

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Criminal Appeal No.S-1317-SB of 2003
Date of Decision : March 04, 2015

Abhimanyu and others

.....Appellants

VERSUS

State of Haryana

.....Respondent

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

Present : Mr. Vijay Sharma, Advocate
for appellant-Abhimanyu.

Mr. Sudhir Sharma, Advocate
for appellants-Hari Partap @ Minu and Yogesh @ Yogi.

Mr. Randhir Singh, Additional A.G., Haryana.

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

The appellants have filed the present appeal for challenging the judgment and order dated 15/16.7.2003 passed by the Sessions Judge, Narnaul, whereby they were convicted and sentenced as follows:-

- (i) Hari Partap @ Minu and Yogesh @ Yogi appellants were convicted under Section 376(2)(g) IPC and sentenced to undergo rigorous imprisonment for a period of ten years and to pay a fine of Rs.500/- each and in default of payment of fine, to undergo further rigorous imprisonment for a period of one month;
- (ii) All the appellants were convicted under Section 366 IPC and sentenced to undergo rigorous imprisonment for a period of five years and to pay a fine of Rs.500/- each and

in default of payment of fine, to further undergo rigorous imprisonment for a period of one month; and

- (iii) All the appellants were convicted under Section 363 IPC and sentenced to undergo rigorous imprisonment for a period of three years and to pay a fine of Rs.500/- each and in default of payment of fine, to further undergo rigorous imprisonment for a period of one month.

The substantive sentences, imposed upon the appellants, were ordered to run concurrently.

The case of the prosecution, in nutshell, is that at about 3.00/4.00 p.m. on 20.8.2001, the prosecutrix, who was described to be 15/16 years of age and studying in +2 class in Champa Devi Senior Secondary School, Ateli was enticed away by Hari Partap @ Minu and Yogesh @ Yogi appellants from her school to some unknown place in Tata Sumo bearing registration No.DL-8-CB-9150 driven by Abhimanyu appellant. On 21.8.2001 at 10.00 p.m., Gopi Ram, father of the prosecutrix, made statement before SI Ram Dutt, on the basis of which FIR No.105 dated 21.8.2001 under Sections 363, 366 and 34 IPC was registered against all the appellants at Police Station, Ateli.

During the investigation of the case, the prosecutrix returned to her house on 22.8.2001 and, thereafter, her statement was recorded by the police under Section 161 Cr.P.C. On 24.8.2001, the statement of the prosecutrix under Section 164 Cr.P.C. was recorded by Shri Ajay Tewatia, Additional Chief Judicial Magistrate, Narnaul. On the basis of the same, offences under Sections 376 and 506 IPC were also added to the heading of the FIR. Further, Abhimanyu appellant was arrested on

22.8.2001 and the Tata Sumo driven by him at the time of the occurrence was recovered. Hari Partap @ Minu and Yogesh @ Yogi appellants were also arrested on 23.8.2001 and were got subjected to medical examination, during which they were found fit to perform sexual intercourse. The prosecutrix was also medico-legally examined by Dr. Alka Bishoi on 22.8.2001, pursuant to which, vaginal swabs and clothes of the prosecutrix were taken into possession. The statements of the witnesses were recorded and upon completion of the investigation, challan presented against the appellants. Following commitment of the case, all the appellants were charged under Sections 363 and 366 IPC read with Section 34 IPC. Besides, Hari Partap @ Minu and Yogesh @ Yogi appellants were also charged under Section 376 IPC read with Section 34 PC as well. All the appellants pleaded not guilty and claimed trial.

In support of its case, the prosecution examined PW1 Dr. Alka Bishnoi, who deposed about the medico-legal examination of the prosecutrix. PW2 Dr. Arun Kalra testified that he examined Hari Partap @ Minu and Yogesh @ Yogi appellants and found them fit to perform sexual intercourse. PW3 ASI Om Parkash deposed that he took the prosecutrix for her medico-legal examination. PW4 Om Parkash Yadav, Principal, Government Senior Secondary School, Ateli testified that as per the school record, the date of birth of the prosecutrix was 10.4.1983. PW5 HC Ram Karan and PW6 Constable Dharam Pal tendered in evidence their respective affidavits. PW7 Dalbir Singh testified about being the owner of the Tata Sumo. The scaled site plan of the place of occurrence was proved by PW8 Ved Parkash, Patwari. Gopi Ram, father and Hari Singh, uncle of the prosecutrix were examined as PW9 and PW10, respectively. Both of them supported the prosecution case in its entirety. The prosecutrix herself was examined as PW11. PW12 SI Laxmi

Narain testified that upon completion of the investigation, he prepared the final report under Section 173 Cr.P.C. PW13 Shri Ajay Tewatia, Additional Chief Judicial Magistrate, Narnaul deposed before the trial Court that he recorded the statement of the prosecutrix under Section 164 Cr.P.C. PW14 SI Ram Dutt testified about the various steps taken by him during the investigation of the case. After tendering into evidence the report of the Forensic Science Laboratory Ex.PC, the prosecution closed its case.

