

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

CRA-S-2117-SB-2012 (O&M)

Date of Decision: November 24, 2017

Manoj Kumar and another

...Appellants

Versus

State of Haryana

...Respondent

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Ashwani Bhardwaj, Advocate
or the appellants.

Ms. Gaganpreet Kaur, AAG Haryana.

JAISHREE THAKUR, J.

This is a criminal appeal filed against the judgment dated 20/23.04.2012 passed by the Additional Sessions Judge (Fast Track Court) Narnaul, whereby, the appellants have been convicted and sentenced to undergo rigorous imprisonment substantially for a period of 07 years and to pay fine under Sections 363, 366-A, 376, 120-B of Indian Penal Code.

2. In brief, the facts of the case are that complainant-Chokhi Devi by an application dated 30.08.2011 informed ASI Ramesh Chand that she was having three sons and two daughters. On 29.08.2011, she and her children went to sleep, after having taken a meal and when she woke up at night around 2.00 p.m., she found that her daughter, aged 13 years, was not available in the house. At that time itself, she brought this fact to the notice

of her neighbours and she along with them looked for her at the railway station and at the bus stand. In the complaint, she mentioned that one Sanoj son of Bhagtu with the help of his brother Manoj had enticed away her daughter and Manoj would know the whereabouts of her daughter and Sanoj. It was further mentioned that her daughter had also taken away Rs.20,000/- and gold ornaments. On the basis of said complaint, an FIR Ex.PB was registered against the appellants Sanoj and Manoj. During the course of investigation, appellant No.1-Manoj was arrested and on the basis of disclosure statement suffered by him, the prosecutrix was recovered from the custody of Sanoj from Village Sewapur Kamal. She was medically examined and her statement under Section 164 Cr.P.C. was got recorded from CJM Narnaul and based on the statement and conclusion of investigation, both the appellants were sent by the police to stand for trial for committing the offence under Sections 363, 366-A, 376, 120-B of Indian Penal Code.

3. Finding a prima facie case under Sections 363, 366-A, 376, 120-B of Indian Penal Code, the appellants were charge-sheeted accordingly, to which they pleaded not guilty and claimed trial.

4. In order to prove its case, the prosecution has examined as many as 18 witnesses. LC Sunita appeared as PW1, SHO SI Partap Singh appeared as PW2, ASI Lal Chand appeared as PW3, ASI Mahesh Kumar appeared as PW4, ASI Ramesh Chand appeared as PW5, ASI Kapoor Singh appeared as PW6, LC Savita appeared as PW7, ASI Virender Singh appeared as PW8, Dr. Pradeep Yadav appeared as PW9, HC Jai Bhagwan appeared as PW10, Chuki Devi appeared as PW11, Setha Ram appeared as

PW12, Dr. Vandana Yadav appeared as PW13, prosecutrix appeared as PW14, Hanuman appeared as PW15, Dr. Aggarwal appeared as PW16, Dr. Chanderhass CJM, Narnaul appeared as PW17, ASI Babulal appeared as PW18 and thereafter, the prosecution evidence was closed.

5. Statement of the appellants were recorded under Section 313 Cr.P.C. in which they stated that they are innocent and have been falsely implicated in this case.

6. Based on the statement of the prosecutrix, her parents and medical evidence on the record, the Additional Sessions Judge, Narnaul convicted the appellants under Sections 363, 366-A, 376, 120-B of Indian Penal Code and sentenced them; to undergo rigorous imprisonment for a period of 04 years and to pay a fine of Rs.1000/- each under Section 363 IPC and in default of payment of fine, to undergo further imprisonment for a period of three months; to undergo rigorous imprisonment for a period of 07 years and to pay fine of Rs.2000/- each under Section 366-A IPC and in default of payment of fine, to undergo further imprisonment for a period of four months; to undergo rigorous imprisonment for a period of 07 years and to pay a fine of Rs.2000/- each under Section 376 IPC and in default of payment of fine, to undergo further imprisonment for a period of four months; to undergo rigorous imprisonment for a period of 02 years and to pay a fine of Rs.1000/- each under Section 120-B IPC and in default of payment of fine, to undergo further imprisonment for a period of three months. It is this judgment that has been assailed in the instant appeal.

7. Custody certificates of the appellants were filed, which goes on to show that both the appellants have been released from jail on 07.12.2016

and 03.02.2017 respectively after completion of their sentence.

8. Learned counsel appearing on behalf of appellants at the very outset submitted that he does not press the instant appeal qua appellant No.2-Sanoj, however, while assailing the judgment qua appellant No.1-Manoj, learned counsel argued that the prosecutrix had varied her statement on several occasions. It is submitted that in her statement recorded under Section 161 Cr.P.C. the prosecutrix has not levelled any allegation of rape against appellant No.1-Manoj and it is only subsequent thereto that an improvement has been made in her testimony, which would show that he had been falsely implicated. It is also argued that till the initial statement that has been recorded under Section 161 Cr.P.C. on 08.09.2011, she had only named Sanoj as a person, who had committed the offence of rape and subsequently taken her to Bihar. It is contended that the prosecutrix also did not raise any alarm, while she was being taken from Rewari to Bihar and that would be sufficient to show that she had gone willingly. It is further argued that appellant No.1-Manoj has wrongly been convicted, therefore, he is liable to be acquitted from all the charges levelled against him.

