

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

CRA-S-1203-SB of 2012 (O&M)

Date of decision: 23.09.2017

Satish

...Appellant

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr. Amaninder Preet, Advocate
for the appellant.

Ms. Dimple Jain, AAG, Haryana
for the State.

Jitendra Chauhan, J.

Present appeal is directed against the judgment of conviction and order of sentence passed by learned Sessions Judge, Rewari, vide judgment dated 25.01.2012 and order of sentence dated 28.01.2012. The appellant was convicted under Sections 363, 366-A and 376 of the Indian Penal Code (for short 'IPC') and sentenced to undergo rigorous imprisonment for four years with fine of Rs.2000/- each and in default of payment of fine, to further undergo rigorous imprisonment for a period of one year under Section 363 of IPC. He was further sentenced to undergo rigorous imprisonment for seven years with fine of Rs.5000/- and in default of payment of fine, to further undergo rigorous imprisonment for one year and nine months each under Sections 366-A

and 376 of IPC. All the substantive sentences were ordered to run concurrently.

2. The facts of the case of the prosecution as set out from the judgment of the trial Court is as under:-

“On 21.08.2011, a telephonic message was received from Control Room, Rewari at Police Station Bawal which intimated that a girl had been raped in the fields of Dulhera Kalan. On receipt of message, ASI Surender Singh along with his official companions reached the spot and recorded the statement of victim Aarti daughter of Banwari Lal, aged 14 years. The prosecutrix stated that her parents had taken agricultural land of Pradeep son of Karan Singh resident of village Jhabua for cultivation on batai. So, they were living in the house constructed in the said fields. Near to their house is a poultry farm in which a boy Satish son of Subhash Lal resident of village Shikvapur, Police Station Thathiya, District Kanoj (U.P.) was working as a labourer. Satish offered her to become his friend to which she agreed. Last night (intervening 20/21.08.2011) when she was sleeping on the roof of her house, Satish threw mud on the roof by which she woke up and came down stairs. Satish then took her into bajra fields at the back of their house. Alluring her for marriage, he forcibly raped her and kept her in the fields for the whole night. In the morning, he took her to the poultry farm but the people at the poultry farm sent her back to her parental home. She narrated the entire occurrence to her parents. Satish then refused to honour his promise of marriage and

hence the matter was reported to the police. On the statement of the prosecutrix, a case under Section 363, 366-A and 376 of IPC was got registered by SI Surender Singh. Investigation commenced. Accused was arrested. Prosecutrix as well as accused were sent to medicolegal examination. A sealed parcel containing salwar of the prosecutrix, swabs, slides, sample seal, a sealed envelope etc., handed over by the doctor were taken in possession by the investigation officer. After medical examination of the accused, the sealed parcel containing his underwear, prepared by the doctor, was also taken into possession by the investigating officer by preparing a memo. Sealed parcels were later sent to FSL, Madhuban for chemical analysis. Prosecutrix was produced before learned Addl. Chief Judicial Magistrate, Rewari on 23.07.2011, who recorded her statement under Section 164 Cr.P.C. Prosecutrix was also subjected to radiological test for determination of her age. Statements of the witnesses were recorded. On completion of investigation and necessary formalities, accused was challaned and was sent to Court for trial.”

3. On presentation of challan, the trial Court found prima facie evidence against the accused-appellant, framed charge for the offences punishable under Sections 363, 366-A and 376 of the Indian Penal Code to which accused pleaded 'not guilty' to the charge and claimed trial.

4. In support of its case, the prosecution examined the following witnesses:-

PW-2-Gopi Chand Bhuraria, Head Master, Govt. Middle School, Jeelota Block Kishangarh Bass, District Alwar neighbour of Kashmira Singh (PW1), testified the date of birth of the prosecutrix as 21.07.1998 and brought on record the school certificate; PW-3-Banwari, father of the prosecutrix, narrated the whole occurrence. He stated that his daughter had disclosed him that the accused had forcibly committed rape upon her. He mentioned the age of his daughter as 14/15 years; PW-4- Prosecutrix herself appeared in the witness box and testified the whole story as to how and in what manner, she was subjected to sexual act by the accused/appellant. She stated that on the intervening night of 20/21.08.2011, she was sleeping alone on the roof of her house and during the night, accused came and threw mud on the roof. When she came down stairs, the accused took her to a bajra field and forcibly raped her. She was kept in the field till morning and then in the morning, the accused took her to the poultry farm and during day time, the owner of poultry farm handed her to her father. She further stated that her statement was recorded by the police.

