

IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

CRA No.S-1689-SB of 2014

Date of decision: 28.01.2015

Joginder

.....Petitioner

versus

State of Haryana

.....Respondent

CORAM: Hon'ble Mr.Justice Kuldip Singh

Present: Mr.Anshuman Dalal, Advocate for the appellant
Mr.Chetan Sharma, AAG Haryana

1. *Whether Reporters of Local Newspapers may be allowed to see the judgment ? yes*
2. *To be referred to the Reporters or not ? yes*
3. *Whether the judgment should be reported in the Digest? yes*

Kuldip Singh, J.

By this judgment, I shall dispose of Criminal Appeal No.S-1689-SB of 2014 filed by Joginder against the judgment dated 7.2.2014 passed by the learned Additional Sessions Judge, Bhiwani, vide which he was convicted under Sections 376, 344, 506 Part-II IPC and vide order dated 10.2.2014 sentenced to undergo RI for seven years and fine of Rs.3000/-, in default thereof, to further undergo SI for six months under Section 376 IPC, RI for two years and fine of Rs.2000/-, in default thereof, to further undergo SI for four months under Section 344 IPC and RI for three years and fine of Rs.2000/-, in default thereof, to further undergo SI for four months under Section 506 Part-II PC. All the sentences were ordered to run concurrently. The appellant was further directed to pay amount of

Rs.50,000/- by way of compensation to the prosecutrix under Section 357 Cr.P.C.

The prosecution case as coming out from the First Information Report is that on 11.7.2012 at about 4.00 P.M., the prosecutrix accompanied by her father visited police station Sadar Bhiwani and submitted application against Joginder for taking action against him for kidnapping, commission of rape and receiving amount on pretext of employment and extending threat of dire consequences to her. Prosecutrix stated that she is resident of village Lohar Nathuwas. She stated that her application is written by her in presence of Smt.Kusum Sharma, Legal Aid Counsel. It was alleged against the accused that on 7.3.2011, Joginder accused had telephoned her at her residence and told her father that the prosecutrix was to be employed at Sirohi. Her father accompanied the prosecutrix till Rewari. Joginder was living in the adjacent house of the prosecutrix. For sometime, the accused had good relations with the family members and younger brother of the prosecutrix. Therefore, he was trusted by her family. In place of taking to Sirohi, the accused took the prosecutrix to Alwar and there she was kept for 5-6 months. Accused administered her intoxicating material, beaten her and promised to get her employed. Accused also offered to get job of T.T. in Railway to the younger brother of the prosecutrix. Accused also took money from her. Accused compelled the father of the prosecutrix to sell the plot and also took one buffalo and calf, one chain (*kanthi*) of three *tolas* for the said purpose. Accused wanted to take forcible possession of the land of the father of the prosecutrix.

As her father was illiterate so the thumb impressions of the father of the prosecutrix were obtained illegally. Accused misrepresented that his grand father is Inspector General of Police and his brother is Gunman. He also claimed that he himself is employed as TT in Railways. He had assured the prosecutrix that it is very easy for him to get her employed. From Alwar, she was taken to Hisar and there also accused had been committing rape with her. Then she was taken to Dev Nagar, where she was also beaten up, given intoxicating material and was sexually exploited. Then he started giving threat on telephone, asking the prosecutrix to come back to him otherwise her brother and father will be got murdered. Accused also made the family of the prosecutrix to sell the plot. He also extorted Rs.38 lacs from them, Rs.10 lacs for getting employment to the brother of the prosecutrix and Rs.2 lacs for getting employment to the prosecutrix. Her father was forced to sell plot. Later on, accused told the prosecutrix that Rs.15 lacs are required and documents of the land are to be shown. Accused offered to get the land transferred in her name. He again obtained the thumb impressions of the father of the prosecutrix. When her father started demanding amount, accused threatened him with dire consequences. Accused went to the fields and destroyed the crop. Accused refused to pay back the amount and spoiled her life. Her brother had also sent amount from abroad, which was also taken by the accused. She was confined and raped for two years. She came stealthily in auto-rickshaw. Accused threatened to set ablaze the prosecutrix and shoot her.

