

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**Criminal Appeal S-3036-SB of 2010
Date of Decision: September 16, 2015**

Satnam Singh @ Satti

.....Appellant

Versus

State of Punjab

..... Respondent

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

Present : Mr. M.S.Rai, Advocate, for the appellant.

Mr. Vikram Bishnoi, Asstt. A.G., Punjab.

T.P.S.MANN, J. (Oral)

The appellant was tried for committing offences punishable under Sections 363, 366-A and 376 IPC with the allegations that he induced the prosecutrix, who was under the age of eighteen years to go from the place of her father so that he may seduce her for illicit relations and after so inducing her, he subjected the prosecutrix to rape.

Vide judgment and order dated 30.8.2010, learned Additional Sessions Judge, Ferozepur, convicted the appellant for

the aforementioned offences and sentenced him as under:-

- (i) Rigorous imprisonment for three years and to pay a fine of Rs.500/- under Section 363 IPC and in default of payment of fine, to suffer further rigorous imprisonment for fifteen days;
- (ii) Rigorous imprisonment for seven years and to pay a fine of Rs.500/- under Section 366-A IPC and in default of payment of fine, to suffer further rigorous imprisonment for one month; and
- (iii) Rigorous imprisonment for seven years and to pay a fine of Rs.500/- under Section 376 IPC and in default of payment of fine, to suffer further rigorous imprisonment for one month.

All the 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 imposed upon him.

The case of the prosecution, in nutshell, is that on 28.9.2008, when the prosecutrix, aged about 15 years, was sleeping on a cot, the appellant after inducing her, took her with him. The mother of the prosecutrix searched for the prosecutrix in the houses of her relatives and also in the house of the appellant but she could not find her daughter. Ultimately, on 22.10.2008, complainant-Resham Kaur, mother of the prosecutrix, got

recorded her statement with ASI Surjit Singh, on the basis of which FIR No. 158 dated 22.10.2008 under Sections 363/366-A/376 IPC was registered against the appellant at Police Station Mamdot.

Further case of the prosecution is that on 24.10.2009, ASI Surjit Singh arrested the appellant and recovered the prosecutrix from her possession. The prosecutrix as well as the appellant were, thereafter, got subjected to medico-legal examination. The statements of the witnesses were recorded. Once the investigation was completed, final report under Section 173 Cr.P.C. was submitted before the Illaqua Magistrate, which was, thereafter, committed to the Court of Sessions, where the appellant was charged for the aforementioned offences, to which he pleaded not guilty and claimed trial.

In support of its case, the prosecution examined the prosecutrix as PW1, her mother-Resham Kaur, complainant, as PW2 and Mohinder Singh, paternal uncle of the prosecutrix, as PW3, who deposed regarding the abduction of the prosecutrix by the appellant and about the appellant committing sexual intercourse with the prosecutrix against her wishes. The prosecution also examined PW4 Dr. Vanita, who deposed about the medico-legal examination of the prosecutrix and PW5 Dr. Pardeep Kumar Aggarwal, who testified about the medical

examination of the appellant. The investigation part of the case was brought on record by the prosecution through the testimonies of PW6 HC Surjit Singh, PW7 HC Lakhwinder Singh, PW8 SI Jagdish Lal and PW9 ASI Surjit Singh.

When examined under Section 313 Cr.P.C. the appellant denied all the incriminating evidence brought on record by the prosecution and pleaded innocence. He stated that he neither abducted the prosecutrix nor subjected her to rape. The appellant, however, led no evidence in defence.

The trial Court, after hearing learned counsel for the parties and perusing the record, believed the prosecution case and convicted and sentenced the appellant, as mentioned above. Hence, the present appeal.

While deposing before the trial Court as PW1, the prosecutrix had stated that she was born on 15.9.1993 and had studied upto 5th Class in Government Primary School, Lakha Haji, District Ferozepur. The appellant, who was resident of Mohalla Dhobi, Bathinda, used to come to her house. He started keeping an evil eye upon her. He, alongwith Mohan Singh, Karnail Singh, Deepo Bai and Paramjit Kaur, had abducted her after giving her some intoxicants and took her to Gujarat. The appellant as well as Mohan Singh and Karnail Singh used to have intercourse with her against her consent. She was threatened to be eliminated in

case she disclosed about the matter to anyone. The appellant arranged Court marriage with her at Alwar but the same was on account of force used by him and without her consent. When he brought her to Bathinda, the police arrested him and recovered her. She proved on record her School Leaving Certificate as Ex.P2.

