

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRA-S No.2097-SB of 2003

Date of decision: 4th November, 2015

Kishan Kumar and others

... Appellants

Versus

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. V.S. Rana, Advocate
for the appellants.

Mr. J.S. Brar, Asstt. Advocate General, Punjab.
for the respondent/State.

FATEH DEEP SINGH, J.

This is an appeal by convict/appellants Kishan Kumar, his mother Chander Patti @ Battar, father Mauji Ram and maternal uncle's son Satbir, who were found guilty by the Court of learned Additional Sessions Judge (Adhoc), Fast Track Court, Ludhiana in case bearing FIR No.32 dated 12.05.1999 pertaining to Police Station Division No.2, Ludhiana and after holding them guilty for commission of offences under Sections 376/366/34 IPC were sentenced as under:

Kishan Kumar

u/s 376 IPC

RI for seven years and fine of ₹1000, in default of fine, further RI for three months.

u/s 366 IPC

RI for seven years and fine of ₹1000, in default of fine, further RI for three months.

Mauji Ram

u/s 366/34 IPC RI for seven years and fine of ₹1000, in default of fine, further RI for three months.

Chander Pati @ Battar

u/s 366/34 IPC RI for seven years and fine of ₹1000, in default of fine, further RI for three months.

Satbir

u/s 366/34 IPC RI for seven years and fine of ₹1000, in default of fine, further RI for three months.

Heard Mr. V.S. Rana, Advocate for the appellants, Mr. J.S. Brar, Assistant Advocate General, Punjab for the respondent/State and perused the records of the case.

The brief narration which is necessitated on the factual aspect is that on 12.05.1999 Babu Singh, father of the prosecutrix (name withheld), lodged a complaint before the police that his daughter aged around 14/15 years, a student of 6th Class, went to her school on the morning of 07.05.1999 and thereafter never came back and suspected the role of the convict/appellants in commission of the crime having enticed her away. On the basis of this, the FIR in question was registered and it is subsequent thereto on 13.05.1999 the girl and the boy were got recovered from Railway Station, Ludhiana leading to their medical examination and subsequent prosecution.

The prosecution examined PW-1 Dr. Jagdish Kaur Sidhu who examined the girl, PW-2 Dr. Manmohan Singh who examined the boy and thereafter complainant father of the prosecutrix Babu Singh

PW3 testified followed by the deposition of her mother Bala Devi PW4 and thereafter PW5 the girl herself was examined. The prosecution thereafter examined PW7 ASI Ranjit Singh, PW8 Sukhdeep Kaur teacher to prove age of the girl, PW9 Harminder Singh Draftsman, PW10 HC Gurcharan Singh who took the samples to the laboratory followed by the deposition of MHC Jagtar Singh PW11 who received the sample from the Investigating Officer and handed it over to PW10. HC Hardev Singh PW12 testified the arrest of the accused in his presence by the Investigating Officer and lastly PW13 Hari Ram Chief Pharmacist proved records of the MLR. In the process, prosecution proved documents Ex.P1 to Ex.P13.

Appreciating the submissions of the two sides, the golden principle of criminal jurisprudence that the onus to prove its case always rests upon the prosecution which is supposed to prove its case beyond shadow of reasonable doubt and which can never be displaced, by the weaknesses of the defence which cannot in any manner ameliorate the prosecution version. Though in such cases of allegations of rape and that too with a minor, the Court needs to be very sensitive but at the same time it has to be ensured that the prosecution story is imbued with truthfulness and not impregnated with falsehood. The very allegations of the father, who admittedly is not an eye-witness and has testified as PW3 on the basis of hearsay and suspicion that he suspected that since the accused were residing in his neighborhood he suspected role of the accused in commission

of the crime and since the day of occurrence on 07.05.1999 till 12.05.1999 i.e. for a period of almost 5/6 days family has kept mum inspite of the own admission of PW3 that the police post was nearby. Though mere delay in registration of the FIR is not fatal to the prosecution but needs to be taken account of to rule out any false implication or introduction of tainted version. As has been highlighted on behalf of the appellants side, even recovery of the girl though the prosecution claims and which is the version spelled out by the Investigating Officer PW7 ASI Ranjit Singh that they were recovered from the Railway Station Ludhiana but the very cross-examination of PW3 father Babu Singh, PW4 mother Bala Devi and PW5 the prosecutrix herself leaves no scope to doubt that it was the boy and the girl at the instance of parents of the boy, have surrendered before the police at the Police Station, are matters which leaves no scope to ward off suspicion on the truthfulness of the prosecution version. What further erodes the very credibility is that inspite of the girl having been claimed to have been recovered on 13.05.1999 till 16.05.1999 she was never medically examined, are matters which create a suspicion on the very veracity of the allegations of rape so levelled by the prosecution.

To the very specific query of this Court, learned State counsel could not highlight in what manner the very allegations of rape have fructified, as even PW1 Dr. Jagdish Kaur Sidhu who medically examined the girl, did not testify it so nor the alleged laboratory report

has been proved on the record to highlight the allegations of rape. More so, even the very medical examination of the girl by way of Ex.PA and the testimony of the doctor establishes that neither there was any fresh marks of injury and the hymen too was healed and apparently reflects from this testimony of the doctor that the girl was habitual to sexual intercourse and thus are matters which certainly have a bearing on the case in hand.

