

493

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRA S-2334-SB of 2009 (O&M)
Date of Decision: 06.09.2017.

Sahibul Aalam

... Appellant

Versus

State of Haryana

... Respondent

CORAM : Hon'ble Mr. Justice Jitendra Chauhan

Present : Mr. Ajay Kumar Kansal, Advocate,
 for the appellant.

 Ms. Dimple Jain, AAG Haryana.

JITENDRA CHAUHAN.J.

 This appeal is directed against the judgment dated 08.06.2009 and order dated 10.06.2009 passed by Additional Sessions Judge, Rewari vide which the appellant was convicted under Sections 363, 366-A and 376 IPC and sentenced to undergo imprisonment as under:-

Offence	Sentence	Fine	In default
363 IPC	RI for 3 years	--	
366-A IPC	RI for 5 years	--	
376 IPC	RI for 7 years	Rs.2000/-	RI for one year

 All the substantive sentences were ordered to run

concurrently.

Brief facts of the case as mentioned in the judgment passed by the trial Court are as under:-

“Brief facts of the case are that on 17.01.2008 Satish Kumar, complainant, submitted an application Ex.PL in police station, Kasola. In application, he *inter alia* stated that he is permanent resident of Rampur, Manpur, PS Sikarpur, District Bulandshar (U.P.) and is presently residing in village Suthani. He is working as electrician in Sainik Finance Company. His sister Murti Devi used to come to meet him. On 10.01.2008 he along with his wife Sunita and two small children went to in-laws house in village Tikriwala (U.P.). In rented house at Suthani, he had left his sister Murti Devi and two daughters-victims, aged about 17-1/2 years and 15-1/2 years. On 14.01.2008 when he returned to his house in village Suthani, he did not find his daughter-victims. On asking his sister Murti Devi told that on 13.01.2008 his daughters-victims had gone at about 9.30 a.m and did not return. He searched for them. During search, he has come to know that his daughters have been enticed away by Ishaq and Sahibul Aalam. Action be taken and minor

daughters be got recovered. On application, the FIR was registered. Copy of FIR is Ex.PP.”

After investigation, challan/report under Section 173 Cr.P.C was presented before the Court.

Copies of challan and other documents were supplied to the accused free of costs.

Charges under sections 363, 366-A and 376 IPC were framed against the accused to which the accused denied and pleaded false implication.

In order to prove its case, the prosecution examined PW-1 Victim, PW-2 another Victim, PW-3 Dr. Seema Yadav, PW-4 Dr. Anil Yadav, PW-5 Dr. A.K. Saini, PW-6 C. Dharampal, PW-7 Satish Kumar, PW-8 Inspector Om Parkash, PW-9 ASI Lal Chand, PW-10 HC Subhash Chand, PW-11 Lady Constable Anita Rani, PW-12 Dr. Jay Parkash, PW-13 Inspector Mahender Singh, PW-14 EHC Girdhari Lal, PW-15 Shri Ajay Tawatia and PW-16 Inspector Azam Khan and closed its evidence.

Statements of accused were recorded under Section 313 Cr.P.C and all the incriminating circumstances appearing in the prosecution evidence were put to them to which they denied and pleaded false implication.

The accused tendered certain documents in defence evidence and closed the same.

After appraisal of the evidence, the learned trial Court, vide impugned judgment and order, convicted and sentenced the accused/appellant as narrated above. However, co-accused Abul Kalam was acquitted of the charges.

Feeling dis-satisfied with the impugned judgment and order, the present appeal has been filed by accused/appellant Sahibul Aalam.

It is contended that the victims as per the FIR had gone away from home on 13.01.2008, whereas, the FIR was lodged on 17.01.2008. The delay of four days in lodging the FIR has not been explained. It is further contended that statements of PW-1 and PW-2 recorded under Sections 161 and 164 Cr.P.C suffer from material contradictions. In the cross-examination, PW-1 has stated that on 13.01.2008 she had gone to the house of her aunt Sangeeta. She had left the place of her aunt for going to Bawal at 11.30 am. She had mentioned in her statement recorded under Section 161 Cr.P.C that Abul Thekedar, Sahibul and Ishaq had met her at a secluded place whereas, name of Abul Thekedar and reference to secluded place was missing in the statement recorded under Section 164 Cr.P.C Ex.PA. Her version has been found to be false qua Abul Thekedar and Ishaq. It is further contended that the prosecution has failed to prove the date of birth of the victims as the prosecution has relied upon the middle class certificates which are not admissible in evidence unless the basis of

birth entries in school record at the time of their admission in school is also proved.

On the other hand, the learned State counsel has supported the judgment and order passed by the trial Court.

I have heard the learned counsel for the parties and have gone through the case file.

The law was set into motion by complainant, Satish Kumar by moving application Ex.PL. It was alleged by him that on 10.01.2008, he along with his wife Sunita and two young daughters, had gone to his in-laws house in village Tikriwala (Uttar Pradesh). He had left his sister Murti Devi and two daughters aged about 17-1/2 years and 15-1/2 years at home. On his return on 14.01.2008, he did not find his daughters. His sister told him that on 13.01.2008 his daughters had gone at about 9.30 a.m but did not return. The complainant searched for them. During search, he had come to know that his daughters had been enticed away by Ishaq and Sahibul Aalam. During investigation, accused were arrested and the victims were recovered from their custody. Statements of victims were got recorded under Section 164 Cr.P.C. PW-1 victim has stated that on 13.01.2008 at about 9.30 she had left home for house of her aunt Sangeeta. At about 11.30 am, she left place of her aunt for going to Bawal for taking medicine. When she was going, Ishaq asked her where she was going. She replied that she was going to purchase medicine. Ishaq asked her

