

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRA-S-2587-SB of 2014 (O&M)
Date of Decision: 17.12.2015

Gourav

Versus

State of Punjab

.....Appellant

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.....Respondent

CORAM: HON'BLE MR. JUSTICE SHEKHER DHAWAN

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present:- Mr. Arun K. Bakshi, Advocate,
for the appellant.

Mr. Deepak Garg, AAG, Punjab.

SHEKHER DHAWAN, J

Present appeal against judgment of conviction dated 11.02.2014 and order of sentence of even date passed by Additional Sessions Judge, Pathankot, whereby appellant Gourav was convicted and sentenced as under:

<i>Offence U/s</i>	<i>Substantive sentence</i>	<i>In default</i>
U/s 363 IPC	RI for 2 years with fine of Rs.2,000/-	In default to undergo further RI for 2 months.
U/s 366 IPC	RI for 4 years with fine of Rs.4,000/-	In default to undergo further RI for 4 months.
U/s 376 IPC	RI for 10 years with fine of Rs.10,000/-	In default to undergo further RI for 10 months.
All sentences were ordered to run concurrently.		

2. Relevant facts of the case that the prosecutrix (name not disclosed) was allegedly kidnapped by three accused persons, namely, Gourav, Harish @ Monti and Yudhvair Saini on 21.02.2010 from S.D. College, Khosla Mill, Sarna. Prosecutrix aged about 17½ years was a student of B.A.-III year and had gone to her college. As she had not gone back to her parental home till 6 PM, Sushma, mother of prosecutrix, reported the matter to the police and police started the investigation. Thereafter, on 11.03.2010 Sham Lal, father of prosecutrix, got recorded DDR No.16 dated 11.03.2010 and name of appellant Gourav was given. Later on, prosecutrix came back to her parental home on 26.04.2010. Prosecutrix was produced before police and her statement was recorded by the police and the prosecutrix named Gourav as an accused, who had kidnapped her by way of inducement with the promise to perform marriage and thereafter she was taken to different places and made physical relation with her on false promise. Prosecutrix was got medico-legally examined from Civil Hospital, Pathankot and Section 376 IPC was added. Investigation was completed and challan was presented in the Court.

3. During trial of the case, learned trial Judge after completing various formalities including framing of charge against the accused persons for the commission of offences under Sections 363, 366-A and 376 IPC, recording of statement of prosecution witnesses, examining of accused under Section 313 Cr.P.C. and after considering the prosecution evidence and defence version held appellant Gourav guilty and convicted and sentenced him for the said offences.

4. During trial, an application under Section 319 Cr.P.C. was moved and on the basis of same Harish @ Monti and Yudhvair Saini were

also ordered to be summoned to face trial, vide order dated 19.11.2011. However, after trial both the accused Harish @ Monti and Yudhvair Saini were acquitted by learned trial Judge and appellant Gourav was convicted. Present appeal is by appellant Gourav only.

5. Learned counsel for appellant mainly argued that the prosecutrix had gone in the company of appellant Gourav of her own. Thereafter, both of them had performed marriage and lived as husband and wife for a period of about 2 months and 5 days. During that period, she visited different places i.e. Kartarpur, Jalandhar, Pathankot and Amritsar. Had it been a case of false promise or any threat etc., she had ample time and opportunity to run away and to go back to the company of her parents but that was not the case. More so, the version made by prosecutrix is contradictory at different stages. Her first statement was recorded by the police on 05.05.2010 whereby she had implicated present appellant Gourav only. At that stage she refused to make any statement before the magistrate under Section 164 Cr.P.C. Subsequently, she appeared as PW-2 during trial of the case on 22.11.2010 and she named three persons as accused. As per prosecutrix there appellant/accused in this case had taken her away from lawful guardianship with the false promise and Gourav and Harish joined them later on. As such, if statement of prosecutrix as PW-2 dated 22.11.2010 is taken into consideration Yudhvair was the main accused and that version was in quite contrast to her earlier statement dated 05.05.2010, Sushma, mother of the prosecutrix, had simply reported to the police regarding missing of prosecutrix and when she appeared as PW-1 she named all the three accused persons. As per learned counsel for the appellant this contradictory version in the statement of prosecutrix makes

the prosecution case highly doubtful and wholly unreliable. So, the present appellant be acquitted.

6. Learned State counsel while arguing on the point that appellant had taken away minor girl of the age of less than 18 years and forcibly performed sexual intercourse with her with the false promise of performing marriage and committed different offences including kidnapping from lawful guardianship as well as commission of offence of rape upon minor girl, who was admittedly less than 18 years of age. She was not of the age of giving a valid consent as per law because she was less than 18 years of age. Otherwise, the prosecution case has been duly proved on file as per statement by prosecutrix, who has stated in so many words that she was taken from college with the false promise to perform marriage and, thereafter, she was sexually exploited by the appellant/accused, who had been facing the trial. Medical evidence available on file fully supported the ocular version. Investigating proceedings were carried out and the same also proved the guilt of the accused. Learned trial Judge has rightly held the appellant-accused guilty.

7. Having considered the above facts, this Court is of the considered view that learned trial Judge has rightly considered all these aspects while recording judgment of conviction of present appellant Gourav. Learned trial Judge has rightly taken the view that date of birth of prosecutrix is 18.06.1992 and on 21.02.2010 she was less than 18 years of age, when she was taken away from the custody of her lawful guardianship. She was not of the age of giving valid consent as per law. Otherwise, the prosecution case has been duly proved on file at least against present appellant Gourav on the basis of statements of prosecutrix and Sushma

(mother of the prosecutrix), which is duly supported by medical evidence. The defence version is not reliable at all and the same has rightly been discarded by learned trial Judge. As such, the present appeal against judgment of conviction dated 11.02.2014 is without any merit and the same stands dismissed.

8. As regards to appeal against the order of sentence, learned counsel for the appellant urged that appellant has already been undergone actual sentence of five years and six months by now and a lenient view on that point be taken. Learned State counsel submitted that it was not a case of reduction of sentence, as appellant has ruined the life of young girl.

9. Having considered the facts of the case and arguments advanced by learned counsel for the appellant on the point of sentence, this Court is of the considered view that lenient view certainly can be taken on the point of sentence and substantive sentence under Section 376 IPC is reduced from ten years to seven years and directions to pay a fine of ₹2,000/- and in case of default of payment of fine to undergo one month rigorous imprisonment.

10. With the above modification/reduction in the order of sentence, the present appeal is dismissed on merit.

December 17, 2015

naresh.k.

**(SHEKHER DHAWAN)
JUDGE**