PW-5-Dr. Garima Bajaj, who was posted as Medical Officer, Rewari, conducted the medico-legal examination of accused/appellant as well as of prosecutrix and proved the medico-legal report of prosecutrix as Ex.PG and of accused as Ex.PJ; PW-6-Dr. Manpreet Tanwar, who was posted as Medical Officer, General Hospital, Rewari stated that he radiological examined the prosecutrix on 25.08.2011 and on the basis of x-rays, he opined the age of prosecutrix between 15 to 16 years.

The other PWs were examined as formal witnesses along with PW-12, SI Surender Singh, who was the Investigating Officer in the case.

5. The statement of the accused under Section 313 Cr.P.C., was recorded. He pleaded innocence and alleged false implication. However, the accused did not lead any evidence in his defence.

6. After hearing the Public Prosecutor for the State, the counsel for the complainant and counsel for the accused, and after going through the evidence on record, the trial Court convicted and sentenced the accused/appellant, as stated hereinbefore.

7. Feeling aggrieved, against the judgment of conviction and sentence rendered by the trial Court, the instant appeal was filed by the accused/appellant which was admitted on 03.04.2012. The sentence of the appellant was suspended on 30.09.2016.

8. Learned counsel for the appellant/accused has contended that the learned trial Court has misread, misconstrued and misinterpreted the oral as well as documentary evidence while convicting the appellant/accused. He states that there is a delay of one day in lodging the FIR and sending the special report to the Magistrate remains unexplained. The learned counsel refers to statement of prosecutrix recorded under Section 164 Cr.P.C., and states that the prosecutrix has specifically admitted that on 21.08.2011, when she was sleeping in the house, her friend came and both went to fields. She has further stated that no illegal act was committed by the appellant with her and she had gone

with him as per her own sweet will and she does not want to take any legal action against the accused. Thus, the learned counsel for the appellant has submitted that the prosecutrix was a consenting party.

9. It is further submitted that the statement of prosecutrix made before the trial Court on 28.11.2011, was afterthought and had been made under fear and pressure of the parents. The custody of the prosecutrix was handed over to her parents after recording the statement under Section 164 Cr.P.C., on 21.08.2011 and thereafter, the prosecutrix examined before the trial Court on 28.11.2011, thus, the parents had enough time to influence and force her to resile from her earlier statement, however, the trial Court has failed to point out the major contradiction in the stance of the prosecutrix.

10. It is asserted that the prosecutrix was major. Learned counsel refers to the statement of PW-6-Dr. Manpreet Tanwar who had radiologically examined the prosecutrix for determination of her age whereby on the basis of X-ray, he opined the age of prosecutrix to be between 15 to 16 years and in cross examination, he admitted that there is possibility of plus/minus of two years on either side which means that the prosecutrix was not only more than 16 years or she could be of 18 years. He further submitted that even as per deposition of PW-2, Gopi Chand Bhuraria, Head Master who issued the certificate Ex.PA admitted that in record two names 'Aarti Devi' and 'Nukti Devi' had been written by different persons and further word alias is not written between the names and the attendance of the student used to be called by Nukti Devi

whereas the prosecutrix deposed that she was not known by any other name except Aarti, therefore, the learned counsel submits that fabrication and manipulation in the school record creates dent in the prosecution story.

11. Learned counsel for the appellant has further contended that as per medical record, prosecutrix was well conversant with the orientation and she used to have sexual intercourse and was habitual of it and there was no external marks of injuries which proved that the appellant had not committed rape upon her forcibly and the prosecutrix used to do the act out of her own sweet will. He further submitted that there are major contradictions and improvements in the statement of prosecutrix which cannot be ignored. The prosecution has failed to record the statement of any independent witness and only the statements of interested witnesses have been recorded. Reliance has been placed upon **Manga @ Man Singh Vs. State of Uttarakhand**, 2013(7) SCC 629, wherein in para No.34, it has been stated as under:-

“27. It was contended that according to the prosecution when the accused party attacked the injured party apart from the family members of the injured party, local villagers were also present but yet, none was examined by way of independent witness. The said submission has been rightly rejected by the High Court by giving reasons. The High Court has rightly held that though the injured witnesses were related to each other, having regard to the nature of evidence tendered by them, there were no good grounds to discard their version. It has found that their evidence was natural and there was nothing to find fault with their version. It has further held rightly that it is the quality of the witness and not the quantity that matters. It has also taken

judicial notice of the fact that the public are reluctant to appear and depose before the Court, especially in criminal cases because of many obvious reasons. We fully endorse the said conclusion of the High Court, while dealing with the said submission made on behalf of the appellants.”

