

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

CRA-S-1684-SB of 2005 (O&M)
Date of decision: 07.10.2017

Pradeep

...Appellant(s)

Versus

State of Haryana

...Respondent(s)

CRR-2059 of 2005 (O&M)
Date of decision: 07.10.2017

Veer Bhan

...Petitioner(s)

Versus

Pardeep and others

...Respondent(s)

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr. Ashwani Bhardwaj, Advocate/Amicus Curiae
for the appellant(s).

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

Mr. Sukhdeep Parmar, Advocate for the petitioner
in CRR-2059-2005

Jitendra Chauhan, J.

The aforementioned appeal and revision are being decided by way of this common judgment, as the same have arisen out of the same impugned judgment. However, the facts are being derived from CRA-S-1684 of 2005 to avoid the repetition and sake of brevity.

2. The appellant, Pradeep, has filed the criminal appeal bearing No. CRA-S-1684-SB-2005 assailing his judgment of conviction and order of sentence dated 25.05.2005, passed by learned Additional

Sessions Judge, Fast Track Court, Sonapat, whereby, the appellant was convicted under Sections 363 and 366 of the Indian Penal Code (for short 'IPC') and sentenced to undergo rigorous imprisonment for 05 years with fine of ₹5000/- and in default of payment of fine, to further undergo rigorous imprisonment for six months in the above Sections. However, he was acquitted under Sections 376(G), 368 and 506 of IPC.

3. Petitioner/complainant Veer Bhan in criminal revision has assailed judgment of acquittal and order of sentence dated 25.05.2005, passed by learned Additional Sessions Judge, Fast Track Court, Sonapat, whereby, respondent No.1 Pardeep was acquitted of the charges under Sections 376(G), 368 and 506 of IPC and respondent Nos. 2 to 6 were acquitted of all the charges framed against them.

4. The case of the prosecution as emanating from the impugned judgment of the trial Court is as under:-

“On 28.01.2003, SHO Police Station Sadar along with his fellow police officials was present on the check post of Sector 23, Sonapat abutting Kakroi road, when complainant Veer Bhan son of Beli Ram met him and got recorded his statement Ex.PC to the effect that he is resident of village Kakroi and is blessed with three daughters and a son. The eldest daughter Meenakshi had already passed out her matriculation examination and is aged about 17 years. She was missing since the night of 14.11.2002. She was searched by the complainant and during search her dupta and her chappal were recovered from canal bridge to cause an apprehension in the

mind of the complainant that Meenakshi had drowned in the canal. She was searched through canal also but could not be found. Regarding this incident the complainant had got registered report No.17 on 29.11.2002 and kept on searching for Meenakshi thereafter also. On 27.01.2003, complainant came to know that her daughter Meenakshi had accompanied accused Pardeep resident of village Kakroi who had taken his daughter on the night of 14.11.2002 by enticing her and said accused Pardeep cheated the complainant by placing her chappal and dupta near the canal bridge. Request was made to the police for taking appropriate action against accused Pardeep and for the recovery of her daughter. On the basis of above said statement Ex.PC, formal FIR Ex.PC/2 was got registered by SHO against accused Pardeep for commission of offence punishable under Sections 363, 366 and 420 IPC. During the investigation of the case, prosecutrix Meenakshi along with accused Pardeep was seen coming from railway station side of Sonapat on 29.01.2003 while police officials were present at Hindu College Chowk, Sonapat. Prosecutrix was recovered from the possession of accused Pardeep and her custody was restored to complainant Veer Bhan. Statement of prosecutrix was recorded by police and she levelled allegations of rape against accused and as such offence under Section 376 IPC was also added in the existing offences. Prosecutrix was got medico-legally examined from the authorities of Civil Hospital, Sonapat and accused was also got medico-legally examined and the investigation of the case was

completed. After completion of entire investigation, challan was prepared and accused were forwarded to the Court of Addl. Chief Judicial Magistrate, Sonapat.”

5. On presentation of challan, the trial Court finding prima facie evidence against accused-appellant, framed charge for the offences punishable under Sections 363, 366, 376 and 506 of IPC to which he pleaded 'not guilty' and claimed trial. Further, under Section 219 Cr.P.C., after summoning the additional accused on an application moved by the prosecution, accused Pardeep along with co-accused (since acquitted) charge sheeted for the offence punishable under Section 376(G) of IPC.

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

PW-1 Dr. Arun Garg who had examined accused Pardeep and proved copy of MLR on record.

PW-2 Veer Bhan (complainant) testified the version of his report lodged by him with police on 29.11.2002 and corroborated the whole prosecution story.

PW-3 Prosecutrix herself narrated the entire incident.