When examined under Section 313 Cr.P.C., all the appellants pleaded false implication. However, they did not lead any evidence in their defence.

After hearing learned counsel for the parties and going through the evidence brought on the record, the trial Court went on to accept the prosecution case and convicted and sentenced the appellants, as mentioned above. Hence, the present appeal.

This Court has heard Mr. Vijay Sharma, Advocate for Abhimanyu appellant, Mr. Sudhir Sharma, Advocate for Hari Partap @ Minu and Yogesh @ Yogi appellants and Mr. Randhir Singh, Additional Advocate General, Haryana and minutely scanned the evidence with their able assistance.

The case of the prosecution regarding kidnapping of the prosecutrix and her being subjected to gang rape, thereafter, has been duly proved from the testimonies of PW9 Gopi Ram and PW10 Hari Singh, father and uncle, respectively, of the prosecutrix. Even the prosecutrix stepped into the witness box as PW11 and described, in detail, as to how the appellants had kidnapped her and, thereafter, she being subjected to gang rape by Hari Partap @ Minu and Yogesh @ Yogi appellants.

From the testimony of PW4 Om Parkash Yadav, it stands established that the prosecutrix was born on 10.4.1983 and, therefore, she was 18 years, 4 months and 10 days of age on the date of commission of the crime. Further, PW1 Dr. Alka Bishnoi, after referring to the report Ex.PC of the Forensic Science Laboratory, opined that the prosecutrix had been subjected to forcible sexual intercourse. The vehicle i.e. Tata Sumo said to have been driven by Abhimanyu appellant in which Hari Partap @ Minu and Yogesh @ Yogi had kidnapped the prosecutrix was owned by Dalbir Singh, who stated so while stepping into the witness box as PW7 that his father was the registered owner of the aforementioned Tata Sumo. Both Hari Partap @ Minu and Yogesh @ Yogi appellants were also found by PW2 Dr. Arun Kalra to be fit to perform sexual intercourse. The entire prosecution case taken as such makes out the commission of various offences for which the appellants already stand convicted by the trial Court.

Learned counsel for the appellants have submitted that when the prosecutrix was medico-legally examined, no marks of injuries or struggle were found on her body and, therefore, it is highly improbable that she had been subjected to forcible sexual intercourse. However, fact remains that the prosecutrix was subjected to sexual intercourse by Hari Partap @ Minu and Yogesh @ Yogi appellants. In such a situation, the prosecutrix would not have been able to offer any resistance to the act of rape nor could struggle to escape from the clutches of the rapists.

Learned counsel for the appellants have also submitted that the prosecutrix was having an affair with one of the two appellants who stand convicted under Section 376(2)(g) IPC and she had sent greeting card to him. However, the defence has not been able to elicit any material to show that

such a greeting card was sent to which of the appellants, namely, Hari Partap @ Minu and Yogesh @ Yogi. Thus, it cannot be said that the prosecutrix had an affair with any of the two appellants, who stand convicted for committing the offence of gang rape.

All the appellants had denied the prosecution allegations when they were examined under Section 313 Cr.P.C. However, in support of their plea, they did not examine any witness.

In view of the above, no case is made out for any interference in the conviction of the three appellants, as recorded by the trial Court.

Coming to the quantum of sentence, it may be noticed that for the offence of gang rape, the law requires imposition of minimum imprisonment of ten years. The said sentence of imprisonment has been imposed upon Hari Partap @ Minu and Yogesh @ Yogi appellants, who stand convicted for the offence of gang rape.

However, in the case of Abhimanyu appellant, the conviction is recorded for committing offences punishable under Sections 366 and 363 IPC. From the record, it is made out that Abhimanyu appellant remained in custody as an under-trial for one month and three days. He was again taken into custody on 15.7.2003 when he was convicted by the trial Court and, subsequently, granted the concession of suspension of sentence by this Court vide order dated 27.9.2004. He, thus, spent a period of one year, two months and twelve days as a convict. In all, he has undergone an actual period of one year, three months and fifteen days. This appellant was found to have driven Tata Sumo vehicle at the time of the occurrence. He is resident of

Ateli, whereas his two co-convicts are residents of village Saidpur. He is not shown to be connected to his two co-convicts. He has been facing the agony of criminal prosecution for the last more than 13 years. He had pleaded before the trial Court that he was having aged parents, wife and children to look-after. Taking into consideration the totality of the circumstances, this Court is of the considered view that the remaining sentence of imprisonment of Abhimanyu appellant can be set aside.

Resultantly, the conviction of the appellants, as recorded by the trial Court, is upheld. The sentences of imprisonment as well as of fine, alongwith their default clauses, in respect of Hari Partap @ Minu and Yogesh @ Yogi appellants are maintained.

However, the substantive sentence of imprisonment imposed upon Abhimanyu appellant on both the counts under Sections 366 and 363 IPC are reduced to the one already undergone by him. The sentences of fine, alongwith its default clause, are, however, maintained.

The appeal is, accordingly, disposed of.

March 04, 2015
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(T.P.S. MANN)
JUDGE