

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRA-AD-16-2016 (O&M)

Date of decision: 25.02.2016

Ram Murti @ Murti Devi and another

..... Appellants

Versus

Parveen and others

..... Respondents

**CORAM: HON'BLE MR. JUSTICE T.P.S. MANN
HON'BLE MR. JUSTICE RAMENDRA JAIN**

1. *Whether Reporters of the 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. Rahul Vats, Advocate
for the appellants.

RAMENDRA JAIN, J.

CRM-1056-2016

Sufficient cause has been shown to condone the delay of 467 days in filing the instant appeal.

Hence, the application is allowed and delay of 467 days in filing the instant appeal is condoned.

CRM-1057-2016

Allowed as prayed for.

CRA-AD-16-2016

Appellant No. 1-complainant and her daughter-appellant No. 2 (hereinafter to be referred as 'the prosecutrix') have filed the present appeal against the judgment dated 22.07.2014, passed by the learned Additional Sessions Judge, Karnal acquitting both respondents No. 1 and 2 under Sections 363/366-A/372/373 and 376 of the Indian Penal Code (IPC).

2. Briefly stated, on 08.05.2012, DDR No. 23 was got recorded about missing of the prosecutrix since 02.05.2012. On 17.05.2012, FIR under Section 363 IPC was got lodged against 8 persons for kidnapping and illegal confining of the prosecutrix. During investigation, respondent No. 2-Jasbiri Devi and one Ramesh Kumar residents of Karnal were named for selling the prosecutrix to respondent No. 1-Parveen. Consequently, raid was conducted at the house of respondent No. 1. The prosecutrix was recovered from the road near the house of respondent No. 1. In her statement, she alleged that respondent No. 2 had sold her to respondent No. 1 and he had committed rape upon her. Resultantly, Sections 366-A, 368, 372, 373 and 376 IPC were added. Respondent No. 1 was arrested. Statement of the prosecutrix under Section 164 Cr.P.C. was got recorded before the learned Magistrate, Karnal. Eight persons, named in the FIR were found innocent during investigation. Co-accused Ramesh and respondent No. 2-Jasbiri Devi could not be arrested. Hence, after completion of investigation, final report under Section 173 (2) Cr.P.C. was presented against respondent No. 1 only before the learned

Area Magistrate. On arrest of respondent No. 2, supplementary challan was also presented against her.

3. On commitment of the case to the Court of Session, by the learned Area Magistrate, respondents No. 1 and 2 were tried for charges under Sections 363/366-A/372/373 & 376 IPC.

4. The prosecution in support of its case examined as many as 12 following witnesses.

5. PW-1 Dr. Neeru Bala and PW-2 Dr. Rajesh Chaudhary, through their separate duly sworn-in affidavits Ex. P-1 and Ex. P-3, respectively testified about the medico-legal examination of the prosecutrix and respondent No. 1 vide MLRs Ex. P-2 and Ex. P-4 respectively.

6. PW-3 ASI Daljeet Singh, had recorded the formal FIR Ex. P-6 on 17.05.2012, on receipt of ruqa Ex. P-5 duly endorsed by ASI Roop Chand.

7. PW-4 EHC Vir Shakti Singh, draftsman deposed about preparing of scaled site plan Ex. P-8 with correct marginal notes.

8. PW-5 Lady Constable Darshan Devi, had deposed about collection of sealed parcels and envelope etc. from the doctor and further handing over the same to the Investigating Officer vide recovery memo Ex. P-9.

9. PW-6 Murti Devi-appellant No. 1 and PW-7 the prosecutrix fully supported the prosecution case on all material aspects.

10. PW-8 HC Sandeep remained associated with the

investigation with SI Hukam Singh (PW-11). He testified about the arrest of respondent No. 1 and his medico-legal examination.

11. PW-9 HC Rajbir Singh, through his affidavit Ex. P-14 testified about depositing of the case property with him by the Investigating Officer and further sending of the same to Forensic Science Laboratory (FSL), Madhuban.

12. PW-10 ASI Roop Chand had recorded DDR Ex. P-21 about missing of the prosecutrix on the statement of her father Mai Chand on 08.05.2012. He further deposed about making of his endorsement Ex. P-15 over application Ex. P-5 moved by appellant No. 1 and sending the same for registration of the case through Constable Hawa Singh.

13. PW-11 SI Hukam Singh, Investigating Officer deposed about the chain of events during his investigation.

14. PW-12 EHC Pardeep Kumar, testified about deposit of case property with the FSL authorities on 28.08.2012 handed over to him by HC Rajbir Singh.

15. Both respondents No. 1 and 2 in their statements recorded under Section 313 Cr.P.C. denied the entire incriminating evidence brought on record against them. They pleaded their false implication.

16. After hearing learned counsel for the parties and going through the evidence brought on record, the learned trial Court acquitted respondents No. 1 and 2 vide impugned judgment. Hence, the present appeal.

17. Learned counsel for the appellants contended that the

impugned judgment of learned trial Court is based on surmises and conjectures. The learned trial Court has wrongly and illegally acquitted both the respondents No. 1 and 2 on the ground that there was a delay of about 15 days in lodging the FIR. The learned trial Court failed to appreciate that in the case of abduction of a girl, there is always reluctance of making the same public by reporting the matter to the police, in order to save the reputation of the family. Hence, delay in lodging the FIR was immaterial, more particularly when missing report had already been lodged within a week. The learned trial Court has wrongly declared the prosecutrix as major though it was well proved that she was minor on the date, when she was kidnapped from the lawful guardianship of her parents without their consent with an intent that she would be forced to have illicit intercourse with respondent No. 1. Finally respondent No. 2 sold the prosecutrix to respondent No. 1 for a sum of ₹ 80,000/-. The learned trial Court has erred in not considering the above fact coupled with the deposition of the prosecutrix that she was raped by respondent No. 1 against her wishes. Respondent No. 2 had confined her in a room for about 15-16 days and during this period she used to inject her with narcotic substance. The learned trial Court has wrongly held that the prosecutrix was a consenting party. Even otherwise, consent of a minor is not lawful and, thus, both respondents No. 1 and 2 ought to have been convicted by the learned trial Court.