Accused also threatened her that if she disclosed anything to her

parents or the police, nothing will happen to him as his grandfather is I.G. in police, he is T.T. in Railways and his brother is gunman. Therefore, request was made for taking action against the accused. On the said basis, FIR No.300 dated 11.7.2012 under Sections 376, 344, 420 and 506 IPC was registered at police station Sadar Bhiwani.

On 12.7.2012, the accused and on 11.7.2012 prosecutrix were got medico legally examined.

On 12.7.2012 Buffalo and calf were got recovered from dairy farm of the accused.

During the course of investigation, on 16.7.2012 statement of the prosecutrix under Section 164 Cr.P.C. (Ex.PF) was recorded.

After completion of investigation, challan was presented.

The trial Court framed the charges under Sections 344, 376, 506 and 420 IPC to which the accused pleaded not guilty and claimed trial.

In support of its case, the prosecution examined ESI Prem Singh (PW1), Constable Joginder (PW2), ASI Dalip Singh (PW3), Dr.Ramesh Lamba (PW4), Prosecutrix (PW5), Kusum Sharma advocate (PW6), Dharmender Singh, Draftsman (PW7), Dr.Sheetal (PW8), Kuldeep, brother of the prosecutrix (PW9), Shri R.K. Jain, the then learned Additional Chief Judicial Magistrate, Bhiwani (PW10), ASI Amir Singh (PW11), Constable Shamsheer Singh (PW12), ASI Ramesh Kumar (PW13), Baljeet Singh, father of the prosecutrix (PW14).

When examined under Section 313 Cr.P.C, the accused raised the following defence:-

“I am innocent. I have been falsely implicated because prosecutrix was under influence of her brother and father and she was tutored by them to depose against me. I have never committed any cheating against the complainant party on the contrary one of the party of the agreement in question namely Pritam, who is friend of the accused. There was a conspiracy on the part of the complainant party to avoid the performance the contractual liability because they have earlier sold the property in question to someone else, hence the question of selling it again does not arise. In fact, prosecutrix was living with me with her free consent with the permission of her father and brother and she keeps on visiting them on regular basis. This case is fastened upon me by the complainant party to extort money from me. I have never committed rape upon the person of prosecutrix. I have never illegally confined her nor I had ever threatened her for anything.”

In defence, the accused examined his father Suresh (DW1), Sombir (DW2) and closed the defence evidence.

After hearing learned Public Prosecutor and learned counsel for the accused, the learned Additional Sessions Judge, Bhiwani convicted and sentenced the accused under Sections 376, 344, 506 Part-II IPC. However, he was acquitted under Section 420

IPC.

I have heard learned counsel for the appellant, learned State counsel and have also carefully gone through the file.

The testimony of four witnesses is important to determine the genesis of the occurrence. First is the prosecutrix (PW5), second is her brother Kuldeep (PW9), third is her father Baljeet Singh (PW14) and fourth is Investigating officer ASI Amir Singh (PW11).

The prosecutrix, while appearing as PW5 has reiterated her case. She asserted that the accused Joginder is a close friend of her brother Kuldeep. Joginder told Kuldeep that he is working as TTE (Travel Ticket Examiner) in Railway Department, his grandfather is Inspector General and his brother is gunman. He further told that he belongs to Rohtak and that he would help them in arranging a job for the prosecutrix, over which, her father took her to Rewari and left her with the accused. It was agreed that Joginder will take the prosecutrix to Sirohi for employment in Rajasthan police. On 7.3.2011 her father left her at Railway station with Joginder. However, accused Joginder, instead of taking her to Sirohi, took her to Alwar and there kept her for 5-6 months. Prosecutrix claimed that accused had committed rape on her. Thereafter, accused took her to Hisar and threatened that if she disclosed this fact to her family, then she as well as her family members will be killed. He kept on raping her. In June 2012, he took her to Dev Nagar and raped her there. She further claimed that accused Joginder took Rs.3 lacs from her family for getting her job. He also took Rs.10 lacs for providing job to

her brother Kuldeep. He took Rs.38 lacs in total from his father and also arranged for sale of plot in Harsukh Dhani belonging to her father. She claimed that her father had taken some amount on interest from the village. Some amount was sent by his brother living in Oman. When her father asked the accused to return the money, he threatened them. He did not let her leave Dev Nagar Bhiwani, therefore, she stealthy came from Dev Nagar Bhiwani and reached home in June 2012. Then she moved a complaint to police (Ex.PC), which was written by the lady constable. She also proved her statement recorded under Section 164 Cr.P.C.

