

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

**Crl. Appeal No. S-700-SB of 2004
Date of decision : 11.01.2016**

Rashid

..... 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? Yes/No
2. To be referred to the Reporters or not? Yes/No
3. Whether the judgment should be reported in the digest? Yes/No

**Present: Mr. Ashit Malik, Advocate
for the appellant.**

Ms. Vibha Dhiman, AAG Haryana.

ANITA CHAUDHRY, J.

Trial of the appellant in FIR No. 142 dated 26.4.2003, registered at Police Station Gharaunda under Sections 366 and 376 IPC, culminated into his conviction. Vide judgment dated 06.03.2004 and order dated 09.03.2004 the appellant was sentenced to undergo rigorous imprisonment for five years and seven years respectively and to pay a fine of Rs.2000/- under each head. In default of payment of fine, he was required to further undergo rigorous imprisonment for six months under defaulting clause. Both the sentences were ordered to run concurrently.

The case was registered on the basis of statement, Ex.PD made by Gian Singh, father of the prosecutrix on 26.04.2003, wherein he informed the police that his daughter was missing (hereinafter to be referred as 'the prosecutrix') since 23.04.2003. He suspected Rashid, a co-villager,

who was also missing. He had seen him roaming near his house and suspected him of enticing his daughter with an intention to marry her.

A case was registered under Section 366 IPC. On 29.04.2003 the prosecutrix was recovered from Delhi. She was found in the company of the accused. Medical tests were carried on both of them. Statement of the victim under Section 161 Cr.P.C. was recorded. Section 376 IPC was added. On completion of usual investigations, challan against the accused was filed for trial.

Charges under Sections 366 and 376 IPC was framed against the accused, who pleaded not guilty. Evidence was led by the prosecution. Thirteen witnesses were examined, including the prosecutrix, her father, medical officers and the investigating officer, besides some formal witnesses.

In his statement recorded under Section 313 Cr.P.C., the accused denied the prosecution allegations and pleaded false implication.

On conclusion of trial, the trial Court convicted and sentenced him under Sections 363 and 366 IPC in the manner indicated above.

I have heard the learned counsel for the appellant and learned State counsel and have gone through the record carefully.

In this case, the prosecutrix was found to be more than 18 years of age at the time of occurrence. The relevant findings returned by the trial Court in this regard reads as under:-

“21. The first question which requires determination in this case is that what was the age of the prosecutrix. In this regard, it may be pointed out that the prosecutrix in order to prove the age of the prosecutrix has placed on

record school certificate issued by Government Primary School, Sadarpur, Ex.PJ/12 wherein the date of birth of the prosecutrix has been shown as 15.2.1985. Moreover, the prosecutrix when was examined by PW2 Dr. Archana revealed age of the prosecutrix as 18 years. Further, in this case PW4 Gian Singh in his statement Ex.PD also stated the age of the prosecutrix as 18 years. So from all angles the age of the prosecutrix comes more than 18 years as she was presently married and even her elder brother is also married. The fact that the prosecutrix when had appeared in the witness box as PW3 has stated her age as 16-17 years does not find any support from any other evidence. So, the age of the prosecutrix is held to be more than 18 years as on 23.4.2002.”

However, the trial Court concluded that the prosecutrix was allured by the accused on the pretext of marrying her and she was sexually assaulted by the accused forcefully.

In the circumstances, it has to be seen whether the prosecutrix was a consenting party to the sexual acts or it was against her wishes on the pretext of marriage.

When she stepped in the witness-box, the prosecutrix deposed that she had gone to the tailor shop of the accused 2-3 times. On 23.04.2003 she was alone and Rashid came to her house and asked her to come with him and promised marriage. He administered some medicine and she became unconscious. The accused took her to Yamuna Bandh, Sadarpur and committed rape. She further deposed that the accused took her to Fatehpur at the house of his relative and in the night on pistol point, he committed rape. On 25.04.2003 she was taken to Saharanpur, where they stayed for

2/3 days and then went to Dehradun. They returned to Delhi where police apprehended them. The prosecutrix had made number of improvements while deposing in Court. She was confronted with statement Ex.DA made before the police after her recovery by the police. She did not state then that she was administered any intoxicating material by the accused. At that point she had stated that she had agreed to the offer of marriage given by the accused. She had admitted that all family members were present in the house when the accused had taken her away from the house. In that situation, it was highly improbable to administer any intoxicating substance. It cannot be accepted that she was kidnapped. The prosecutrix had admitted in her cross-examination that that she went to Yamuna Bandh and then to village Fatehpur on foot. From there they went to village Shamli and then to Saharanpur and to Dehradun and finally to Delhi. She admitted in clear terms that she did not lodge any complaint against the accused either to his relatives nor to anybody else. She showed ignorance about the conveyance used to travel. It cannot be believed that during this long journey she did not meet any person. Her conduct was unnatural. She kept silent and did not raise alarm clearly falsifying her version of forceful sexual intercourse. She admitted that she made a telephonic call to her family and another to her aunt on 27.04.2003. Nothing is there on record to prove that she had complained against the accused. But when she stepped into the witness box, she gave a different version. When she stated that she had made a complaint to Delhi police, but no such record was produced. Rather, in her statement, Ex.DA she had stated that they had been roaming in Delhi. The story of threat on pistol point is nothing but a cover up. Considering the above, it is

found that the statement made by her does not inspire confidence. The other circumstance which throws doubt on the veracity of her statement is the statement of PW 2 Dr. Archana, who had medically examined the prosecutrix. She did not find any external mark of injury on the private parts. No evidence of recent sexual acts was noticed. No semen was detected. She instead noted that the prosecutrix was found to be habitual to sex. No doubt conviction can be recorded on the sole testimony of complainant, but the testimony of complainant is full of omission and improvements, which casts doubt on her veracity and it would be unsafe to rely upon it.

In a criminal case, the prosecution has to prove its case beyond reasonable doubt against the accused. In the instant case, the prosecution has failed to prove the case against the accused beyond shadow of reasonable doubt. The conviction and sentence recorded under Section 363 and 366 IPC cannot be sustained and is set aside. The appeal is allowed. The accused is acquitted.

January 11, 2016
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(ANITA CHAUDHRY)
JUDGE