

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl. Appeal No.952-SB of 2000(O&M)
Date of Decision: 11.02.2016

Ishwar

...Appellant

Versus

State of Haryana

...Respondents

with

Crl. Appeal No.989-SB of 2000 (O&M)

Arvind

...Appellant

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

- 1. Whether Reporters of local papers may be allowed to see the judgment?
- 2. To be referred to the Reporters or not? Yes
- 3. Whether the judgment should be reported in the digest? No

Present: Mr. Paras Talwar, Advocate
for appellant-Ishwar.

Mr. H.S. Gill, Sr. Advocate with
Mr. Vivek Goel, Advocate
for appellant-Arvind.

Ms. Vibha Dhiman, AAG, Haryana.

ANITA CHAUDHRY, J.

1. These are two appeals directed against the judgment and order passed by the Additional Sessions Judge,

Bhiwani who convicted both the appellants in FIR No. 281 dated 14.11.1998, registered under Sections 363, 376, 506, 120-B IPC, Police Station Adampur. Accused Arvind was sentenced to the following punishment:-

Under Sections	Rigorous Imprisonment for a period of	Fine	In Default RI.
363 IPC	2 years	Rs.1000/-	2 months
366 IPC	3 years	Rs.2000/-	4 months
506 IPC	1 year	Rs.1000/-	1 month

Accused Ishwar was convicted under Section 120-B read with Section 376 IPC and sentenced to undergo rigorous imprisonment for a period of 7 years along with fine of Rs.5,000/-. In default of payment of fine, he was to further undergo rigorous imprisonment for a period of 10 months.

The facts giving rise to the case are that the victim as usual had gone to attend her school. She was a student of the 9th class. The incident is of 11.11.1998. At 12:00 noon, Arvind a neighbour, reached her school and called her out. The victim used to address him as uncle (Chacha). She inquired as to what had happened. The accused told her that family had called her immediately. Initially she refused to accompany him but later on, thinking that the family must have sent him, she accompanied him on his motorcycle. When the motorcycle turned towards the Electricity Board, she asked as to where he was taking her. The accused asked her

to keep quiet and threatened to kill her . Out of fear she did not react. The accused brought him to Bridge View Restaurant in Hisar. A boy namely Ishwar (appellant) was at the Reception. She was taken to a room. Arvind raped her. The victim started crying but could not raise alarm due to fear. She was brought down after half and hour. She returned to her village at 6:00 PM. The victim did not disclose about the incident to her parents. The matter was revealed to the family after three days. The matter was reported to the police on 14.11.1998. The police took the register from the hotel and found that there was an entry regarding the visit of Arvind. The accused was arrested. Accused Ishwar was also arrested. He was accused of conspiracy. The allegations were that he knew the purpose for which the girl had been brought to the hotel and there was a conspiracy.

Ishwar was arrested on 16.11.1998. Arvind surrendered in the Court on 18.11.1998.

Challan was presented. Charge was framed. The prosecution examined 11 witnesses.

In the statement under Section 313 Cr.P.C., Arvind took the plea that a water-course leading to the land of Ram Murti passed through his land and an altercation had taken place earlier and he was not on speaking terms with the family. He had also stated that on 11.11.1998, after sun set he over heard the parents and the grand-mother beating the

prosecutrix and they were levelling allegations against her character and he had gone there and had stated that the girl had a doubtful character on which an altercation took place and therefore, the case was registered against him with due deliberation and consultation. Ishwar took the plea that he had been falsely implicated at the instance of Superintendent of Police, Hisar who was personally inimical to him and his family. He had stated that he did not know Arvind and the police had reached the hotel on 13.11.1998 and had taken their register.

The trial Court held that the girl was under 16 years of age. It doubted the defence raised by Arvind and also convicted Ishwar for conspiracy. It was held that Ishwar knew for what purpose the girl had been brought to the hotel. Both the accused were convicted and sentenced to the punishment mentioned here-in-before.

I have heard counsel for both the sides.

The submission on behalf of appellant Arvind was that the FIR had been lodged after a delay and it was a case of consent and the trial Court had not considered the evidence with respect to the age and the girl did not raise any hue and cry when she was being taken nor she had made any complaint to any person while going inside the hotel and the story is doubtful. It was urged that Arvind was not on speaking terms with the family on account of a previous

altercation and the prosecution had not been able to prove its case. It was urged that the medical evidence also does not support the prosecution. It was urged that the birth certificate and the school certificate contained different date of birth and the Court should have rejected that evidence and accepted the statement of the mother and if the age is calculated in the manner she had stated, the girl was over 18 years. It was urged that if the submission was not accepted then the sentence be reduced as the appellant was 24 years when the incident occurred and he has faced protracted trial of over 18 years and he has college going daughters. It was urged that the amendment had been made in 2013 and the sentence can be less than 7 years. Reliance was placed upon ***Ram Kumar Vs. State of Haryana 2006(2) SCC (Cri) 308, Rajesh Vs. State of Haryana 2006(3) RCR (Criminal) 777, Sandip Kumar Vs. State of Punjab 2007(2) RCR (Criminal) 758 and Sushil Kumar Vs. State of Punjab AICLR 2003(2) 608.***

The submission on behalf of Ishwar was that as per the statement given to the police, it was a young boy who was at the reception of the hotel and Ishwar was around 40 years of age then and he had been named at the behest of the then SSP, Hisar who had personal enmity and grudge against the appellant. It was urged that the appellant did not know the co-accused and there was no evidence of conspiracy and he was entitled to acquittal.