It is to be noted that age of the prosecutrix given at the time of her examination in Court on 19.2.2013 was 20 years. Meaning thereby she was around 18 years in the year 2011. So far as age of the accused is concerned, he has given his age as 22 years when he was examined under Section 313 Cr.P.C. in August 2013. Meaning thereby, at the time of crime his age was 19 to 20 years. Therefore, at the first instance, it looks very strange that a young girl was left by her father with a young boy of around same age at Railway station Rewari on 7.3.2011 and she stayed with the accused till June 2012 i.e. for one year and three months. It is not normal that a young girl is left with young boy for such a long period whatever may be pretext. In the meanwhile, it is claimed that accused had been taking money from father of the prosecutrix. Now when the cross-examination of the prosecutrix is scrutinized, she claimed that she was not in touch with her parents from 7.3.2011 to June 2012. She was kept in underground house in Alwar. She was

never allowed to step out. She used to use bathroom existing outside the room. Accused Joginder used to bring food articles. She was taken from Hisar to Alwar on a train in which other passengers were also travelling. She stated that she does not know locality in Hisar where she was kept. She stayed there for 2 ½ months. Then she stated that she was beaten up many a times by the accused Joginder at Hisar. There was house in the colony. She was made to cook food for the accused. She denied the suggestion that she had married accused Joginder in Jaipur in *Ram Mandir*. She stated that she was taken to Dev Nagar Bhiwani in the year 2012. There was a dairy in Dev Nagar in which she was forced to live. She denied that the dairy was out of partership between her brother Kuldeep, her father and Joginder. She admitted that accused Joginder took a buffalo from their house. She was not in the house at that time. She saw that buffalo in the dairy. Regarding her educational qualification, she stated that she has taken admission in Rajiv Gandhi Woman College in BA 1st year and studied there for one year. She admitted that her father or brother did not make any complaint to the police regarding her being missing. She admitted that she was made to talk with her parents by the accused on 4-5 occasions.

Kuldeep (PW9) brother of the prosecutrix in his examination-in-chief never stated that accused was his friend and that any promise of job was made to him. He stated that on 12.7.2012, accused got recovered one buffalo and one calf from Dev Nagar Bhiwani in his presence which was taken by the police into possession vide memo (Ex.PJ). He also admitted that no complaint

was made to the police regarding her sister. He stated that accused had taken her sister on 7.3.2011. She came one to two times to their house of her own. He further stated that he and other family members used to talk with the prosecutrix on mobile phone one or two times. The admission of Kuldeep shows that the prosecutrix was in constant touch with her parents on mobile phone and that even during the period she was allegedly kept by the accused from 7.3.2011 till June 2012, she visited her house once or twice.

Now while examining the statement of Baljit Singh (PW14) father of the prosecutrix, it comes out that he has stated in his statement saying that on 7.3.2011 accused asked him to bring prosecutrix and three of them went to Rewari together in train. Accused told him that he would leave prosecutrix at Sirohi but instead took her to Alwar and then to Hisar and then to Bhiwani and had been committing rape with her. He further asserted that in the meanwhile accused had taken Rs.38 lacs from him in lieu of providing a job. Accused also got executed false agreement and took his thumb impressions on point 'B' and 'C' at Mark A. In cross-examination, he admitted that her daughter was living with the accused for one year. He did not make complaint in this regard to the police during the said period. He denied that after Joginder took her daughter, she had come to see him. He also denied to have talked to her daughter on mobile phone. He further stated that he had also sold a buffalo to accused for Rs.27,000/- though he claimed that amount was not paid to him. He further stated that the plot measuring 600 square yards situated in Harsukh Dhani was standing

in the name of his wife. He denied that the agreement dated 28.2.2012 Mark A was executed with Pritam who is friend of Joginder.