Going through the evidence of the girl herself as PW5, wherein she admits and so her father as to her photographs Ex.D1 with the boy shows that the girl definitely was in a relationship with the boy and which is further materially corroborated by her letters Ex.DA, Ex.DB and Ex.DC, which were put to her in cross-examination, certainly coupled with the fact that it is the own case of the prosecution that the place from where the girl is alleged to have been taken away is a busy locality hardly one minute's walking distance from the house of the girl and that from Ludhiana the girl accompanied the boy in a bus to Chintpurni and thereafter by bus to Sonipat and then to Bahadurgarh, and in-between had stayed for the night in Dharamshala at Chintpurni as well as at Bahadurgarh at the house of sister of the boy and thereafter she had returned to Ludhiana by road and the own admission of the girl that throughout this period she never raised any alarm, shows the very element of voluntariness of the girl and thus, adds to the woes of the prosecution story.

As if that was not enough, in the light of contentions of learned counsel for the appellants which could not be refuted in any manner by learned State counsel, father of the girl claims that she was aged around 14/15 years and which is so in the deposition of the mother PW4 Bala Devi and though none of the parents have given date of birth of the girl or proved exactly her age and the only semblance of evidence that has come across by the prosecution is the deposition of PW8 Sukhdeep Kaur teacher of the school where the girl lastly studied. The certificate brought on the record as PW2/E is a mere photostat copy purported to be attested by the Principal of the school. What comes to the mind of this Court in the light of arguments of the two sides neither, as is admitted by this witness, the original has been brought and the copy so proved to be a true copy of the original without any secondary evidence having been brought about. Even the person who made this entry or the original record of this entry were never brought before the Court. Even the clerk who has so entered it in the records has not been examined and even father and the mother never mentioned about having got this entry made in the school record. Even no proof of municipal record has been proved on the record to corroborate this fact.

It is well enunciated principle of law that mere proof of document would not tantamount to proof of its contents, as has been laid down in **1988 CCC 503 SC** in the case of '**Birad Mal Singhvi v. Anand Purohit**'. More so, an entry of date of birth in a school

certificate carries no probative value unless and until the person who made the entry is examined. So none of these essential requirements of law of evidence stands fulfilled. Not only this, even the deposition of PW1 Dr. Jagdish Kaur Sidhu who examined the girl, has only proved the MLR by way of its photostat copy which has been merely exhibited and thus, cannot be taken into account as a piece of evidence though subsequently without seeking the permission of the Court for additional evidence the same has been sought to be proved through a subordinate in the hospital administration by way of PW13 Hari Ram Pharmacist but since it is not the claim of this witness that this document was prepared in his presence and has only brought the original register and though the prosecution deceptively has sought to fill in the lacuna in its case but his cross-examination leaves no scope to doubt that his knowledge of this is mere on hearsay when he is unable to say as to who has written the original MLR and that he at no point of time was associated with the examination and similar is the fate in his cross-examination regarding MLR of the boy, the original of which has never been proved by Dr.Manmohan Singh PW2 and therefore, the very MLRs could not be legitimately proved on the record by the witnesses who prepared the same, have certainly a debilitating effect on the prosecution story.

As if it was not enough, it emancipates from the arguments and the evidence that upon x-ray examination of the girl, her age has been determined to be between 17-19 years. Assuming that it is not

the definite opinion with margins on both sides and the admission of the girl herself depicts her age to be between 18-19 years, certainly creates a doubt over the very veracity of the prosecution as to her age and from this overall evidence brought on the record to this effect it can be safely concluded that the girl was certainly above 17 years of age and therefore, to the mind of this Court was mature enough to understand the events of life.

Going through the testimonies of the parents PW3 Babu Singh and PW4 Bala Devi as well as the girl herself PW5, especially their cross-examinations, puts them in a bad light and the admission of the father who identified the photographs of the girl Ex.P1 had volunteered about it that she wanted to marry the accused Kishan Kumar on account of which he was very much annoyed with his daughter as well as this accused, are matters which leave no scope to doubt that all was not well between them prior to the alleged occurrence.

The admissions of the mother Bala Devi that they had sent her husband's brother to the accused family and who brought the boy and the girl to Ludhiana and claims that her daughter was in the house of sister of the accused from where her husband's brother had brought the girl to their house straightaway further seriously contradicts the prosecution version and the truthfulness of deposition of the Investigating Officer ASI Ranjit Singh.

On perusal of the entire prosecution evidence and the principal witnesses Babu Singh, Bala Devi as well as the girl, there is no cogent evidence against the remaining accused namely Chander Patti @ Battar mother, Mauji Ram father and Satbir cousin of the principal accused Kishan Kumar. Neither any role is attributed to them in the commission of the offence of either kidnapping, enticement nor the element of rape is concerned. The mere fact that the girl and the boy were desirous of marrying each other does not mean and cannot be construed, as has been appreciated by the trial Court that the remaining accused have any role to play in commission of the offence. Thus, from this all it clearly emerges that the prosecution story is impregnated with falsehood, unworthy of acceptance. The learned trial Court certainly has fallen into an error and on mere conjectures and surmises has arrived at a conclusion which is bereft of any merits. The impugned judgment is based on misconstruing of evidence and being illegal and infirm needs to be set aside and is thus set aside by way of acceptance of this appeal thereby acquitting all the appellants/accused. Records be sent back.

(FATEH DEEP SINGH)
JUDGE

November 4, 2015
rps

Whether to be referred to the Reporters or not? Yes