On the other hand, the State counsel supported the judgment of the Court below.

In rape cases the age of the victim is important and therefore, it has to be seen as to whether the prosecution had been able to prove that the girl was under 16 years of age. The prosecution had brought two certificates on record. In one of the certificates, the date of birth was mentioned as 14.08.1983 Ex.PC and in Ex.PE the date of birth was mentioned as 02.04.1983. The submission on behalf of the defence was that the mother had given her age and had given the details of birth of each child and if the age is calculated then the girl was over 18 years of age.

The trial Court had dealt with the issue exhaustively dealing with each piece of evidence, observing that the mother was illiterate. It had noted that the mother had thumb marked her statement and the age was given by her by approximation. In the birth certificate Ex.PC the date was mentioned as 14.08.1983 whereas in Ex.PE that is the school record, the date was 02.04.1983. The trial Court dealt with the evidence and rightly concluded while relying upon the birth certificate that the girl was born in 1983 and she was less than 16 years of age and I find no illegality nor it can be said that the finding was against record.

When the age is determined and the girl is found to be under 16 years of age, the question of consent would not

arise. The girl was examined after three days of the incident. She had taken her bath by then. The Medical Officers had carried out the examination and had noted the following:-

"Hair were not matted with blood or semen. There was scratch mark on genitalia. Libia majora on perineum showed no mark of injury. Discharge per vagina was present. Hymen was ruptured. Vagina did not admit two fingers. It was tender on examination."

In the Indian setting refusal to act on the testimony of a victim of sexual assault in the absence of corroboration as a rule, is adding insult to injury. Why should the evidence of the girl or the woman who complains of rape or sexual molestation be viewed with the aid of spectacles fitted with lenses tinged with doubt, disbelief or suspicion?

If the evidence of the victim does not suffer from any basic infirmity, and the "probabilities-factor" does not render it unworthy of credence, as a general rule, there is no reason to insist on corroboration except from the medical evidence, where, having regard to the circumstances of the case, medical evidence can be expected to be forthcoming, subject to the following : Corroboration can be insisted upon when a woman having attained majority is found in a compromising position and there is a likelihood of her having levelled such an accusation on account of the instinct of self preservation or when the "probabilities-factor" is found to be out of tune.

The Supreme Court in the case of [Shri Bodhisattwa Gautam v. Miss Subhra Chakraborty](#), A.I.R. 1996 Supreme Court 922, S. Saghir Ahmad, J. speaking for the Bench observed as follows:-

"10. Rape is thus not only a crime against the person of a woman (victim), it is a crime against the entire society. It destroys the entire psychology of a woman and pushes her into deep emotional crises. It is only by her sheer will power that she rehabilitates herself in the society which, on coming to know of the rape, looks down upon her in derision and contempt. Rape is, therefore, the most hated crime. It is a crime against basic human rights and is also violative of the victim's most cherished of the Fundamental Rights, namely, the Right to Life contained in [Article 21](#). To many feminists and psychiatrists, rape is less a sexual offence than an act of aggression aimed at degrading and humiliating women. The rape laws do not, unfortunately, take care of the social aspect of the matter and are inept in many respects.....

The prosecutrix in her statement had reiterated the entire version as given by her in the FIR. She had also explained the reason for the delay. One can understand the trauma the girl would have undergone. It was the fear, the repercussion and the shame which made her quiet. She did not even share it with her mother. She did not attend school. Mustering courage, she confided in her mother only when fear overtook her that the accused may again ravish her. There was no reason for her to falsely implicate him. There are hardly any contradictions to discard her testimony. The

defence raised by Arvind was rightly rejected by the Court below. No evidence could be produced that he had an altercation with the family or that he was not on speaking terms. It is unbelievable that on one hand he had said that he was not on talking terms but he over heard the conversation and came to the prosecutrix's house on 11.11.1998. The police had found an entry in the register in the hotel in which the girl was taken. There was an entry in his name, though the room number in which she was taken was different. That aspect had also been rightly examined by the trial Court.

Once it is held that the prosecutrix was less than 16 years on the date of occurrence she was not in a position to give a valid consent. She was induced by the accused and was taken away from the school by making a false story. There could not be any consent. There is no evidence that there was any party faction or rivalry between the two families. Therefore, the conviction of Arvind was rightly recorded

So far as Ishwar is concerned, the police failed to collect any evidence to show that Arvind was on friendly terms with the accused. If that was so, they could have collected his call records to show that they were in constant touch. They could have also collected material to show that the girls were being brought to this hotel for immoral purposes. When allegations of conspiracy are made, there has

to be substantial evidence to prove them. It appears that the girl had named Ishwar at the instance of family and it could be on account of anger. I find no evidence so far as accused Ishwar is concerned. His conviction is set aside.

The submission on behalf of the appellant on the quantum of sentence was Arvind was that he was very young when the incident had occurred. The incident had taken place 18 years ago. The appellant has undergone two years and two months of custody before he was bailed out in 2001.

After having giving my thoughtful consideration to the contentions, in my considered opinion the ends of justice would be met if the sentence of rigorous imprisonment of 7 years is reduced to 5 years under Section 376 IPC. There will be no change or modification in the other sentences or in the fine. Appellant Arvind is presently on bail. He would surrender within one month to undergo the remaining part of the sentence.

The appeal filed by Ishwar is allowed. The appeal filed by Arvind is dismissed with modification in the sentence.

(ANITA CHAUDHRY)
JUDGE

11.02.2016

'Sunil'