

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

CRA-S-2378-SB-2012 (O&M)

Date of decision : 28.10.2017

Rajin @ Lillu @ Anil

...Appellant

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: None for the appellant.

Mr. Manoj Kumar Sangwan, DAG, Haryana.

ANIL KSHETARPAL, J. (ORAL)

Although, learned counsel for the appellant has chosen to remain absent, however, with the assistance of the learned Deputy Advocate General, Haryana, I have gone through the judgment passed by the Sessions Judge, Rewari and the record.

Although learned Sessions Judge has convicted the appellant under Sections 363, 366, 376, 342 and 506 of Indian Penal Code, however, after going through the file, this Court has reached at a conclusion that it is a case of consent.

It is not in dispute that the appellant and prosecutrix are resident of the same village. It is further not in dispute that the defence had produced on file photographs Ex.D2 and Ex.D3 where appellant-accused and the prosecutrix have got themselves photographed jointly. The defence had also produced on file allegedly letters written by the prosecutrix which are Ex.D4, Ex.D5, Ex.D6, Ex.D7, Ex.D8. These letters were duly put to the prosecutrix. However, she denied having written these letters.

The prosecutrix first submitted an application to the police which is Ex.PJ on the file. It has been mentioned by her that she was to go to Rohtak and for that purpose, she was going on foot to the bus stop to catch a bus. At that time, the appellant-Rajan @ Rajin started walking with her and enquired as to where she was going. On that, the prosecutrix disclosed that she was going to Rohtak. The appellant also stated that he was also going to Rohtak and that is how they boarded the bus which was going to Rewari. It is stated in the application, contents whereof have been admitted by the prosecutrix in the evidence that the appellant came and sat with her and started talking and thereafter he lured her away to Gurgaon, another city.

However, when the prosecutrix was produced before the Judicial Magistrate, she made a statement that she boarded the bus, Rajin was sitting on a seat behind her and thereafter he came and sat with her and he extended threat to me to accompany him otherwise appellant shall kill her father and other family members.

The prosecutrix Savera was examined in evidence as PW14. In the evidence before the Court, she has stated that she had purchased a ticket for Rs.17/-. She was threatened in the bus by the appellant-accused but she did not raise any alarm, although many passengers were there in the bus. She admits that she got down from the bus at Rewari and then boarded another bus for Gurgaon. She admits that there were several shops at Bus Stand, Rewari and the entire area was crowded. She admits that she did not raise any alarm. Thereafter once they were travelling in the bus to Gurgaon, which was full of passengers, she did not raise any alarm or she did not

inform the bus driver or the conductor about the threat being extended to her by the accused.

It is further admitted by her that after alighting from the bus at Gurgaon, they boarded a tempo. It is further admitted that in that tempo, there were other passengers. She did not even raise any alarm or disclosed this fact to a co-passenger that she is being kidnapped.

Still further, she admits that the accused had taken her to an isolated place. She could see other houses at some distances.

Accused had told him that the house was of his friend which was having a small kitchen and a room. She remained with the accused for two days. She did not inform anybody after the appellant had left her at that place. She came back to her village and thereafter lodged complaint.

It is clear from the facts noticed above that the prosecutrix has been changing her story and it was clearly a case of consent. As per the judgment passed by the trial Court, prosecutrix is not a minor.

The accused is 25 years of age on the day his statement under Section 313 Cr.P.C. was recorded, therefore, both were young and were living in the same village having prior acquaintance.

Taking into consideration the aforesaid facts, judgment under appeal cannot be sustained. Appeal is allowed.

Accused is acquitted. The bail bonds submitted by him shall stand discharged.

28.10.2017

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:-

Yes/No

Whether reportable:-

Yes/No