where were her parents. She told that her parents were away to the house of her maternal uncle. Meanwhile, police officials came and apprehended them. On enquiry, they told her that they had apprehended them as they got information regarding commission of suicide by them. The police officials took them to Police Station Bawal. Krishan Munshi, Abul Thekedar and Abul Kalam Azad accused were present there. Abul Thekedar got them released from the police. They travelled to Banipur chowk in a tempo. From Banipur Chowk, she walked ½ kilometer. At a secluded place on the road, Abul Thekedar, Sahibul and Ishaq met her. They were in a van. On seeing them, she got perplexed. They asked her not to get perplexed. They made her drink water forcibly. On drinking water, she became unconscious. Abul Thekedar handed over a bundle of currency note to Sahibdul and instructed him to take her alone by stating that he (Abul Thekedar) shall deal with her father. He told Sahibul that as and when he required money, he shall send the same. On regaining consciousness, she found herself in Delhi with her sister PW-2 and Sahibul. Sahibul and Ishaq took them to a house in Delhi. Sahibul and Ishaq threatened them not to tell anything to anybody. They were kept in a house in Delhi. Next day, accused Sahibul and Ishaq took them to West Bengal in a train. On 15.01.2008 they reached West Bengal and they were separated from each other by Sahibul and Ishaq. During night of 15th and 16th January, 2018, accused Sahibul committed rape on her against her wish. On

17.01.2008 police came and got her signatures on some papers with written lines. She and her sister were made to join each other. When she was made to sign papers by police, a person with two revolvers was sitting with her sister PW-2. The person who was sitting with her sister had told her to give answers in yes or no otherwise, he shall put her and her sister to death. After some time, she was made to sit with a person and her sister PW-2 was instructed in the above manner. She had also signed certain papers. On 18.01.2008 Ishaq took her to house of his maternal uncle (Mama). He kept her there and committed rape on her. On 19.01.2008 Ishaq took her to house of his brother-in-law (Jija) and confined her there till 23.01.2008. Ishaq took her to another village and kept her there till 17.02.2008. Ishaq kept on committing rape on her on several occasions and kept her confined in a room throughout the period. To the similar effect is the statement of PW-2 another victim. She has deposed that on 13.01.2008 at about 9.30 am, she along with her sister PW-1 had gone to house of her aunt Sangeeta. At about 11.30 am PW-1 had left house of her aunt for purchasing medicine. At about 3/4 pm, she received a telephone call from a person, who gave his name as Sahibul and told that she should take her unwell sister. She went to home, told her paternal aunt and left for Bawal. After walking one kilometer, she found Sahibul, Ishaq and Abul Kalam sitting in a van. Sahibul showed her sister PW-1 victim lying unconscious in van. On seeing her sister, she got perplexed. They made her drink water. On

drinking water, she became unconscious. When she regained consciousness, she found herself in Delhi. Sahibul and Ishaq told her sister that in case they tried to tell anything, they shall be killed with a knife. On 14.01.2008 they were taken to West Bengal. On 15.01.2008 during night time, accused Sahibul committed rape on her against her wish. On 15.01.2008 she was separated from her sister. On 19.01.2008 Sahibul took her to another place on motorcycle. She was kept there in a house till 01.02.2008. During the said period accused Sahibul kept on committing rape on her. On 01.02.2008 accused Sahibul took her to another place and kept her there till 03.02.2008. During the said period accused Sahibul used to receive mobile calls from Abul. On 16.02.2008 police reached with her father and got her rescued from the clutches of accused.

Both the victims have given vivid minute details of the offence. They were cross-examined at length but nothing could be elicited from their testimony to shake their testimonies. However, the trial Court while finding contradiction with regard to name of accused Abul Kalam in the statements recorded under Section 161 and 164 Cr.P.C, acquitted him as his name was not mentioned in those statements. That apart nothing could be brought on record to disbelieve the statements of the victim. As regards the delay, the victims had gone missing on 13.01.2008. Their father on arriving at home on 14.01.2008 found that the victims had gone missing, he searched for them and

ultimately submitted complaint Ex.PL to the Police on 17.01.2008, so, the delay in recording the FIR is well explained. The victims have produced on record middle class certificates Ex.PB and PD to prove dates of their birth. On the basis of the same, the trial Court has rightly held that the age of the victims was less than eighteen years. In view of this clinching evidence on record, this Court finds that the prosecution has successfully established its case beyond all reasonable doubt, against the accused. The testimonies of the victim need no corroboration and are sufficient to base conviction. There is nothing on record to disbelieve the testimonies of the victims who have minutely stated each and every detail of the offence. They have successfully withstood the test of cross-examination. Relying upon **State of Himachal Pradesh vs. Sanjay Kumar (2017) 2 SCC 51** Hon'ble the Apex Court has held that in case of child victims of sexual assault, no corroboration of the statement is necessary as it adds insult to injury. Besides, the victim should be kept on a pedestal and not at par with the accused. Thus, despite that there is no discrepancy and concrete corroboration of the statements of both the prosecutrix.

In view of above, the present appeal is dismissed and the impugned judgment and order are upheld.

Custody Certificate dated 05.09.2017 issued by Superintendent, District Prison, Narnaul, has been filed in the Court.

The same is taken on record. As per the custody certificate, the

accused/appellant was released from jail on 23.11.2013 on completion of sentence awarded to him.

Dismissed.

06.09.2017.

(JITENDRA CHAUHAN)

SN

JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No