi. In cross-examination, the prosecutrix as PW11 has categorically admitted that she knew the respondent-accused No.2 Sanju Dagar earlier also. The

buses keep on going and coming on ISBT during day and night and there are number of ticket booths. There were very few people at ISBT at that time. She did not make any noise, when the respondent-accused No.2 took her forcibly to the toilet. Had, the prosecutrix been kidnapped and enticed away by the respondent-accused No.2 forcibly, in that event, she had ample opportunities to raise hue and cry or disclose her alleged woeful story to any of the passenger present there. Her silence of not raising any hue and cry speaks about her conduct that she was a consenting party to the entire episode.

The statement of DW1 Satender Rathi seems to be quite genuine that on 06.12.2012 around 06.30 p.m., he had received a telephone call from his father-in-law Tejveer Singh that the respondent-accused No.2 Sanju Dagar with one girl had gone to Panipat. He had asked him to bring them back. He, then reached Panipat around 07.30 p.m., and found both of them at Suvidha Mall on their way. Photographs Mark A and B were taken at the time of their dinner at Haveli. On returning back to the house of respondent-accused No.2, the parents of the prosecutrix and their relatives were present, who brought her back with them. She was not inclined to accompany them.

DW2 Tejveer Singh father of the respondent-accused No.2 had deposed that on 06.12.2012, he had gone to Ludhiana in connection with some official work. At 09.30 p.m., he received a call that the respondent-accused No.2 along with the

prosecutrix had gone to Panipat. Thereafter, he asked his son-in-law Satender Rathi to bring them back, who brought them back and then the prosecutrix was handed over to her parents. Mother of the prosecutrix used to call him on his mobile that he should keep his son (respondent-accused No.2 Sanju Dagar) in safe hands as her daughter (prosecutrix) was insisting to accompany him. He had also talked to the prosecutrix. She had told him about her wish to not go to her father's house, as he would kill her.

A perusal of photographs Mark A and B shows that the respondent-accused No.2 and the prosecutrix are having their dinner in a very happy mood. There is no sign of any hesitation or arrogance on the face of the prosecutrix, rather she is quite comfortable with him.

More so, the prosecutrix had made material improvements in her statement as PW 11, because, in her statement under Section 164 Cr.P.C. before the Magistrate, she did not speak about any rape upon her by respondent-accused No.2. Even at the time of her medico-legally examination conducted by PW10 Dr.Naveen, Medical Officer, General Hospital, Gurgaon. She did not allege any incident of rape with her. Even no injury was found by the aforesaid doctor upon her person. Her hymen was found without any active bleeding.

All these facts and circumstances falsify the prosecution case that the prosecutrix was ever raped by respondent-accused No.2. Her deposition before the Court is not worth reliance. Before the Magistrate, the deposition that she had given her earlier statement under the threat of the police is quite unbelievable, because she had given the same under the custody of her parents and thus, question of any threat or fear in her mind does not arise at all.

We have gone through impugned judgment and found no illegality or perversity in the same. The impugned judgment is more moral than legal which cannot stand in the eye of law.

No other point was urged before us.

In view of the discussion above, the appeal being devoid of any merit is hereby dismissed.

(RAMENDRA JAIN)
JUDGE

(S.S. SARON)
JUDGE

06.08.2015
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