

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Crl. Appeal No. S-1564-SB of 2003

Date of decision : 22.07.2016

Dishant @ Sonu

..... Appellant

versus

State of Punjab

... Respondent

CORAM:- HON'BLE MRS. JUSTICE ANITA CHAUDHRY

1. Whether Reporters of 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. P.S. Sullar, Advocate
for the appellant**

Mr. K.S. Aulakh, AAG Punjab

ANITA CHAUDHRY, J.

The appellant was convicted and sentenced to three years rigorous imprisonment along with fine of Rs. 100/- under Section 376/120-B IPC, two years rigorous imprisonment along with fine of Rs. 100/- under Sections 344,120-B IPC and one year rigorous imprisonment under Sections 506,120-B IPC.

The facts which emerge from the record are as follows :-

The prosecutrix aged 16-17 years was missing from the house on 03.07.2000. The father got the FIR lodged on 07.07.2000. He disclosed that his daughter had gone to see her result at a book shop in Sadar Bazar, Nabha and had not returned. He searched in the neighbourhood, with their relatives but her whereabouts could not be ascertained. He disclosed that about a year ago his daughter and wife had gone to Haridwar and after that his daughter had been receiving letters and greeting cards from Mona daughter of Karam Singh, resident of Haridwar. He also mentioned that his daughter used to speak to Mona on telephone. The complainant called up Mona but did not get satisfactory reply. The

caller on the other end responded that there was no girl by that name. The

complainant left for Haridwar to make his own inquiries. He learnt that his daughter had been lured by Dishant, son of Karam Singh and brother of Mona. According to him, Dishant's father Karam Singh also had a hand in it. On the lead given by complainant, the police along with complainant left for Haridwar. The victim was found in the company of Sandip Dass Gupta. Both of them were taken into custody and were produced for their medical in a Hospital in Haridwar. Sandip was arrested. The Medical Board was formed to ascertain the age of the victim and her statement under Section 164 Cr.P.C. was recorded. The police later arrested Dishant on 09.09.2000. He had been named by the victim.

Challan was presented against Sandip, Dishant and his father Karam Singh.

At the trial, the victim had deposed that she had gone to Haridwar along with her mother a year prior to the occurrence and she came in contact with Dishant who made enquiries and took her details. She had deposed that Dishant was also called by name of Mona and he took her address and on the next day he came to her native place and thereafter there were exchange of letters. She disclosed that she had received 2-3 letters from him and she was also responding to his letters. She stated that she had been receiving calls from him. On 02.07.2000 she received a telephone call from Dishant and he wanted to see her but she had refused. On the next day, she went to the book shop to enquire about her matriculation result at 12:30 p.m., she came to know that she had failed. She saw Dishant and Anil Arora at the book shop. On coming to know of the result she became nervous. Both these boys assured her that they knew someone in the School Education Board, Mohali and they would help her. She accompanied them to the office of Education Board. Both of them went inside. They came out after some time and disclosed that official was on leave and they were to go on the next

day. Since it was getting dark she told them to leave her at Nabha as her parents might be waiting for her. She stated that Dishant told her that he wanted to marry her. She refused as they were of different castes. As per her version the accused threatened her that in case she did not marry him he would not spare her and forcibly took her to Haridwar. Dishant took her to a house. She was raped against her wishes on the next day. He took her to Dehradun and to the house of Sandip Dass Gupta. She was raped by him. She stated that a room on rent was taken in Narula Building where she was introduced as sister of their friend. Dishant then went away. She stated that Sandip used to visit her daily and raped her and they kept her for a month. She stated that Karam Singh came there and gave her luggage and desired that she should marry his son. She stated that he made her write a letter to her family. She stated that Sandip took her to his village where she was raped. She stated that Sandip took her to Har Ki Pauri for a bath. She stated that the police came looking for her and they were detained and then she informed her father who came to Haridwar.

In the cross-examination she stated that she must have exchanged 10-15 letters. She denied that she had called Dishant to Nabha. She denied that she was maintaining a diary. She refused to identify her hand writing on the letters Mark D-1 to D-6 and the greeting cards or her writing on the envelopes. She stated that she did not raise any at the bus stand. She admitted that there were other passengers in the bus. She clarified that both the boys were sitting by her side and she was sitting in the middle and, therefore, she could not raise alarm. She stated that the bus stopped at several places but she did not raise alarm nor she got down. She stated that they used to go out for food but no person met them in the street. She raised alarm in the room but nobody heard her.

Gurcharan Singh PW-2 gave a similar statement as given in the

complaint. He stated that he had handed over some greeting cards and envelopes to the police which were taken into possession vide Memo Ex. PB. He stated that he received a telephone call from Haridwar on 16.08.2000 and he left for Haridwar the next day and on 18.08.2000 his daughter was produced before the Magistrate. He admitted that he had found some letters in the house before proceeding to Haridwar. He stated that after satisfying himself that his daughter was with the accused he had lodged the FIR. He admitted that he came to know the name of Dishant and Karam Singh before the FIR was lodged. He stated that he could not identify the hand writing of his daughter. He could not say whether letters Mark D-1 to D-6 were written by her daughter. However, he admitted that the letters Mark D-12 to D-16 were handed over to the police by him.

Besides, the two crucial witnesses, the prosecution had examined the Medical Officers Dr. Anju Gupta PW-6. She had noted the following:

“Patient was moderately built, moderately nourished, conscious, cooperative. Pulse 72 per minute regular B.P. 120/80 mmhg.