A perusal of the School Leaving Certificate Ex.P2 reveals that the date of birth of the prosecutrix was recorded therein as 15.9.1993 and, therefore, on the date of occurrence, i.e. 28.9.2008, she was fifteen years and thirteen days old. Merely because the Headmaster, who had issued the said certificate has not been examined by the prosecution is not sufficient to rule the certificate out of consideration, as when the prosecutrix had produced it before the trial Court, no objection was raised by the defence. Therefore, it stands conclusively proved that the prosecutrix was fifteen years and thirteen days of age as on 28.9.2008, when she was abducted by the appellant.

The defence could not bring on record any material during the cross-examination of PW1 prosecutrix, PW2 her mother Resham Kaur and PW3 Mohinder Singh, her paternal uncle, which could dislodge their respective testimonies. Therefore, this Court has no other option but to rely upon the testimonies of the prosecutrix, her mother and her paternal uncle

in regard to the version of the prosecutrix that it was the appellant who had abducted her from her house and, thereafter, subjected her to forcible sexual intercourse.

PW4 Dr. Vanita, Medical Officer, Civil Hospital, Ferozepur had tendered into evidence her duly sworn affidavit Ex.PW4/1. It was mentioned in the said affidavit that she had medico legally examined the prosecutrix on 25.10.2009 and on external examination, she found her breast normally developed, pubic hair normal and no signs of any external injury marks on thighs, legs and abdomen. Per vaginum examination, it revealed that introitus admitted two fingers, internal OS closed and hymen absent. After receipt of the report of Chemical Examiner Ex.PW4/3, she gave certificate Ex.PW4/4 to the effect that spermatozoa were detected on the vaginal swabs.

PW5 Dr. Pardeep Kumar Aggarwal, Medical Officer, Civil Hospital, Ferozepur who had medico legally examined the appellant on 25.10.2009, testified that there was nothing to suggest that the appellant was incapable of doing sexual intercourse. Therefore, the medical evidence corroborates the testimonies of the prosecutrix and her near relatives.

In view of the above, no case is made out for any interference in the impugned judgment of conviction passed by the trial Court.

Coming to the quantum of sentence, it may be noticed that the prosecutrix had remained in the company of appellant for a period of more than one year. In her testimony, the prosecutrix had admitted that the appellant had arranged Court marriage with her at Alwar, though, according to her, it was without her consent and under threat. However, the fact remains that for a sufficiently long period of time, the appellant and prosecutrix had lived together. It is also submitted on behalf of the appellant that he was about twenty two years' old at the time of the occurrence and the only bread earner of his family. He is in custody since 24.10.2009 and has, thus, undergone an actual period of about five years and eleven months. Prayer has, accordingly, been made for reducing the sentence of imprisonment of the appellant to the one already undergone by him.

Once a person stands convicted under Section 376 IPC, the law requires imposition of minimum imprisonment for seven years. However, for adequate and special reasons, the Court can award even a lesser sentence but those reasons have to be mentioned in the judgment.

The prosecutrix was more than fifteen years of age on the date of the occurrence, i.e. 28.9.2008, but by the time she was recovered from the possession of the appellant, i.e. on 24.10.2009, she was more than sixteen years of age. She stayed

in the company of the appellant for a period of more than one year. The medical evidence brought on record does not suggest that the appellant had been committing forcible sexual intercourse with the prosecutrix. The appellant was about twenty two years of age at the time of the occurrence and stated to be the sole bread winner of his family. As per the custody certificate produced by the State counsel, the appellant has undergone an actual period of five years, nine months and twenty days. Besides, he has earned remission of one year.

In view of the above, there exists adequate and special reasons for awarding of sentence of imprisonment under Section 376 IPC to a period less than the minimum sentence of seven years. Of course, for the offence under Section 366-A IPC, there is no requirement of minimum sentence of seven years.

Resultantly, the conviction of the appellant for the various offences is upheld. His sentence of imprisonment on all the counts is reduced to the one already undergone by him. The sentences of fine alongwith their default clauses are, however, maintained.

The appeal is, accordingly, disposed of.

September 16, 2015
amit rana

(T.P.S. MANN)
JUDGE