12. There is no credible evidence against the appellant, rather the facts on record goes to establish the false implication of the accused in the instant case.

13. Lastly, the learned counsel for the appellant submits that the appellant has undergone the entire sentence. There is nobody else to support and look after the old parents. The appellant is facing the agony of trial since the registration of FIR i.e 21.08.2011 and has remained in custody for 05 years and 03 months. He prays that the present appeal may be accepted.

14. On the other hand, learned State counsel contended that the case of the prosecution has been duly proved beyond reasonable doubt. The prosecutrix has supported the prosecution version. Her statement is duly supported and corroborated by medical evidence and the investigation of the present case. There is cogent evidence on record to show that the date of birth of the prosecutrix is 21.07.1998, and at the time of occurrence she was less than 16 years of age. The school Head Master PW-2, Gopi Chand Bhuraria has duly testified her date of birth by producing on record the document Ex.PA. The learned State counsel argued that that the offence under Sections 363 and 366-A IPC are duly proved as the minor cannot give the consent and she was kidnapped from the lawful custody of her natural guardian without the consent of her

natural guardian. Learned State counsel further contended that the contradictions, if any, do not materially affect the case of the prosecution, therefore, this is not a case where any benefit could be given to the accused. The prosecutrix being minor at the relevant time, therefore, the consent of prosecutrix is immaterial. The act of the accused has been duly proved by way of medical evidence, therefore, learned State counsel prays for the dismissal of the present appeal.

15. I have heard learned counsel for the parties and have gone through the record.

16. The main argument raised by learned counsel for the appellant is that the prosecutrix was a consenting party as she had specifically admitted in her statement Ex.PD recorded under Section 164 Cr.P.C., before the Magistrate that no illegal act was committed by the accused and she had gone with him on her own volition. A bare perusal of the record would reveal that prosecutrix was minor at the time of occurrence. PW-2 Gopi Chand Bhuraria, Head Master, Govt. Middle Scholl, Jeelota, produced the admission register of his school whereby he testified that prosecutrix was admitted in his school on 24.08.2004 and he date of birth was mentioned as 21.07.1998 in the record. He has also produced on record certificate Ex.PA. Further, PW-3 Banwari, father of prosecutrix has also deposed that her daughter (prosecutrix) is aged about 14/15 years. There is no contrary evidence on record which erodes the authenticity of the record i.e. the certificate Ex.PA. Otherwise also, from the evidence on record, it cannot be held that the prosecutrix was major at

the time of occurrence. Further, PW-6 Dr. Manpreet Tanwar also testified the age of prosecutrix between 15 to 16 years. The learned counsel for the appellant has laid much emphasis on the opinion of PW-6 Dr. Manpreet Tanwar that possibility of two years minus/plus on either side in the age determination, however, this opinion was duly refuted by PW-5 Dr. Garima Bajaj who had medico-legally examined the prosecutrix whereby she proved that age of the prosecutrix was less than 16 years as the sexual characters of a girl develop fully after 16 years but the same were at the developing stage of the prosecutrix. The accused/appellant has failed to corroborate or rebut the factum of age of the prosecutrix that she was major at the time of occurrence. No oral or documentary evidence was produced before the Court to substantiate this assertion. In view of the school record of the prosecutrix, duly certified by the Head Master school, it is duly proved that the prosecutrix was minor at the time of occurrence and being minor, her consent, if any, is immaterial. In **State of Punjab** Vs. **Ramdev Singh**, 2004(1) RCR (Criminal) 345, it has been held as under:-

“This Court dealt with the issue and held that rape is violative of victims fundamental right under Article 21 of the Constitution. So, the courts should deal with such cases sternly and severely. Sexual violence, apart from being a dehumanizing act, is an unlawful intrusion on the right of privacy and sanctity of a woman. It is a serious blow to her supreme honour and offends her self-esteem and dignity as well. It degrades and humiliates the victim and where the victim is a helpless innocent child or a minor, it leaves behind a traumatic experience. A rapist not only causes physical injuries but leaves behind a scar on the most

cherished position of a woman i.e her dignity, honour, reputation and chastity. Rape is not only a crime against the person of a woman, it is a crime against the entire society. It is a crime against basic human rights, and also violates the most cherished fundamental right guaranteed under Article 21 of the Constitution of India.”

