

***CRM-8218-2016 and
CRA-AD-93-2015 (O&M)***

-1-

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRM-8218-2016 and
CRA-AD-93-2015 (O&M)

Date of decision: 19.05.2016

Mohd. Rihan

..... Applicant/Appellant

Versus

State of Haryana 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. Chiranji Lal, Advocate
for the applicant/appellant.

RAMENDRA JAIN, J.

CRM-36382-2015

Allowed as prayed for.

**CRM-8218-2016 and
CRA-AD-93-2015**

Briefly stated, in the morning of 23.11.2014, minor daughter of applicant-Mohd. Rihan was found missing from his house. Therefore, on raising suspicion upon respondent No. 2-Manoj, about enticing her away, the applicant moved an application to the police against him.

Accordingly a case under Sections 363 and 366A of the Indian Penal

Code (IPC) was registered against respondent No. 2. During investigation, the applicant made supplementary statement also naming respondents No. 3 and 4 namely Richpal and Ravi Kant, respectively as helpers of respondent No. 2 in commission of crime. Accordingly, Sections 216 and 120-B IPC were added. Respondents No. 2 to 4 (in short 'the private respondents') were arrested. The prosecutrix was recovered from the possession of respondent No. 2 and was medico-legally examined. Her statement under Section 164 Cr.P.C. was also got recorded and pursuant thereto, Section 376 IPC and Sections 4 and 6 of the Protection of Children from Sexual Offences Act, 2012 (for brevity 'the Act') were added. On completion of investigation, final report under Section 173 Cr.P.C. was filed against the private respondents before the Area Magistrate.

2. On commitment of the case, the private respondents were charge-sheeted by the trial Court under Sections 363, 366A, 216, 376 120-B IPC and Sections 4 and 6 of the Act, to which they pleaded not guilty and claimed trial.

3. The prosecution in support of its case examined as many as 17 witnesses whereas, in defence, the private respondents examined 3 witnesses.

4. On appraisal of evidence brought on record by the prosecution and hearing learned counsel for both the sides, the learned trial Court did not find itself convinced with the prosecution story and resultantly, acquitted the private respondents vide impugned judgment dated 14.08.2015.

5. Being aggrieved, the applicant has filed the instant application under Section 378(3) Cr.P.C. seeking leave to file the accompanying appeal.

6. Learned counsel for the applicant contended that the impugned judgment is based on surmises and conjectures. Learned trial Court has failed to appreciate the evidence led by the prosecution in a proper perspective. The prosecutrix had categorically testified about her forcible conversion into Hinduism before her marriage with respondent No. 2. The trial Court ought to have appreciate the present case under Hindu Laws, according to which the prosecutrix was minor being below 18 years of age. The Court below has wrongly acquitted the private respondents.

7. After giving our thoughtful consideration to the submissions made by learned counsel for the applicant/appellant, we find no merit in the instant application and the appeal for the reasons to follow.

- (i) In her statement Ex. PD recorded under Section 164 Cr.P.C., the prosecutrix testified that she had accompanied respondent No. 2 on 23.11.2014 with her own will and had performed marriage with him in the Court and thereafter, in Arya Smaj Mandir. She had developed relations with him without any pressure, with her own sweet will and consent. Respondent No. 2 was not at fault as she wanted to accompany him.

As per ossification test certificate Ex. DC of the

prosecutrix, her age was ascertained between 18 to 20 years. Vide conversion certificate Ex. DB, the prosecutrix had converted herself from Muslim to Hindu religion on 27.11.2014. This certificate also consists of her marriage certificate. That apart, the prosecutrix also wrote a letter to the Senior Superintendent of Police, District Meerut (U.P.) disclosing therein that she had married respondent No. 2 as per Hindu rites and ceremonies at Arya Samaj Vivah Manch, Jagatpuri, Delhi, being major aged around 19 years. She made a request to the Senior Superintendent of Police, Meerut that in case, any complaint is lodged by her parents or relatives against her or her husband, the same be treated as null. All the above circumstances, lead to an irresistible conclusion that the prosecutrix was a consenting party to the entire episode.

- (ii) Though the prosecutrix as PW-2 testified that respondent No. 2 had ravished her with the aid of remaining respondents, but in cross-examination, she admitted that six months earlier also, respondent No. 2 had tried to commit rape upon her by entering her house, but was caught by her family members and in the Panchayat the matter was compromised. She also testified that in the night of 18.11.2014, when her

family members were sleeping, she had gone with respondent No. 2 on receiving a phone from him. Respondent No. 2 was accompanied by three other persons and he threw her in a car and took her to Delhi at Begampur Vihar and committed rape upon her. At that time respondent No. 3 had also tried to commit rape upon her. She became pregnant and stayed with respondent No. 2 in a room at Begampur Vihar, Delhi belonging to respondent No. 3 for about 2½ months. On search by her parents with the police, she was recovered from the possession of respondent No. 2. She was brought to Civil Hospital, Gurgaon, where she was medico-legally examined and her statement under Section 164 Cr.P.C. was also recorded.

From her above deposition, it is apparent that in the intervening night of 18.11.2014, the prosecutrix woke up around 2/2.30 A.M. and accompanied respondent No. 2 without telling anything to her family members. Her stand that she could not intimate her family members about her escape with respondent No. 2 on account of pressing of her mouth by respondent No. 2 does not seem to be probable and convincing, because no one can kidnap or entice away any person from her house unless and until the person kidnapped or enticed away has his/her own will for the same.

From the overall facts and circumstances of the case, it can safely be inferred that the prosecutrix had accompanied respondent No. 2 of her own sweet will and consent and her deposition before the trial Court is completely un-worthy of any credence.

(iii) The prosecution has examined PW-14 Smt. Hasmat Begum, Principal, Indian Montessori Junior High School, Gaziabad (U.P.) to prove the date of birth certificate Ex. PN, besides copy of admission and withdrawal register Ex. PO, showing date of birth of the prosecutrix as 10.07.1998. The prosecutrix had gone with the private respondents on 23.11.2014. Thus, it is evident that on the date of occurrence, the prosecutrix was more than 16 years of age. There is exception to Section 375 IPC which envisages that sexual intercourse or sexual act by a man with his own wife, the wife not being under fifteen years of age, is not rape. Admittedly, the prosecutrix had performed marriage with respondent No. 2. Thus, under the aforesaid exception, he is not guilty of rape allegedly committed by him upon the prosecutrix.

(iv) Respondent No. 3-Richpal is the father of respondent No. 2. There is no allegation against him except that he had helped his son in enticing away or kidnapping the prosecutrix, but the prosecution has not been able

to prove the same. The prosecution has also not been able to prove the conspiracy of respondent No. 4 and thus, it can safely be inferred that respondents No. 3 and 4 have wrongly been implicated.

8. From the discussion above, no case is made out for any interference in the impugned judgment of acquittal.

9. Consequently, the instant application being completely devoid of any merit is dismissed. Leave to appeal is declined and resultantly, the appeal is dismissed.

**(T.P.S. MANN)
JUDGE**

**(RAMENDRA JAIN)
JUDGE**

May 19, 2016
rishu