9. Per contra, learned counsel appearing on behalf of the respondent-State vehemently opposed the arguments addressed by learned counsel for appellant No.1-Manoj. He argued that there has been a categorical averment by the prosecutrix in her statement recorded under Section 164 Cr.P.C. before CJM Narnaul on 08.09.2011, that both Manoj (appellant No.1) and Sanoj (appellant No.2) had given her intoxicant substance, which made her unconscious and thereafter, both Manoj and Sanoj had raped her. Therefore, he prayed that the instant appeal should

be dismissed and the conviction/sentence should be maintained.

10. I have heard learned counsel for the parties.

11. During the course of arguments, learned counsel for appellant No.1-Manoj has tried to question the very statement of the prosecutrix, claiming that there is material improvement that has been made by the prosecutrix in her two statements. Out of these statements, one has been recorded by the Investigating Officer under Section 161 Cr.P.C. and the other one has been recorded by CJM, Narnaul under Section 164 Cr.P.C. and both of them have been dated 08.09.2011. In simple words, this court has to weight the evidentiary value of both of these statements of the prosecutrix, while taking into consideration the statement that has been recorded during the course of evidence.

12. While stepping into the witness box as PW14, the prosecutrix in her testimony has stated that she is illiterate girl residing in Huda Narnaul along with her family members. She went along with Sanoj and Manoj and her family members for work as daily labourer. At about 10.00 p.m. both Sanoj and Manoj came to her house and gave her 'dew' cold drink and after drinking it, she felt giddy. She was taken by both Sanoj and Manoj to their slum (house) where, Manoj took out her cloths and raped her and subsequently, Sanoj raped her as well. After that Manoj threatened her that if she will tell about this incident to anyone then he would kill her family members. Both Sanoj and Manoj took her to Rewari in a vehicle from where Manoj told Sanoj that Sanoj should take the prosecutrix further, and he would try to manage other things. Sanoj took her from Rewari railway station to Bihar and in Bihar, Sanoj took her to slum adjoining railway line

and raped her. Thereafter, police recovered her and arrested Sanoj. Police brought her back to Narnaul and she was medically examined at GH Narnaul by the police. Police brought her to court where, her statement was recorded. When her statement recorded by Magistrate under Section 164 Cr.P.C. was shown to her, she stated that the said statement was made by her to the Magistrate without any pressure and undue influence, which bears her thumb impression. She was again medically examined at Gurgaon.

13. In her statement that was recorded by the Investigation Officer under Section 161 Cr.P.C. on 08.09.2011, no doubt the prosecutrix did not name appellant No.1-Manoj as a person, who has committed rape upon her. However, in her statement that was recorded under Section 164 Cr.P.C. by the Magistrate on 08.09.2011 itself, she named both Sanoj and Manoj, as the persons who have committed rape upon her, apart from narrating the other episodes of giving intoxicant substance to her and how she was taken to Rewari and thereafter to Bihar. The allegations, which she had levelled against both the appellants in her statement recorded under Section 164 Cr.P.C., she deposed on the similar lines while she appeared in the witness box as PW14.

14. Admittedly, the prosecutrix herein is a minor girl, who had categorically stated that she is an illiterate girl and daughter of a daily labourer. She deposed that she knew both Manoj and Sanoj and they also work as daily labourer along with her parents. She in no certain terms stated that she had been given 'Dew' cold drink by both the appellants and after consuming the same, she became giddy and unconscious and narrated that it is thereafter a wrongful act had been done to her. The expression that

“wrongful act was done to her” would signify that she had been subjected to rape. This conclusion was arrived at by referring to the medical available on the record, duly proved by PW13 Dr. Vandana Yadav, who her statement has categorically stated that sexual assault on the prosecutrix cannot be ruled out.

15. The testimony of the prosecutrix as PW14 and statement recorded by the Magistrate under Section 164 Cr.P.C. clearly substantiate the fact that both the appellants have subjected her to rape. So far as the question of statement that was recorded under Section 161 Cr.P.C. is concerned, it does not bear the signatures of the prosecutrix and this fact has rightly been noticed by the trial court. Further, during the examination-in-chief of prosecutrix, which was recorded while she appeared as PW14, the prosecution has not relied upon or referred to the said statement recorded under Section 161 Cr.P.C. However, during cross-examination when the prosecutrix was confronted with her statement that was recorded under Section 161 Cr.P.C. Ex.DA, she categorically mentioned that she had stated before the police and Magistrate that at about 10.00 p.m. Sanoj and Manoj came to her house and gave her dew cold drink and after drinking it, she felt giddy. She further mentioned that she had stated before the police and Magistrate that when she started feeling giddy, Sanoj and Manoj took her in their slum, where Manoj took out her clothes and raped her. During her cross-examination, she stated that appellants Manoj and Saroj known to her from last two years and they occasionally visits her house. Earlier also Sanoj and Manoj used to give her eatable things like Samosa etc. She categorically stated that at that time appellants Manoj and Saroj offered her

cold drink, when all her family members were sleeping. Therefore, the argument as raised by learned counsel for appellant No.1-Manoj that he is not guilty of the offence as his name does not figure in the statement that was recorded under Section 161 Cr.P.C., would have no substance. This court has thoroughly gone through the cross-examination of prosecutrix, but this court does not find any substance which would go in favour of appellant No.1.

16. In view of the above discussion, this court is of the considered view that learned counsel for appellant No.1-Manoj has failed to point any illegality or perversity in the judgment and order of conviction that has been passed by the trial court. The material available on record is sufficient to hold that the appellants are guilty of the offences, as alleged against them. Accordingly, the appeal in hand is hereby dismissed, being devoid of any merits.

November 24, 2017

vijay saini

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned

Yes

Whether reportable

Yes/No