

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

(1) CRA S-1933-SB of 2014 (O&M)
Date of Decision: 29.11.2017.

Shamsher and another ... Appellants

Versus

State of Haryana ... Respondent

(2) CRR No. 3892 of 2014 (O&M)

Rani ... Petitioner

Versus

Shamsher and others ... Respondents

CORAM : Hon'ble Mr. Justice Jitendra Chauhan

Present : Mr. Manoj Kumar, Advocate for
Mr. Sandeep Singh, Advocate,
for the appellants in CRA S-1933-SB of 2014.

Mr. Amarjit Singh Virk, Advocate,
for the petitioner in CRR No.3892 of 2014.

Mr. Arun Kumar, AAG Haryana.

JITENDRA CHAUHAN.J.

This judgment shall dispose of afore-mentioned two cases i.e. CRA S-1933-SB of 2014 filed by the accused/appellants against the judgment and order dated 03.01.2014 passed by Additional Sessions Judge (Special Court), Karnal and CRR No.3892 of 2014 filed by the complainant/petitioner for enhancement of sentence.

Brief facts of the case as noticed in the judgment

passed by the trial Court are as under:-

“To recapitulate the case of the prosecution as projected in the FIR Ex.P-7 on 20.03.2012, Rani wife of Hans Raj, resident of Chhoti Market Balmiki Basti, Model Town, Karnal (PW-1) gave statement Ex.P-1 to the police inter alia alleging therein that her husband is a driver on the bus of Parth Public School, Gharaunda. She has got three children. The eldest one 'X'(PW-3) (name withheld in view of Section 228-A of IPC and as per the directions given by the Hon'ble Apex Court in case titled **State of Karnataka vs. Puttaraja 2004(1) RCR (Crl.), Supreme Court, 113 (SC) (hereinafter to be referred as the victim)** is aged about 14 years, younger to her is son Arun, aged 12 years, and Tarun is youngest to all who is 10 years of age. Yesterday dated 19.03.2012 at about 11 PM she got slept her all the three children in the room and she and her husband got up for going to his duties, he saw that the victim was not at her cot and the door of the room was open. She and her husband immediately searched the victim in the neighbourhood and also informed their 'mausi' Kalawati wife of Ram Pal, living in their

neighbourhood and that they all three made searches for the victim. The neighbourers also traced her. At about 8 AM when they were searching the victim, they saw the 'chappals' of the victim, lying in the staircase of the house of Balwan. On suspicion she along with her husband and 'mausi' Kalawati knocked at the door of the house of Balwan situated at first floor and they heard the cries of victim coming out from the room. They got opened the door of the room and found Deepak and Naveen sons of Balwan along with son of their maternal uncle namely Shamsheer in the room, who confined the victim in the room. On seeing them all the accused fled away. On being enquired the victim disclosed that at about 3 a.m when she was sleeping, accused Deepak, Naveen and Shamsheer had kidnapped her by lifting and putting the hands on her mouth and took her forcibly in the 'chaubara' from the wall and that she tried her best to get her freed from their clutches and in that process her 'chappals' fell down in the staircase and that Naveen and Shamsheer had caught hold her hands and legs whereas Deepak had committed forcible rape with her and that they kept her confined in the

'chaubara' and threatened her that in case she disclosed the incident to anybody they would liquidate her.”

Copies of challan and other documents were supplied to the accused free of costs. Thereafter the case was committed to the Court of Session.

Charges under Sections 363, 366-A, 376(2)(g), 342 and 506 IPC were framed against the accused to which the accused did not plead guilty and claimed trial.

In order to prove its case, the prosecution has examined, PW-1 complainant, Rani, PW-2 EHC Vir Shakti Singh, Draftsman, PW-3 victim, PW-4 Inspector Satish Kumar, PW-5 Gurdayal Singh, Computer Clerk, PW-6 HC Amarjit Singh, PW-7 Dr. Gaurav Dhawan, PW-8 SI Surat Singh, PW-9 E/ASI Ravinder Kumar, PW-10 Dr. Seema Sharma, PW-11 SI Tek Ram, Investigating Officer, PW-12 Bhupinder Singh, Ahlamd and PW-13 ASI Raj Pal. After tendering certain documents, the prosecution closed its evidence.

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

In defence evidence, Gaurav Mittal was examined as

DW-1.

After appraisal of the evidence, the learned trial Court, vide impugned judgment and order dated 03.01.2014, convicted and sentenced the accused/appellants as under:-

Offence	Sentence	Fine	In default
363 IPC	RI for 3 years	Rs.500/-	SI for 6 months
366-A IPC	RI for 7 years	Rs.1000/-	SI for 1 year
342 IPC	RI for 6 months	Rs.500/-	SI for 1 month
376(2)(g) IPC	RI for 10 years	Rs.5000/-	SI for 1 year
506 IPC	RI for 1 year	Rs.500/-	SI for 2 months

All the substantive sentences were ordered to run concurrently.