18. After giving our thoughtful consideration to the above submissions made by learned counsel for the appellants, we find the

present appeal completely devoid of any merit for the reasons to follow:-

- (i) The prosecutrix was missing from her house since 02.05.2012. However, DDR No. 23 Ex. P-21 regarding her missing was got recorded by her father Mai Chand on 08.05.2012 after 6 days. FIR for her kidnapping and enticing was lodged on 17.05.2012 around 15-17 days, thereafter. There is no explanation on the file that what refrained appellant No. 1 or her husband Mai Chand for not reporting the matter to the police promptly on 02.05.2012, itself. No doubt, to save the reputation of the family, such like incidents are reluctantly reported to the police, however, in the instant case, there are no such circumstances. The conduct of the appellants coupled with other factors do not in any manner suggest that they and Mai Chand father of the prosecutrix did not lodge the FIR immediately to save their reputation. It is pertinent to mention here that earlier in Sessions Case No. 27 of 15.03.2012, titled as “State Vs. Sonu @ Garda”, arising out of FIR No. 719 dated 28.10.2011 under Sections 363/366-A and 376 IPC, Police Station City, Jind, appellant No. 1 had levelled similar allegations of kidnapping, abduction and rape of her daughter (the prosecutrix herein) against one Sonu @ Garda,

resident of village Bhir Majri, Tehsil Indri, District Karnal. In that case, disbelieving the appellants, said Sonu @ Garda was acquitted of the charges framed against him vide judgment dated 03.01.2013. Hence, it is evident that the appellants are habitual of getting registered false cases of abduction and rape against innocent persons.

- (ii) The age of the prosecutrix has rightly been declared major by the learned trial Court, because in the aforesaid case she was declared major. It has also been observed in the said judgment dated 03.01.2013 that the prosecutrix in her statement Ex. D-4 before the learned Judicial Magistrate Ist Class, Karnal had disclosed her age as 17 years. In the aforesaid case, appellant No. 1-Murti Devi as PW-6 disclosed her age as 50 years. In her cross-examination, she clarified that she was married at the age of 18 years. Four children were born to her. Her first child was born after 2/2½ years of her marriage and there was a gap of 2 years in the birth of each child. Hence, as per own statement of appellant No. 1, the age of prosecutrix on the date of occurrence came to be 22 years.
- (iii) The whole story revolves around the statement of PW-7-the prosecutrix. She testified that Sanju etc.

(Found innocent by the police during investigation; even no application under Section 319 Cr.P.C. was filed to summon them as an additional accused) took her near the Railway Station, Karnal on a motorcycle. From there she was taken by respondent No. 2 and one Ramesh (since absconding) to their house and kept her there for 15-16 days. Respondent No. 1 visited the house of respondent No. 2 and she sent the prosecutrix with him to his house at village Gudha.

- (iv) However, the prosecutrix in her cross-examination admitted her marriage photographs Ex. D-5 to D-10 with respondent No. 1. She also categorically admitted that she stayed with respondent No. 1 as his wife for about 15-16 days in his house. She got stitched her new clothes which are to be worn by a newly wedded woman as a bride. The police had met her at bus stand Gharaunda, when she was accompanying respondent No. 1 to the house of respondent No. 2. The above admission of the prosecutrix of accompanying respondent No. 1 from one place to another and her stay at the house of respondent No. 2 for 15-16 days and further at the house of respondent No. 1 for another 15-16 days, after performing marriage, itself speaks about her consent, because during this period

she did not raise any hue and cry, nor disclosed the incident to anyone. She even did not try to report the matter to the police or to run away, despite having ample opportunities to do so. Hence, from her above conduct, the only irresistible conclusion which can be is drawn that the prosecutrix was a consenting party to the entire episode.

- (v) Prosecutrix was medico-legally examined vide MLR Ex. P-2. However, no mark of resistance and internal or external injury was found on her body by the doctor. Even no semen was detected on her clothes. Hence, the prosecution also miserably failed to prove the story of rape upon the prosecutrix by respondent No. 1.
- (vi) It is pertinent to mention here that the names of respondents No. 1 and 2 were not mentioned at the time of registration of FIR but after a considerable delay of 15 days. As discussed above, those 8 persons, who were named, were found innocent.
- (vii) As far as the offence under Section 372 IPC against respondent No. 2 is concerned, the prosecutrix had not uttered even a single word that respondent No. 2 had sold her to respondent No. 1 for a valuable consideration or that respondent No. 1 has paid any sale consideration to her. Hence, the learned trial

Court had rightly acquitted respondent No. 2 under
Section 372 Cr.P.C.

19. No other point was urged before us.

20. In view of the above discussion, we are not inclined to differ
with any of the findings recorded by the learned trial Court while
acquitting both the respondents.

21. The instant appeal completely devoid of any merit is,
therefore, dismissed.

(T.P.S. MANN)
JUDGE

(RAMENDRA JAIN)
JUDGE

February 25, 2016
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