ASI Amir Singh (PW11) has recounted the entire investigation. In cross-examination, he has admitted that during investigation it came out that the prosecutrix used to visit her village Nathuwas Dev Nagar, Bhiwani. The investigating officer admitted that he did not got to Alwar or Hisar for investigation.

The evidence of the prosecutrix, her brother and father coupled with the evidence of Investigating Officer when put together makes it clear that the prosecutrix, a young girl of about 18 years was left with the accused by her father on 7.3.2011 at Rewari. It is claimed that she was to be taken to Sirohi for providing job but she was taken to Alwar. It is strange that father will leave the young girl with accused, who is a young boy of same age and will not make any inquiry for complete one year and three months till the prosecutrix returned in June 2012 and will trust the claim of a boy of 19-20 years that he will provide job to the prosecutrix and his son. The statement of the Investigating Officer as well as Kuldeep brother of the prosecutrix shows that during this period the prosecutrix had visited her house and that she was in touch with her family on mobile phone. In the meanwhile, in February 2012, accused also allegedly got agreement executed from Baljeet Singh, father of the prosecutrix regarding plot which means that accused had been visiting the family of the prosecutrix even during this period. He even visited the family to collect Rs.3 lacs for providing job to the prosecutrix and Rs.10

lacs for providing job to Kuldeep brother of the prosecutrix and also allegedly collected the sale consideration of the agreement, which shows that even during the period from 7.3.2011 till June 2012, the prosecutrix as well as the accused had been coming to the house of the prosecutrix. Therefore, the story as sought to be projected by the prosecution that the prosecutrix was kidnapped and forcibly raped falls flat. The prosecutrix stayed with the accused for 5-6 months at Alwar, then she also stayed for few months at Hisar and then even stayed at Dev Nagar colony Bhiwani. It is not possible that for one year and three months, the accused was threatening the prosecutrix and that she was not able to contact anybody to make the complaint against the accused. Even during this period, the accused is stated to have purchased buffalo from the father of the prosecutrix and it is stated that he did not pay sale consideration of the buffalo. So it means that the prosecutrix and accused had been visiting the house of Baljeet Singh, father of the prosecutrix during the intervening period for one or the other purpose. Therefore, the prosecution story of kidnapping by way of enticing or taking away cannot be believed.

The prosecutrix was 18 years and she was apparently living with the accused voluntarily. She returned in June 2012 and lodged the FIR on 11.7.2012 i.e. after a gap of about two weeks.

The perusal of file further shows that the prosecutrix was subjected to medico legal examination on 11.7.2012 and report of Laboratory is Ex.PE, in which, human semen was detected on underwear (Ex.1 and Ex.5), stated to be of the prosecutrix and accused. I am of the view that when the prosecutrix was living with

her family two weeks before the registration of FIR, without any contact with the accused, finding of semen on the underwear of the accused and the prosecutrix cannot be connected with the sexual intercourse in the present case. Further the perusal of agreement Mark A shows that Baljeet Singh complainant had agreed to sell 11 kanals of land to one Pritam stated to be friend of the accused for Rs.16,50,000/-. He was paid Rs.10 lacs as earnest money. The date of sale deed was fixed as 31.8.2012. The agreement dated 28.2.2012 also bears the signatures of accused as witness. It goes to show that on 28.2.2012 atleast accused had meet Baljeet Singh who did not enquire about her daughter, who was left with him and rather agreed to execute an agreement of sale in which accused was the witness. He received Rs.10 lacs as earnest money and before the date of sale i.e. on 31.8.2012, the present case was got registered on 7.11.2012, which shows that the real controversy is something else and not the present allegation of kidnapping and rape.

In view of the foregoing discussions, I come to the conclusion that the prosecution has failed to prove its case beyond all reasonable doubts. Accordingly, I grant benefit of doubt to the accused and acquit him of the charges framed against him under Sections 376, 344 and 506 Part II IPC. He be released forthwith if not required in any other case.

28.01.2015*gk***(Kuldip Singh)
Judge**