Feeling dis-satisfied, CRA S-1933-SB of 2014 has been filed by the accused seeking setting aside of the impugned judgment and order dated 03.01.2014 whereas, CRR No. 3892 of 2014 has been filed by the complainant for enhancement of the sentence.

It is contended by the learned counsel for the appellants/accused that the prosecutrix was more than 18 years of age at the time of alleged occurrence. A year prior to the occurrence, some quarrel took place between the parties as father of accused had seen the prosecutrix with some other boy and he narrated the said fact to other people in the locality. For the act of the father of the accused and in order to take revenge, the accused have been framed in the present FIR. It is further contended that there were no external marks of injury on the person of the prosecutrix. It is further contended that on the date of alleged occurrence, appellant, Shamsher as was at his work place in Hotel

Jewels which fact has been duly proved by DW-1 Gaurav Mittal.

On the other hand, the learned State counsel submits that the prosecution has proved its case beyond shadow of reasonable doubt. The prosecutrix and her mother have proved the factum of kidnapping and rape. They have withstood the test of cross-examination but nothing could be elicited from their testimony to disbelieve the case of the prosecution.

It is submitted by the learned counsel for the complainant/petitioner that the judgment of conviction has been rightly passed. However, the trial Court has taken a lenient view in the matter of sentence. It is further submitted that in rape cases, the accused does not deserve any leniency. A prayer has been made for enhancement of the sentence.

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

It is to be noticed that the occurrence is alleged to have taken place on 20.03.2012. PW-1, the complainant stated on oath that the age of the prosecutrix is 14 years. The prosecutrix also testified her age to be 14 years and gave date of her birth as 25.05.1998. As per Ex.P-3, photocopy of birth certificate, duly proved by PW-5, Gurdayal Singh, Computer Clerk, office of Municipal Corporation, Karnal, the date of birth of the prosecutrix is reflected as 25.05.1998. Thus, in view of the overwhelming evidence on record, the prosecutrix was rightly

held to be less than 16 years of age.

As per PW-1, Rani, mother of the prosecutrix, on the intervening night of 19/20.03.2012 she along with her husband was sleeping in verandah of her house whereas, her children including the prosecutrix were sleeping in a separate room. At about 4.30/5.00 a.m, when her husband got up, he found the prosecutrix missing from her cot and the door of the room was found open wholly. They along with their aunt were searching the prosecutrix in the locality, the cries of the prosecutrix were heard from a house situated at the back of their house and thereupon they went to the roof of that house and knocked the door of the room and on opening the door, they saw accused Deepak committing rape upon the prosecutrix and accused Shamsheer Singh catching hold the arms of the prosecutrix whereas, accused Naveen was holding the legs of the prosecutrix. On seeing them, all the accused fled away from the spot. She further deposed that she put the clothes on the prosecutrix and brought her to her house. On enquiry, the prosecutrix narrated that she was taken away by the accused while she was sleeping. The prosecutrix while appearing as PW-3 has categorically stated that on the intervening night of 19/20.03.2012 she along with her two brothers had gone to sleep in her room. Her parents were sleeping in verandah of the house. When she got up, she found herself in the upper storey (chaubara) of Deepak. Accused Deepak, Naveen and Shamsheer were inside the room. On hearing her cries, her parents

reached the spot. A pair of chappals of the prosecutrix was recovered from the spot. She has further deposed that Deepak committed rape upon her against her will while, accused Shamsheer caught hold of her arms and accused Naveen caught hold her legs. The prosecutrix was medico-legally examined by Dr. Seema Sharma. As per FSL report Ex.P-11, human semen was detected on the underwear Ex.MO/3, glass slides Ex.MO/4 and Ex.MO/5. The doctor further opined that possibility of sexual assault/intercourse cannot be ruled out. Dr. Gaurav Dhawan has medically examined accused Deepak and found him capable of doing sexual intercourse.

As regards the plea of false implication taken by the accused on account of previous enmity, the accused have failed to examine any person from the locality to prove this fact. Even, father of accused, Deepak has not been examined as a witness to depose regarding enmity. So far as the plea of alibi taken by accused Shamsheer Singh is concerned, the accused has failed to produce any documentary evidence to show that he was in the said hotel at the time of occurrence.

In view of above, this Court finds that the prosecution has been able to prove its case beyond shadow of reasonable doubt against the accused. The appeal filed by the accused/appellants fails and the same is hereby dismissed.

As regards quantum of sentence, the accused have been sentenced to undergo rigorous imprisonment for ten years. This

Court feels that there is no scope for interference in the matter of sentence as the accused have been adequately sentenced. Consequently, the revision filed by the complainant is also dismissed. The impugned judgment and order dated 03.01.2014 passed by the trial Court are hereby upheld.

A copy of this judgment be placed in the connected revision petition.

29.11.2017.
SN

(JITENDRA CHAUHAN)
JUDGE

Whether speaking/reasoned :Yes/No

Whether reportable : Yes/No