

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

CRA-S-3206-SB-2010 (O&M)

Date of Decision: 17.08.2016

Rajinder Kumar @ Ravinder Kumar @ Ravi

...Appellant(s)

Versus

State of Punjab

...Respondent(s)

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. M.S. Atwal, Advocate
for the appellant.

Mr. Deep Singh, AAG, Punjab,
counsel for the respondent-State.

ANITA CHAUDHRY, J.

The appellant was convicted and sentenced to 10 years' rigorous imprisonment both under Section 376 IPC and Section 366-A IPC along with fine of Rs.2000/- and in default of payment of fine he was to further undergo rigorous imprisonment for a period of 1 month. Both the sentences were to run concurrently. Aggrieved by the same, the appellant has filed this appeal.

Giving the facts first. The victim went to school at 8:00 A.M. on 19.02.2009. She was a student of 10th Class and was 15 years old. She did not return from school. Her uncle lodged the FIR and suspected Ravinder @ Ravi. He was a neighbour and was also missing from home. The complainant also mentioned that Harmesh Kumar DW1 had seen both of them going together.

The police arrested the appellant on 23.02.2009. The statement of the girl was recorded and her medical was got done. Investigations revealed that the victim was a minor. The Medical Officers noted injury on the face of the prosecutrix. Challan was filed only against the appellant though the victim had named two other persons namely Jolly and Deepa.

At the trial the prosecution examined 10 witnesses which included the Medical Officer, the prosecutrix, her mother, Swaran Singh complainant and the Principal of the Government Secondary School besides the police officials.

In the statement under Section 313 Cr.P.C. accused pleaded false implication and examined four witnesses including Harmesh. His stand was that he had not seen the accused taking the victim away to Ludhiana nor had made the statement to the police. Harnam Singh DW-2 deposed about the Panchayat that was convened in the village regarding the elopement. He stated that a false case had been planted by the parents against Rajinder. Davinder Pal, father of the accused brought the record to prove the age of his son. His stand was that his son was a minor. Gursharan Jit Kaur, Head Teacher - DW4 brought the certificate. She stated that it was a photocopy of the certificate. She also stated that no birth certificate was produced at the time of admission nor she was the class teacher and she had not brought the attendance register and nor the record was in her hand.

I have heard both the sides. The main submission on behalf of the appellant is that the victim was major and there was a tendency in the villages to give a wrong date of birth and it was a case of consent

and no ossification test was carried out and the prosecution failed to carry out the DNA test. It was urged that according to the prosecution it was Harmesh who had seen the accused taking the girl but Harmesh was produced as a defence witness and he denied making any statement to the police and there was no independent evidence.

The State counsel supported the judgment of the trial Court and urged that the prosecution had produced the certificate to show that the girl was a minor and her date of birth has been proved on record and no ossification test was required and the argument of the appellant cannot be accepted that there was a tendency to give a wrong date and the girl was below 16 years.

The victim gave her age as 15 years while making her deposition in the Court. She stated that she had gone to school on a cycle and when she was near the chowk three boys namely Ravi, Jolly and Deepa were already present there and all of them were residents of her village and she was put under fear and they threw her bag and her cycle and she was taken on a motorcycle to the by-pass and she was threatened and accompanied Ravi to Ludhiana and Deepa caught hold of her cycle and her bag while Ravi took her to Ludhiana in a bus and confined her for three days in a room and she was ravished for three days against her consent and she was brought back in a bus and she got down at Darapur by-pass from where she went to her house and disclosed the entire incident to her mother. Her mother took her to police station and reported the matter. She admitted that a Panchayat was convened in the village on 24.02.2009 on her return. She denied that she had disclosed to the Panchayat that she had gone on her own

and that she had been writing letters to the accused. She stated that she tried to save herself and she handed over the torn clothes to the police.

The Medical Officer noted the following:-

“On general physical examination. General behaviour was normal. Gait was normal. Voice was normal. LMP was 21/2/09 as told by patient. Her age was 15 years as told by her mother. There was no abrasion or laceration on the body of patient. (I could not mention word no at that time in MLR inadvertently). There was small scratch about 4 millimeter on face on left cheek placed obliquely red brown in colour. Exiliary hair present. Black in colour. Pubic hair were present black in colour.

On local examination genital organs were developed. There was no swelling of genital organs. Hymen was torn. There was no redness or bleeding from margins. There was skin erosion on the posterior end of the introits. Vagina admitted one finger easily. Patient feld pain with admission of one finger. Vaginal mucous was not smooth. External or internal vaginal swabs were taken and sent for chemical examination. Prosecutrix Manjit Kaur also signed in the presence of her mother. Today I have brought with me MLR register and carbon copy of the same is Ex.PB and pictorial diagram is Ex.PB1. Above said injury on the face of Manjit Kaur was simple in nature and probable duration of injuries was two to three days. In my opinion possibility of attempt of sexual intercourse could not be ruled out. I also received chemical examiner report which was forwarded by me to SHO Tanda and as per report spermatozoa was detected in the contents of Ex.1 (a) and 1 (b) i.e. which were the parcels prepared by me and the said report is Ex.PC.”

Sucha Singh – PW8 Principal of the Government Secondary School, Talwandi brought the admission register where the date of birth was entered as 02.05.1994.

Besides the above, the prosecution had examined the mother and the uncle who had narrated the incident as was disclosed by the victim, therefore, it is not necessary to refer to the same here.

The entire case hinges on the question as to whether the girl was a minor or a major or capable of giving consent.

The trial Court had accepted the evidence led by the prosecution that the girl was minor. The date of birth of the girl had been proved. No evidence contrary to that statement was led by the defence. According to the date indicated in the certificate, the girl was minor. In that case the question of consent would not arise. There was an injury on her face. The girl had resisted and the statement made by the victim gets support from medical evidence. The Chemical Examiner's report showed the presence of spermatozoa. I find no infirmity in the finding recorded by the trial Court. The findings are affirmed.

Having failed to raise a reasonable defence, the counsel for the appellant had urged for reduction of sentence. It was urged that the incident was of 2009 and the accused had already faced a protracted trial and he was in custody for over 6½ years and the sentence be reduced. It was urged that the accused was from a very poor family and the only son of his parents and it is another matter that he could not prove that it was a case of consent and he was just 21 years at the time of registration of the FIR.

Considering the facts and keeping the other factors into mind including the age of the accused, the sentence is reduced to 7 years. There will be no modification with regard to the fine. In case, the appellant has deposited the fine, he be released forthwith, if not required in any other case.

(ANITA CHAUDHRY)
JUDGE

17.08.2016
sunil

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No