Further in **Satish Kumar Jayanti Lal Dabgar Vs. State of Gujarat**, (2015) 7 SCC 359, it has been observed as under:-

“15 The Legislature has introduced the aforesaid provision with sound rationale and there is an important objective behind such a provision. It is considered that a minor is incapable of thinking rationally and giving any consent. For this reason, whether it is civil law or criminal law, the consent of a minor is not treated as valid consent. Here the provision is concerning a girl child who is not only minor but less than 16 years of age. A minor girl can be easily lured into giving consent for such an act without understanding the implications thereof. Such a consent, therefore, is treated as not an informed consent given after understanding the pros and cons as well as consequences of the intended action. Therefore, as a necessary corollary, duty is cast on the other person in not taking advantage of the so-called consent given by a girl who is less than 16 years of age. Even when there is a consent of a girl below 16 years, the other partner in the sexual act is treated as criminal who has committed the offence of rape. The law leaves no choice to him and he cannot plead that the act was consensual. A fortiori, the so-called consent of the prosecutrix below 16 years of age cannot be treated as mitigating circumstance.”

17. The prosecutrix, while appearing in the witness box as PW4, has emphatically supported the prosecution version whereby she had stated that during the relevant night, accused/appellant took her in a

bajra field and forcibly raped her. She further stated that in the morning she was taken to poultry farm by accused and during the day her parents came and she was handed over to them by the owner of poultry farm. The contention of learned counsel for the appellant that she had specifically admitted that she had gone with accused out her own sweet will, lacks merit as the prosecutrix was minor at the time of occurrence and her volition, if any, is of no relevance. The occurrence took place on the intervening night of 20/21.08.2011 and the statement of prosecutrix was recorded under Section 164 Cr.P.C., on 23.08.2011. The prosecutrix had specifically stated before the Court below that the statement made before the Magistrate was under fear and pressure. The prosecutrix had duly identified the accused before the Court below and had specifically reiterated the entire prosecution version which is duly corroborated by virtue of medical evidence that she was forcibly subjected to sexual intercourse. The prosecution has duly proved its case by leading cogent evidence. In view of the fact that the prosecutrix was minor, therefore her being a consenting party is not legally tenable, the appellant cannot be absolved of the act committed by him. She was taken away from the custody of her natural guardian and was raped.

18. The argument of learned counsel for the appellant that there is possibility of fabrication and manipulation in the school record produced by PW-2 Gopi Chand Bhuraria whereby he admitted that in record two names 'Aarti Devi' and 'Nukti Devi' were written by different persons and the attendance of the prosecutrix used to be called by Nukti

Devi, is of no relevance as the factum of age has been duly proved by PW-2 Gopi Chand, PW-3 Banwari Lal, father of prosecutrix and PW-5, Dr. Garima Bajaj. PW-2 Gopi Chand is a public servant and the record was maintained by school teachers. It is not the case of the appellant that the school teachers or PW-2 had any previous enmity with him. Further, in cross examination of PW-2 Gopi Chand, he had specifically admitted that the prosecutrix was also known by the name of Aarti. Thus, it has been proved on record that that the prosecutrix was minor at the time of occurrence.

19. Moreover, as per report given by Forensic Science Laboratory, Madhuban, Karnal, human semen was detected on the slides, vaginal swab, salwar and underwear. Hence, there is corroboration of the testimony of the prosecutrix that the appellant ravished her. The link evidence is complete in the present case.

From the oral as well as documentary evidence, this Court comes to conclusion that the prosecution has successfully established its case beyond all shadow of reasonable doubt against the accused/appellant.

20. There is no illegality or impropriety in the impugned judgment of conviction dated 25.01.2012 and order of sentence dated 28.01.2012 and the same, is, hereby upheld and affirmed. There is no merit in the appeal which is hereby dismissed.

21. It is pertinent to mention here that as per custody certificate dated 22.09.2017, issued by Deputy Superintendent, District Prison,

Narnaul produced on record by learned State counsel in the Court, the appellant was released from jail on 19.11.2016 on completion of the sentence by giving benefit of undertrial period and earned remissions. As such, no further order is required to be passed with regard to committing him to prison again.

23.09.2017
sumit.k

(JITENDRA CHAUHAN)
JUDGE

<i>Whether speaking/reasoned :</i>	<i>Yes</i>	<i>No</i>
<i>Whether Reportable :</i>	<i>Yes</i>	<i>No</i>