

Recording the above submission made by learned counsel for the appellants, the appeal qua appellant Mohammad Shamim @ Shambu stands dismissed as not pressed.

3. It is the case of the prosecution that accused Mohmmmed Nadim @ Neema had sexual intercourse with PW3, the prosecutrix in this case under threat in the absence of her parents. He also threatened to kill her brother if she disclosed this fact to any body. Accused Mohmmmed Nadim @ Neema committed rape upon her against her consent and thereafter, she became pregnant. When the factum of pregnancy was informed to accused Mohmmmed Nadim @ Neema, he took her to village Lallian in the guise of procuring medicine. Accused Neema committed rape on prosecutrix against her consent at village Lalliyan also. Thereafter, she was taken to various places where accused Neema committed rape upon her.

4. PW4 Surinder Pal is the father of the prosecutrix. He spoke about the illicit relations developed by accused Neema with his minor daughter in his absence and the fact that she was taken away forcibly from his house.

5. PW1 Dr. Sukhwinder Kaur medico legally examined the prosecutrix. The prosecutrix was pregnant as per medical examination undertaken by PW1.

6. PW9 Dr. Ashok Bhagat, who was a Radiologist certified that the prosecutrix carried normal foetus of 22 weeks, based on the ultrasound examination he conducted on the prosecutrix. The above

medical evidence would go to establish that prosecutrix was carrying a foetus at the time when she was secured from the custody of accused Mohmmmed Nadim @ Neema and subjected to medical examination.

7. Coming to the age of the prosecutrix, PW2 Daljinder Kaur, the Head Mistress of the school where the prosecutrix studied, brought admission and withdrawal register and deposed that the prosecutrix was born on 6.6.1994 as per the register maintained by the school. The evidence of PW2 is corroborated by the evidence of PW3 and PW4.

8. PW8 Dr. Pritpal Singh examined accused Neema and opined that there was nothing to suggest that he was unable to perform sexual intercourse.

9. Accused Neema has pleaded that he was innocent but a false case was foisted on him in his statement under Section 313 Cr.P.C.

10. The trial Court having relied upon the evidence of PW3 the prosecutrix in this case, in the background of the other supportive evidence including the medical evidence, came to the conclusion that accused Mohmmmed Nadim @ Neema having hatched a criminal conspiracy, kidnapped the minor girl from the lawful custody of PW4 and committed rape upon her.

11. As regards the rape committed by accused Mohmmmed Nadim @ Neema, the prosecutrix has categorically deposed that

accused Mohmmmed Nadim @ Neema committed rape upon her under threat. She also deposed that she had never given consent. Even assuming that there was some consent on the part of the prosecutrix, the consent given by the prosecutrix who was a minor is no consent in the eyes of law.

12. The prosecutrix had been retrieved from the custody of accused Mohmmmed Nadim @ Neema by PW11 and entrusted to PW5. The prosecutrix without any self contradiction has categorically deposed that the accused committed rape upon her. The medical evidence on record also would go to establish that the prosecutrix was carrying a foetus of 22 weeks.

13. Learned counsel appearing for the appellant Mohmmmed Nadim @ Neema would submit that the birth certificate of the prosecutrix was not produced to establish beyond reasonable doubt that the prosecutrix was born on 6.6.1994. True it is that no birth certificate was produced in this case but there is no reason to reject the date of birth of the prosecutrix found entered in the admission and withdrawal register maintained by the school. In the absence of birth certificate, the birth entry in the school records can very well be relied upon to determine the age of the prosecutrix.

14. Learned counsel appearing for the appellant would submit that some leniency may be shown in the matter of sentence. The appellant was sentenced to the maximum period of 10 years rigorous imprisonment for the offence under Section 376 of the

Indian Penal Code.

15. It is a case where the appellant Mohmmmed Nadim @ Neema had subjected the prosecutrix to rape upon several occasions. The prosecutrix was just 14 years old at the time when the occurrence took place. Even at this age she had resisted the act of the accused but she failed. Accused succeeded in committing rape by wielding threat. The prosecutrix was carrying a foetus of 22 weeks. Now it is reported that she has also delivered a male child. Under such circumstances, I do not find any reason to accede to the plea for reduction of sentence awarded to accused Mohammed Nadim @ Neema.

16. The trial Court has rightly evaluated the evidence on record and recorded conviction and awarded suitable sentence. There is no merit in the appeal qua Mohmmmed Nadim @ Neema and, therefore, the appeal qua Mohmmmed Nadim @ Neema stands dismissed.

**(M. JEYAPPAUL)
JUDGE**

May 20, 2015
p.singh