

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRA-S-850-SB of 2010

DATE OF DECISION: JULY 8, 2015

TILAK RAJ

...APPELLANT

VERSUS

STATE OF HARYANA

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE M. JEYAPPAUL.

1. Whether the judgement should be reported in the digest? Yes

PRESENT: MR. AMANINDER PREET, ADVOCATE FOR THE APPELLANT.
MR. TANUJ SHARMA, AAG, HARYANA.

M. JEYAPPAUL, J.

1. Accused Tilak Raj has preferred the present appeal challenging the conviction and sentence passed by the trial Court under Sections 363, 366 and 376 IPC.

2. It is the case of the prosecution that accused Tilak Raj who is the nephew of PW11 Mainpal stayed in his house on the night of 15.7.2008 and kidnapped his minor daughter aged 12 years. PW11 lodged a first information report on 25.7.2008, being unable to locate the accused with his daughter.

3. The prosecutrix who was examined as PW1 deposed that on 15.7.2008, when she was sleeping in her house, accused Tilak Raj who is her mother's sister's son, woke her up at 3.00 a.m. and committed rape upon her without her consent. He compelled her to accompany him. He also threatened her that if she did not accompany him, he would kill her. The accused took her by foot to the railway station, Bhiwani. In the morning he

took her to Panipat by train. From Panipat he took her to Faridabad where he kept her in a room for 11 days. During that period, he also committed rape upon her. As the prosecutrix informed the accused that she wanted to go back home and did not like to live with him, the accused left her in his house at Jind and fled away.

4. PW4 Dr.Anil Sharma, having examined the prosecutrix based on the radiological report opined that she was above 15 years and below 17 years at the time of occurrence.

5. PW2 Daya Kishan Sharma, Headmaster of Government High School, Umrawat, District Bhiwani having brought the relevant school register spoke about the Birth Certificate Ex.P1 issued by his school. He also deposed that the prosecutrix was born on 8.8.1996 as per the school records.

6. PW3 Dr.Amrita Bhardwaj medico-legally examined the prosecutrix on 26.7.2008. She found that there was no mark of stain on the salwar worn by the prosecutrix, yet her apparels were sent for chemical examination. No mark of injury was present over her face, breast, abdomen, thigh or any other part of the body. On examination of the genital, she found that there was no tenderness, but the hymen with old torn admitted two fingers easily. The FSL report would disclose that there was no semen detected in the apparels sent for examination.

7. The accused set up a plea in his statement under Section 313 Cr.P.C. that a false case was foisted by PW11 Mainpal, the father of the prosecutrix when the accused demanded back a sum of ₹50,000/- lent to him.

8. DW1 Karan Singh, father of the accused, of course, spoke about such a loan transaction between the accused and the father of the prosecutrix which allegedly culminated in the registration of a false case.

9. Learned counsel appearing for the appellant referring to the evidence of PW4 Dr.Anil Sharma would submit that the age of the prosecutrix was more than 16 years as per medical evidence. Learned AAG, Haryana referring to the evidence of PW2 Daya Kishan Sharma, Headmaster of the Government High School would submit that the school records maintained by the school Authorities will have to be relied upon by the Court.

10. PW11 has categorically stated in the FIR lodged by him on 25.7.2008 that his daughter was 12 years old at the time when the accused kidnapped her. PW2 Daya Kishan Sharma has emphatically stated based on the school records that the prosecutrix was born on 8.8.1996. The certificate Ex.P1 issued by one of the Teachers serving in the school would reflect the date of birth found in the register maintained by the school Authorities. Of course, PW4 Dr.Anil Sharma based on the examination of the prosecutrix subjecting her to radiological examination has stated that her age was between 15 and 17 years. An opinion disclosing the approximate age of the prosecutrix based on the medical examination cannot take precedence over the concrete evidence available in the school records as regards the age of the prosecutrix. Therefore, I have no hesitation to reject the medical evidence and rely upon the school records spoken to by PW2 to assess the date of birth of the prosecutrix. The occurrence had taken place on 15/16.7.2008. The prosecutrix had not even

completed 12 years at the time when the occurrence took place.

