

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRA-S-4587-SB-2014 (o&m)
Date of Decision: 11.05.2016

Kamal

...Appellant(s)

Versus

State of Haryana

...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. T.S. Sangha, Senior Advocate with
Mr. Narinder Singh, Advocate
for the appellant.

Mr. Sharad Kumar Yadav, D.A.G., Haryana,
counsel for the respondent-State.

ANITA CHAUDHRY, J.

1. The appellant was tried by the Additional Sessions Judge, Special Court for Crime Against Women, Palwal in FIR no. 129 dated 24.04.2013, registered at Police Station Hathin, District Palwal under Sections 363, 366, 376 IPC and Section 4 of POCSO Act, 2012 and was sentenced to the following punishment:-

Under Sections	Simple Imprisonment for a period of	Fine	In default of payment of fine
363 IPC	7 years	Rs.10,000/-	1 month
366 IPC	10 years	Rs.10,000/-	2 months
376 IPC	10 years	Rs.20,000/-	3 months
4 of POCSO Act	10 years	Rs.20,000/-	1 month

2. A complaint was lodged by Beena regarding the incident which occurred in the intervening night of 26-27.04.2013 at about 1.30/2.00 AM. The complainant's husband was stationed at Chandigarh and was not at home that night. The wedding of the complainant's daughter was fixed for 12.05.2013. The prosecutrix went out to answer the call of nature. The allegations were that Man Singh, Mahender and Partap enticed the victim and took her in a Bollero Jeep. Kamal appellant was also said to be involved in the conspiracy. It was specifically stated that they wanted to cause disturbance in the marriage of the prosecutrix. The complaint was given to the police, the same evening and the FIR was registered. The police investigated the matter and filed the challan only against Kamal as the prosecutrix had levelled allegations of rape against him in the statement recorded under Section 164 Cr.P.C.

3. Challan was presented. Charge was framed under Section 363, 366, 376 IPC and Section 4 of the POCSO Act, 2012. The accused pleaded not guilty.

4. The prosecutrix in her statement in the Court had deposed that her father was a driver with Sarv Shiksha Abhiyan Department at Chandigarh and she was to marry Harender on 12.05.2013. She stated that in the intervening night of 26-27.04.2013 at about 1:30/2:00 AM, she woke up to attend the call of the nature and was going to her grand-father's house, nearby and on the way Man Singh, Mahender and Partap dragged her in a Bollero jeep. She stated that one person with the muffled face was sitting on the driver seat but did not know his name and could identify him if he was produced before her.

She was taken to Jewar on Aligarh Road. At about 7:00 AM, Kamal along with another boy came on a motorcycle. Kamal got down from the motorcycle and came and sat in the Bollero jeep and threatened to teach her a lesson for making the complaint of eve teasing against him and Man Singh. Allegations are that Kamal over-powered her and committed rape. She further revealed that Kamal alighted from the jeep and went away and thereafter, Man Singh along with the driver came, started the jeep and took her towards Uttar Pradesh. The roads were blocked and the complainant along with the police was standing at Rahimpur Bridge and they were apprehended and she was freed and was produced before the Magistrate.

Beena – complainant reiterated her allegations and stated that Man Singh, Mahender and Partap came in a Bollero vehicle and Kamal was a conspirator and her daughter was kidnapped so that her marriage would get spoiled. She stated that on 27.04.2013 at about 3:00 PM, she along with her brother in law and the police officials were present at Yamuna Bridge ahead of village Chandhut on the UP Boarder when the jeep came and was stopped and those persons were apprehended and her daughter was recovered.

It is pertinent to mention here that the prosecution had moved an application under Section 319 Cr.P.C. for summoning the additional persons and that application was dismissed.

Besides the above two witnesses, the prosecution had examined the Principal of the Government Girls Secondary School namely Sagir Ahmad – PW5 who produced the birth

certificate and the matriculation certificate and the copy of the admission and withdrawal register. He had deposed that the date of birth entered in the record was 27.11.1995.

Dr. Manish Kumar had examined the accused who had proved the MLR Ex. PW11/B.

Dr. Rama Narula – PW4 had examined the prosecutrix. She tendered her affidavit and proved the MLR.

Report of FSL was tendered in evidence. Human semen was detected on the vaginal swab, the salwar and the underwear.

5. The accused pleaded innocence. He had examined Dr. Satya Dev Aggarwal, Finger Print Expert – DW1, who had examined the handwriting and stated that the questioned handwriting and the admitted handwriting were of the same person.

Sukhbir Singh, Nodal Officer – DW2 produced the call details of two mobile numbers and proved their location.

6. The trial Court rejected the defence story and came to the conclusion that the girl was only 17½ years of age. It rejected the story of consent. It noted that there was no name in any of the letters which had been produced and the statement of the prosecutrix was enough and the medical evidence supported the version given by her. It summarized its finding in the last paragraph, which is as under:-

1. *Prosecutrix, a minor girl, of 17½ years.*
2. *She was kidnapped by Kamal on the intervening night of 26/27.4.2013 in front of her house at 1.30/2.00 PM forcibly from custody of lawful guardian i.e. Parents.*
3. *PW1 prosecutrix is a sterling witness who has corroborated each and every sequence of events to the*

full confidence of the court.

4. *Prosecution version also supported by statement of prosecutrix Ex.P1, original statement of complainant PW2 Beena by Ex.P2 and with the medical evidence namely MLR of prosecutrix Ex.P8 and the FSL report Ex.P5.*
5. *Prompt FIR Ex.P18 was followed by the incident and lastly consent theory of prosecutrix does not hold substance.*

The appellant was sentenced to the punishment mentioned here-in-before.

7. I have heard the counsels of both the sides and have considered the submissions made on behalf of the appellant.

8. The counsel for the appellant urged that the story itself was improbable and there was no evidence of kidnapping by the appellant and the girl had herself fled from home and the girl had written number of letters which had been proved in defence and the only material against the accused was conclusive findings regarding the age of the prosecutrix. It was urged that the girl was found to be 17½ years and the accused has already undergone sentence of over 03 years and he was young in age and a lenient view be taken with respect to the sentence.

The State Counsel had urged that the girl was below 18 years and under the POCSO Act, when the victim is under 18 years, the question of consent is irrelevant and the prosecution had produced evidence that nails him and the girl was under 18 years of age and the accused had spoiled her life and the medical evidence supports the prosecution case.

9. The prosecution had conclusively proved that the girl was under 18 years of age. The matriculation certificate Ex.P10 shows the date of birth as 27.11.1995. The incident occurred in the intervening night of 26-27.04.2013. The plea of consent could not have been accepted as the girl was less than 18 years. The statement of the prosecutrix was rightly accepted. The sole testimony of the prosecutrix was enough to attract the provisions of Section 376 IPC and Section 4 of the POCSO Act. The trial Court had rightly observed that the statement of the prosecutrix was of sterling quality. The judgment is affirmed.

10. Coming to the quantum of sentence, as per the custody certificate dated 11.05.2016, the appellant had undergone 3 years and 10 days of custody. After remission, the total sentence undergone is 4 years, 2 months and 29 days. The appellant was just 21 years old at the time of commission of the offence. Considering the facts in entirety, I am of the view that it is a fit case where the sentence can be reduced to 7 years.

The sentence alone is only modified and reduced to 7 years under Sections 366, 376 IPC and Section 4 of POCSO Act. There would be no modification in the fine.

The appeal stands disposed of with the above modification.

11.05.2016
Sunil

(ANITA CHAUDHRY)
JUDGE