

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRA-S-1789-SB-2002 (o&m)
Date of Decision: 01.04.2016

Suresh Kumar

...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. Raman B. Garg, Advocate with
Ms. Gitanjali, Advocate for the appellant.

Ms. Vibha Dhiman, AAG, Haryana.

ANITA CHAUDHRY, J.

This appeal is directed against the order of conviction and sentence dated 26.09.2002/28.09.2002, passed by the Additional Sessions Judge, Kaithal, vide which the appellant was sentenced to the following punishment:-

Under Sections	Rigorous Imprisonment for a period of	Fine	In default of payment of fine
376 IPC	7 years	Rs.2000/-	6 months
366 IPC	3 years	Rs.1000/-	3 months
344 IPC	1 year	Rs.500/-	1 month
506 IPC	1 year	Rs.500/-	1 month

The factual aspects first. A complaint was lodged on 26.05.2001 and it was disclosed by Duni Chand that his daughter Roopa was married in October, 2000 with Sushil

Kumar. Roopa returned home after a month. She went missing in December, 2000. After six months, the brother of the victim found her purchasing vegetables in a village. Bharat Lal and his cousin Pawan Kumar went up to the prosecutrix and she was brought home and it is thereafter the FIR was lodged under Sections 376, 366, 344, 506 IPC at Police Station Pundri. The maternal uncle of the prosecutrix is said to have enticed her. The victim accused the appellant of rape.

The police investigated the matter and filed the challan. Charge was framed under Sections 376, 366, 344, 506 IPC. The accused pleaded not guilty and claimed trial.

The prosecution examined the victim, the official witnesses and the Medical Officer whereas Pawan Kumar and Duni Chand were given up.

When the accused was confronted with the evidence, he deposed that there were money transactions between him and the brother of the prosecutrix and he had been falsely implicated. He did not adduce any evidence.

On the basis of the evidence that had appeared before it, the trial Court convicted the accused and sentenced him to the punishment mentioned here-in-before.

The main witness for the prosecution was the prosecutrix who had appeared in the witness box as PW-12. She deposed about her marriage to Sushil on 21.10.2000.

She stated that her maternal uncle Suresh used to reside in their house and he used to go to Pundri for labour work and returned in the evening. She stated that Suresh used to say that her husband was not a good match and he would arrange a suitable boy and she should accompany him to Panipat. The prosecutrix further disclosed that she was on a Friday fast and had gone to the Bara for feeding the cow when the accused met her and asked her to accompany him and when she refused, then he threatened her and took her to village Chamrara where she was kept in a room up to 26.05.2001. She stated that the accused committed rape without her consent and used to lock the room from outside. She also complained that she was beaten up on several occasions. On 26.05.2001, she had gone to buy vegetables when her brother Bharat Lal met her and she narrated the whole incident and she was brought back.

Dr. M.K. Goel - PW7 had medically examined the prosecutrix. He stated that the possibility of sexual intercourse could not be ruled out and hymen was found absent.

Ravinder Singh - PW9 stated that in December, 2000 accused Suresh brought one lady and they stayed on the first floor of his house for 5 – 6 months. He stated that the lady used to accompany the accused and he did not know about their relations.

Bharat Lal – PW12, brother of the prosecutrix stated that Suresh, his real maternal uncle was staying in his house for the last several years. He stated that his sister was married 3 – 4 months prior to the occurrence. He stated that the accused took his sister and they had been searching for her for the last 5 – 6 months and he found her buying vegetables in village Chamrara and he went up to his sister and she narrated the incident and they brought her back.

Besides this, the prosecution had examined the police officials, the drafts man and Rangi Ram, Sarpanch of the village, whose statements are only formal in nature.

I have heard the counsels of both the sides.

The submission on behalf of the appellant was that there was a delay in lodging the FIR and it was a case of consent and there was no inducement and no reason has been given for lodging the FIR so late. It was urged that the girl was major and she had gone on her own and she was found buying vegetables and the accused was not around. It was urged that this fact proves the fact that the girl was living with him of her own. It was urged that the landlord of the house had also stated that the couple used to go out together.

On the other hand, the State counsel supported the judgment and it was urged that the statement of the prosecutrix was sufficient.

The prosecutrix was 24 years old. She was married in October, 2000. She returned home after a month and did not go back thereafter. The girl went missing in December, 2000. Neither the husband nor the parents lodged any FIR. Six months later the girl was found purchasing vegetables in a street. The accused was not around. The brothers brought her back to the village and thereafter, the FIR was lodged. The Medical Officer did not find any injuries. The hymen was found to be absent.

The case set up by the accused is that it was a case of consensual sex and the girl was major and it was a case of consent and the victim had never been locked and she had been going out with him.

A perusal of the provisions contained in Clause Fourth of Section 375 of the Indian Penal Code, it would be seen that the Provisions do not apply in the present situation. Clause Fourth of Section 375 of the Indian Penal Code applies when a man induces a married woman to have sexual intercourse with him by impersonating as her husband. When the consent by a woman to a man is under mis-conception of fact that he was her husband, only then, it amounts to rape by a person to whom the woman believes to be her husband. In the present case, the prosecutrix was major and married. She went with her maternal uncle. She did not raise alarm when she was taken. She had consented to the sexual act,

therefore, it cannot be said that it was a case of rape. It is not even a case of kidnapping. The girl had gone on her own. She was major. The parents did not lodge a FIR. There is no explanation for the delay. She was a consenting party. She was not a victim. It was only after the brother saw her that she made the complaint to save her skin. The judgment and order of conviction & sentence are set aside. The accused is acquitted of the charges. The appeal is allowed.

01.04.2016
sunil

(ANITA CHAUDHRY)
JUDGE