PW-4 ASI Satbir Singh deposed regarding handing over sealed envelope and one parcel along with sample seal which was handed over to him by the doctor and the same was further handed over to SHO by this witness.

PW-5 Sub Inspector Mehar Singh, the Investigating Officer

had deposed regarding the sequence of investigation.

PW-6 HC Dalbir Singh testified the delivery of special reports being handed over to him by MHC Jagdish Chander to senior officers.

PW-7 Dr. S.K. Gosain conducted X-ray examination upon the prosecutrix and on the basis of same, he stated that age of prosecutrix seems to be between 16 to 17 ½ years.

PW-8 Dr. Alkrita, who was posted as Medical Officer, Govt. Hospital, Sonapat medico-legally examined the prosecutrix and opined that possibility of sexual intercourse cannot be ruled out in the case.

PW-9 Dr. Sunil Kumar who conducted ossification test upon the prosecutrix and opined that the age of prosecutrix is between 14 to 17 years in any case.

PW-10 Constable Jagdish Chander tendered into evidence his duly sworn affidavit Ex.PI.

PW-11 HC Rajender Singh also tendered into evidence his duly sworn affidavit Ex.PT.

7. The statement of the accused under Section 313 Cr.P.C., was recorded. He pleaded innocence and alleged false implication. In defence, the accused examined DW-1 Ranbir Singh, the employer of the accused and DW-2 Surta.

8. After hearing the learned counsel for the parties and after going through the evidence on record, the trial Court convicted and sentenced the accused/appellant, as stated hereinbefore.

9. Feeling aggrieved, against the judgment of conviction and sentence delivered by the trial Court, the instant appeal was filed by the accused/appellant which was admitted on 26.09.2005. The sentence of the appellant was suspended on 17.03.2006.

10. Learned counsel for the appellant/accused has contended that the appellant/accused has been falsely roped in the present case. The trial Court has not examined the ocular and documentary evidence in the right perspective. He refers to the testimony of PW-2 Veer Bhan, wherein he has stated that appellant abducted his daughter Meenakshi in the night on 14.11.2002 and the matter was reported on 29.11.2002, whereas on 27.01.2003, he came to know that her daughter accompanied accused and ultimately the present FIR came to be registered on 28.01.2003, therefore, the learned counsel has submitted that there is an inordinate delay of 2½ months in lodging the FIR which falsifies the story of the complainant, Veer Bhan. Even the learned trial Court has acquitted the appellant as well as co-accused under Section 376 of IPC by observing that the testimony of prosecutrix is totally contradictory to her earlier statement recorded under Section 161 Cr.P.C., whereby she has levelled allegations of sexual assault only against the appellant. Learned counsel has further argued that since the main offence i.e. under Section 376 of IPC has not been proved and rest of co-accused had been acquitted from all the charges, therefore, the conviction of appellant under Sections 363 and 366 of IPC is not justifiable in the eyes of law.

11. The learned counsel for the appellant has further submitted

that the prosecutrix eloped with the appellant out of her own free will as she was having love affair with accused/appellant. In this context, the learned counsel refers to Para 21 of the trial Court whereby after considering letters Ex.D1 to Ex.D18, the Court below had come to the conclusion that the prosecutrix was having a love affair with accused Pardeep. The hand writing on the said letters were also admitted by the father of the prosecutrix.

12. Material contradictions and improvement in the first and second version of the prosecutrix have been cited. The statement of prosecutrix recorded under Section 161 Cr.P.C., whereby she has categorically stated that accused Pardeep had told that her marriage had been settled with an old man and she would not be able to reside happily and accused had further told that he will be coming to her house during night time and will knock at the door and she should accompany him. In her statement recorded under Section 164 Cr.P.C., the prosecutrix named other accused who has been since acquitted. The trial Court has also mentioned that there is every possibility that version of prosecutrix in her statement recorded under Section 164 Cr.P.C., is a concocted one. It has also come in the concluding paras of the judgment of trial Court that in some letters even an invitation has been given by the prosecutrix to accused to come to her house in the absence of her parents, therefore, the learned counsel has contended that accused has never induced, eloped the prosecutrix and on the date of occurrence, the prosecutrix herself joined the company of appellant out of her own wish. The prosecutrix remained

missing for about 2 ½ months and as per her own version, accused took her to various public places like Gurgaon, Panipat, Sonapat etc., however, at no occasion, she made hue and cry or attempt to escape or approach any person for help. The prosecutrix herself admitted that she is literate and can distinguish between right and wrong, however, at the relevant time, she kept mum as no wrong was committed with her by the accused/appellant.

