

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRA-D-293-DB-2014 (O&M)

Date of decision: 17.05.2016

Suman Rani

..... 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. Balraj Singh Dhull, Advocate
for the appellant.

Mr. Praveen Bhadu, AAG, Haryana
for respondent No. 1-State.

Mr. Rajesh Gupta, Advocate
for respondent No. 2.

Mr. Jainainder Saini, Advocate
for respondent No. 3.

RAMENDRA JAIN, J.

CRM-5834-2014

Heard.

Sufficient cause has been shown to condone the delay in
filing the appeal. The application is, therefore, accepted. The delay of

148 days in filing the appeal is condoned.

CRA-D-293-DB-2014

Respondents No. 2 and 3 (hereinafter referred to as 'the private respondents') were booked and tried under Sections 366, 376, 506 read with Section 120-B of the Indian Penal Code (IPC) on the allegations that on 12.09.2010, respondent No. 2-Vikram with the help of respondent No. 3-Deepak had kidnapped the appellant (daughter of complainant-Bajrang Lal) from his house and committed rape upon her under criminal intimidation.

2. On appraisal of evidence, the learned trial Court did not find itself convinced with the prosecution story and thus, acquitted the private respondents vide impugned judgment dated 17.07.2013.

3. Being un-satisfied, the prosecutrix has filed the present appeal.

4. Learned counsel for the appellant contended that the impugned judgment is based on surmises and conjectures. The trial Court has failed to appreciate that the appellant was minor on the date of occurrence. The Court below has erred in ignoring the truthful deposition of the appellant proving guilt of the private respondents beyond any shadow of doubt.

5. On the other hand, learned counsel for respondents No. 2 and 3, have vehemently opposed the above arguments.

6. After giving our thoughtful consideration to the submissions made by learned counsel for the parties, we find no merit in the instant appeal for the reasons to follow.

- (i) As per the prosecution case, the private respondents had worked as mason and labourer respectively for about two months with complainant-Bajrang Lal for construction of his house. They left the work on 24.08.2010. The appellant as PW-1 testified that on 03.09.2010, when she was drinking water from the water tap in her school, respondent No. 3 armed with a pistol came there and asked her to accompany him. In the meanwhile, respondent No. 2 also came there and took her to the nearby bushes and raped her. Thereafter, the private respondents took her to Hisar bus stand and made her unconscious by sniffing a handkerchief. On her regaining consciousness, she found herself in Kolhapur (Maharashtra), where respondent No. 2 again raped her. The above deposition of the appellant is patently false, because there was no possibility for the private respondents to enter into the school of the appellant without notice of anyone and to take her away more than 1000 miles to Kolhapur (Maharashtra) in unconscious state of affairs in public transport like bus, train etc. where police and huge crowd always remain present.
- (ii) The prosecution also failed to prove that respondent No. 3 had accompanied the appellant and respondent No. 2 to Kolhapur. Since, respondent No. 3 was not

- accompanying them, who was having a pistol, therefore, there was no reason for the appellant to continue her sojourning with respondent No. 2 without raising any hue and cry.
- (iii) The appellant was kept in a room surrounded by busy locality in Kolhapur. As per own case of the prosecution, the toilet was located outside the said room and the appellant had to go out of the said room to attend the call of nature. However, she never tried to escape or to attract the attention of neighbours to tell them her woeful story. The appellant even had changed her clothes at Kolhapur, which shows that new clothes were purchased by her as she had not taken any clothes from her house. Further, respondent No. 2 was bringing food from outside, but the appellant did not make any attempt to run away.
- (iv) As per MLR Ex. P-25, no external or internal injury was found on the private parts of the appellant. Even her hymen was found torn and healed. No bleeding was present in the vagina. Her vagina admitted one finger loose. The above signs clearly indicate that the appellant was habitual of sexual intercourse and no rape was allegedly committed upon her. As per FSL report Ex. P-26, semen was not detected on the vaginal swabs. The semen found on her salwar was not

subjected to DNA test to prove that the same pertains to respondents No. 2.

- (v) To prove that the appellant was minor on the date of occurrence, the prosecution has made futile attempt. As per certificate Ex. P-8 issued by the Registrar, Birth and Death, Mangali, Hisar, the date of birth of the appellant was 04.10.1994. However, the same was prepared on 28.12.2010 after registration of the present case and thus, the learned trial Court has rightly disbelieved the same. Further the prosecution has relied upon the record of *Anganwari* Ex. P-4, whereby a child had born to Santosh and Bajrang on 04.10.1994. However, PW-3 Sumitra, *Anganwari* Worker, while producing the said record testified that the entry regarding the date of birth of the appellant is at serial No. 1 (Ex. D-3). She further testified that initially the name of child was written as Sunita and then after cutting the same was changed as Suman. This witness has admitted that the said cutting did not bear her signatures or initials. Father of the girl in question had taken the register from her and might have erased the name of the child, which was initially written with lead pencil. Hence, the date of birth of the appellant shown in Ex. P-4 and Ex. P-5 (progress chart of the child maintained by *Anganwari*) were also

not found genuine by the learned trial Court, more particularly, when in the certificate Ex. P-11 issued under the scheme “*Apni Beti Apna Dhan*” the date of birth of appellant was shown as 12.10.1994 and not 04.10.1994.

- (vi) The third attempt made by the prosecution to prove minority of the appellant was production of copy of middle examination certificate Ex. P-1, wherein her date of birth was shown as 04.10.1994. However, the school in which the appellant had studied at the relevant time has already been closed. The prosecution did not lead any evidence to show that on what basis or material, the date of birth of the appellant was shown as 04.10.1994 in the said certificate. Hence, in the absence of any such evidence, the learned trial Court has also rightly ignored the middle examination certificate Ex. P-1 of the appellant.
- (vii) It is pertinent to mention here that at the time of medico-legal examination of the appellant, the doctor had referred her for radiological examination to ascertain her age, but she did not get the same done which requires to draw an adverse inference against the prosecutrix that she did not get her radiological test intentionally and deliberately, knowing well that she was major.

7. Learned counsel for the appellant has not been able to put any dent in any of the above findings of the learned trial Court. We have also gone through the impugned judgment and found no illegality or perversity in the same.

8. In view of the above discussion, the instant appeal being completely devoid of any merit is dismissed.

(T.P.S. MANN)
JUDGE

(RAMENDRA JAIN)
JUDGE

May 17, 2016
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