After alleged rape the patient has taken bath and has changed the clothes. Secondary sex character like breasts, public hair were well developed. No mark of any injury on whole of body was seen. On local examination, pubic hair was present. Labia majora and labia minora were well developed. No sign of any external injury was present. DLMP 25.07.2000. Age of menarche two years back. Introitus admits one finger easily. Patient was tensed, did not allow P/V examination. Uterus size could not be make out exactly. Advised ultra sound graphy for uterus size and expert gynaechological opinion. Vaginal swab was sent for chemical examination and handed over to H.C. Joginder Singh No. 1976. Jaswinder Kaur was brought at 5-45

p.m. On 21.08.2000 and was examined at 6:00 p.m. on the same day.”

ASI Balwant Singh, PW-7 partly investigated the case and he along with the complainant had gone to Haridwar in a private vehicle and Dishant was found in his house and the victim was not recovered from him.

Yoginder Pal Singh Station Officer, PW-14 deposed that they received information that a girl from Nabha alongwith some boys was sitting near Sanjay Bridge and they went to the spot and apprehended the couple. They identified Sandip. He stated that a memo was prepared which was signed both by Sandip, Jaswinder Kaur and victim. He stated that Nabha Police came to Haridwar in the intervening night of 17/18.8.2000.

Surjit Kaur, PW-16 brought the original birth register and gave the date of birth of the victim as 31-01-1983.

It may be mentioned here that no appeal was filed by Sandip. He was released after completion of his sentence. We are concerned here only with respect to Dishant. Karam Singh had been acquitted. In the 313 Cr.P.C. statement Dishant admitted his relationship with the victim and stated that she came to Haridwar voluntarily and he had not gone to Nabha to take her. He stated that she had been writing letters to him and she was more than 18 years and she had resided with him and he had been falsely implicated. He stated that the victim's parents wanted him to marry her.

The trial ended in conviction of Sandip and Dishant, whereas Karam Singh was acquitted.

I have heard learned counsel for the parties at length.

The submissions made on behalf of the appellant were that the girl was major and she was missing from the house since 03.07.2000 and her recovery was effected in the middle of August, 2000. It was urged that the father lodged a

complaint after four days and it was the case of consent. It was urged that the prosecutrix had also named one Anil but he was not challaned. It was urged that ossification test was also carried out but the prosecution did not produce that record. It was urged that the girl had travelled in a bus to various places and did not raise alarm though she had the opportunity. It was urged that the age indicated in the certificate could not be accepted as the parents often give a wrong age at the time of admission so as to gain advantage while seeking public service and it was not a case of kidnapping or rape and she was a consenting party. Reliance was placed upon: *Bhup Singh vs. State of Haryana 2005 (3) R.C.R. (Criminal) 63*, *Ram Phal @ Sinda vs. State of Haryana (Crl. Appeal No. 1002-SB of 2000) decided on 08.11.2011*, *Arvinder Kaur and another vs. State of Punjab 2008 (1) Crimes 728* and *Hira Lal vs. State of Haryana, 1994 (2) R.C.R. (Criminal) 435*.

On the other hand the learned State counsel supported the judgment and urged that the statement of the victim should be accepted as the victim had named two persons of rape.

Before proceeding further, it is necessary to examine the age of the victim. The complainant in his complaint to the police had mentioned that his daughter was 16-17 years old. At the trial a birth certificate was produced, according to which, she was born in January, 1983. The occurrence is of July 2000. According to the certificate, her age would be over 17 years. Perusal of the record reveals that the ossification test was carried out. The report is available on record. According to which the age of the victim was stated to be more than 18 years. The prosecution had conveniently held back this report.

The medical evidence suggests that there was no injury on the body. The girl had remained away from home for more than a month. She had been travelling alongwith the boys to different places using public transport. The father

had brought some letters written by the appellant which was taken into possession by the police which suggests that the victim and the appellant were in a relationship. The prosecutrix was confronted with some of the letters written by her and are available on record. The prosecutrix had stated that Dishant's father had made her writing the letters forcibly. The tone and tenor of those letters show that the feelings expressed cannot be of a person who is writing under threat. The complainant refused to identify his daughter's hand writing. If the hand writing was not of her daughter he would have clearly said that letters were not in her hand. He on the other hand took a posture of denial. Perusal of the letters show that they have been written over a period of 6-7 months. It is difficult to accept the story put forward by the prosecutrix that the accused came to the shop. The accused was not the resident of Nabha. The prosecutrix would have supplied the information to the accused. The story that she was forcibly taken in a public transport from Chandigarh to Haridwar cannot be accepted either. The victim did not raise any alarm nor called out for help. All this goes to show that she was a consenting party. The evidence show that the prosecutrix was into a sexual relationship for a long time. The circumstances speak for themselves that the girl had left her house on her own. This fact was also known to her parents otherwise they would have lodged the FIR on that very day. The girl was not a minor. She was mature enough to understand the consequences of her acts. There was no threat extended to her. This plea was taken by her only to save her skin. The facts are sufficient to establish that the prosecutrix had gone on her own, stayed with the accused for more than a month and had a relationship out of her own free will and consent. No force was used upon her. In my opinion, the statement of the prosecutrix cannot be accepted as it is not reliable or trust worthy. The evidence available on record is not sufficient to prove the charges, therefore, the appeal is allowed.

The judgment passed by the Additional Sessions Judge, Patiala is set aside and the appellant is acquitted.

July 22, 2016
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(ANITA CHAUDHRY)
JUDGE