13. It is further argued that as per testimony of PW-7, Dr. Gosain who had radiologically examined the prosecutrix and opined that her age is between 16 to 17 years and it is a well settled law that while dealing with the aspect of age, a margin of two years should be given to accused, but the learned trial Court has not considered the above aspect of the matter. There is no cogent evidence on record to prove that the prosecutrix was minor at the relevant time. The medical evidence also does not support the version of the prosecutrix as no internal or external mark of injury was found on the person of the prosecutrix while she was subjected to medico-legal examination and the prosecutrix was a consenting party. He has further submitted that the learned trial Court grossly erred while assessing the evidence of defence witnesses. Even, except the prosecutrix and her father, there is no other independent witness or neighbourer to corroborate the prosecution story. There were also material contradictions in the statements of prosecution witnesses.

14. *Per contra*, the learned State counsel has vehemently argued that the prosecution has fully proved the case against the appellant,

though the offence under Section 376 of IPC has not been proved, however, it has been duly proved that the prosecutrix was a minor and was kidnapped from the lawful custody of her father by the accused/appellant. The prosecutrix has duly supported her version which has been duly corroborated by her father, complainant in the present case. There was no previous enmity of accused with the complainant or the prosecutrix, therefore, question of false implication does not arise at all. Therefore, she has submitted that the prosecution has duly proved the guilt of the accused.

15. I have heard learned counsel for the parties and perused the record minutely.

16. Indisputably, the prosecutrix had a close intimacy with accused/appellant as is evident from the letters Ex. D1 to D18 being written by the prosecutrix to the appellant. The prosecutrix was missing from the night of 14.11.2002. Thereafter, the matter was reported to the police on 29.11.2002 and DDR in this regard was registered. Ultimately, on 28.01.2003, the complainant, father of the victim lodged FIR against accused/appellant Pardeep for enticing away his daughter. The prosecutrix and accused were apprehended on 29.01.2003 by the police when they were coming from Railway Station side of Sonapat. Statement of prosecutrix under Section 161 Cr.P.C., (Ex.DB) was recorded whereby the prosecutrix had alleged that accused by taking her into confidence and on false pretext that her marriage has been settled with an old man and that she should accompany him till her scheduled date of marriage

expires. She had stated that the accused knocked on the door of the house and on hearing it she came out of the room and accompanied him. The second version of prosecutrix under Section 164 Cr.P.C., was recorded on 05.03.2003 whereby she named the other accused who has been acquitted. The trial Court has rightly recorded that there is every possibility that version of the prosecutrix in her statement under Section 164 Cr.P.C., is a concocted and tainted one, as the statement was recorded after a long gap. PW-8, Dr. Alkirta who had medico-legally examined the prosecutrix had stated that no internal mark of injury was found and the vagina was found inserting two fingers easily, which suggests that the medical evidence does not support the version of prosecutrix. Even in consonance with medical evidence and other date of birth proof on record, it has been proved that she was 17 years old. The prosecutrix and accused were apprehended while there were coming from Railway Station, Sonapat. The prosecutrix did not try to escape or made any effort to draw attention of the public. The name of other accused who have been acquitted were not mentioned in first statement recorded under Section 161 Cr.P.C. Thus, the trial Court has rightly held that the prosecutrix was consenting party and the charges under Section 376 of IPC were not proved against the accused.

17. Now coming to the conviction of accused/appellant Pardeep under Sections 363 and 366 of IPC, this Court is of the opinion that the trial Court has rightly held guilty for the above charges. It has come on record that accused/appellant had taken the prosecutrix by stating that her

marriage has been settled with an old man and she would not reside happily. The prosecutrix had never said that she accompanied the accused to marry him or otherwise. The name of accused has been specifically mentioned by the prosecutrix that he knocked at the door of the house and the prosecutrix accompanied him on the relevant date, thus, it can be safely inferred that the accused has taken her by concocting a false story and on wrong assurance. The accused/appellant is already married to one Neelam and he had taken the prosecutrix by inducing her to live a lavish life and on the pretext of marrying her.

This Court has re-evaluated the entire record. No cogent or convincing material has come on record against other accused (respondent Nos. 2 to 6) except accused/appellant Pardeep. Therefore, the CRR filed by the petitioner Veer Bhan stands dismissed.

There is, thus, no illegality or impropriety in the impugned judgment of conviction and order of sentence dated 25.05.2005, passed by learned Additional Sessions Judge, Fast Track Court, Sonapat and the same, is, hereby upheld and affirmed. There is no merit in the appeal bearing No. CRA-S-1684-SB of 2005 and CRR-2059 of 2005 which are hereby dismissed.

07.10.2017
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(JITENDRA CHAUHAN)
JUDGE

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No