11. It was submitted by learned counsel appearing for the appellant that the version of the prosecutrix appears to be totally unbelievable inasmuch as rape had been committed, as per her story, in the midst of the family members who were sleeping in the house. She also did not inform anyone found on her way to various places for stay at the instance of the accused. Learned AAG, Haryana would submit that even if it was a consensual sex with a girl below 16 years of age, the accused is punishable for the charge of rape.

12. The plea of consensual sex does not have any legal consequence, once it is found that the prosecutrix was below 16 years of age. Any amount of consent given by the prosecutrix would not wipe out the rigors of the charge of rape of a minor girl below 16 years of age. Even otherwise, the prosecutrix has deposed that she was raped against her consent. She was threatened by the accused with dire consequences at the time when she was kidnapped by him. No wonder, a child of 12 years had meekly followed the dictates of the accused.

13. Learned counsel appearing for the appellant would submit referring to the evidence of PW3 Dr.Amrita Bhardwaj that no injury was found on any private part of the prosecutrix. Further, it is his submission that FSL report would disclose that no semen was detected.

14. As already held by me, even if it was a consensual sex, that does not dilute the charge of rape as the prosecutrix was found to be below 12 years of age at the time when the occurrence took place. Secondly, the prosecutrix was kidnapped on 15/16.7.2008. But the prosecutrix came into

the custody of her father only on 26.7.2008 and thereupon she was subjected to medical examination by PW3 on the following day. In a gap of about about 10 days, the marks of resistance, if any, on the private parts would have vanished. Further, on production of the prosecutrix on 26.7.2008, PW3 found that there was no stain found on the apparels of the prosecutrix. Under such circumstances, absence of any semen on the apparels of the prosecutrix does not in any way weaken the case of the prosecutrix.

15. Learned counsel appearing for the appellant would further bring to the notice of this Court that there was a delay of 10 days in lodging the first information report. On the other hand, learned AAG, Haryana would contend that the delay of 10 days in lodging the report in a case of rape does not throw any doubt on the case of the prosecution.

16. It is true that there was a delay of 10 days in lodging the first information report. The fact remains that the prosecutrix was taken away not by a stranger, but by her own cousin. Further, PW11 had searched for his daughter and the accused. It is natural for the parents to make a thorough enquiry from the house of the relatives and friends. Therefore, delay occasioned, under the above circumstances, to lodge the first information report by PW11 is explainable. Even otherwise, such a delay in the case of kidnapping and rape does not go to the root of the case.

17. Lastly, it was submitted by learned counsel appearing for the appellant that the appellant was booked in a case of rape by PW11 Mainpal as the accused demanded back the amount of ₹50,000/- lent to him as

pleaded in the statement under Section 313 Cr.P.C. and as spoken to by DW1 Karan Singh, the father of the accused.

18. Firstly, I find that the accused has come out with a concocted story through his statement under Section 313 Cr.P.C. and the evidence of DW1 Karan Singh. When DW1 washed-off his hands to the demand of amount of ₹50,000/- sought for by PW11, his son would not have obliged PW11 by lending a sum of ₹50,000/- to him. The mother of the accused is none other than the sister of the mother of the prosecutrix. Therefore, the mother of the prosecutrix would have definitely resisted any false case being booked at the instance of her husband to save the life of the son of her sister. PW11 Mainpal would not have ventured to foist a case as against his wife's sister's son if at all no such occurrence had taken place. Further, it is totally unbelievable that PW11 Mainpal had foisted a false case on his nephew for the simple reason that the accused demanded back the money lent by him. In my considered view, the defence has set up a totally fabricated version to wriggle out of the charge of rape.

19. It is found that the prosecutrix has established beyond reasonable doubt that the accused has kidnapped minor girl aged below 12 years with an intent to force her to illicit intercourse and committed rape upon her. The sentence imposed for the rape of a minor girl aged less than 12 years is found not disproportionate to the offence committed.

20. For all these reasons, the judgement of conviction and sentence passed by the trial Court stands confirmed and the appeal stands dismissed.

July 8, 2015
Gulati

(M. JEYAPPAUL)
JUDGE