

310 IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRA S-351-SB of 2013 (O&M)

Date of Decision: 23.09.2017.

Anoop

... Appellant

Versus

State of Haryana

... Respondent

CORAM : Hon'ble Mr. Justice Jitendra Chauhan

Present : Mr. Nitin Jain, Advocate/Legal Aid Counsel,
for the appellant.

Ms. Dimple Jain, AAG Haryana.

JITENDRA CHAUHAN.J.

This appeal is directed against the judgment dated 29.11.2012 and order dated 30.11.2012 passed by Additional Sessions Judge, Bhiwani vide which the appellant was convicted and sentenced as under:-

Offence	Sentence	Fine	In default
363 IPC	RI for 3 years	Rs.2000/-	RI for 1 month
366 IPC	RI for 7 years	Rs.5000/-	RI for 2 months
376 IPC	RI for 10 years	Rs.8000/-	RI for 2 months

All the substantive sentences were ordered to run concurrently. It was further ordered that if fine is realized, in that eventuality Rs.10,000/- be paid to the prosecutrix as compensation.

Brief facts of the case as noticed in the judgment passed by the trial Court are as under:-

“Brief facts of the prosecution case are that on 29.12.2010 Inspector/SHO Sanjay Kumar along with Constable Raj Kumar No.694 in Government vehicle bearing No. HR-61/2586 being driven by driver Constable Virender Singh No. 342 was present at Gas Agency Bawani Khera in connection with patrolling duty where complainant Sunder Singh, son of Shri Rangi Ram, resident of Sorkhi met him and presented an application to the effect that he is a resident of aforesaid address. His daughter (prosecutrix) aged 13-14 years was residing with Dharam Singh, son of his maternal uncle Molu Ram, resident of Bawani Khera in the fields where she was studying in 6th Class in Government Primary School, Bawani Khera. On that day in the morning, he received a telephone call from Dharam Singh that due to stomach pain to prosecutrix, she went to answer call of nature at about 4.00 pm, but she did not return back. They kept searching. Some unknown person enticed his daughter and took with him.

On the basis of aforesaid complaint, FIR was lodged. Police swung into the investigation. The investigating officer inspected the place of occurrence and drew its

rough sketch. Scaled site plan was also got prepared. Statements of witnesses under Section 161 of Cr.P.C were recorded. Accused was arrested. After completion of usual formalities of investigation, challan against the accused was presented before Court. Copies of challan was supplied to the accused free of costs as envisaged under Section 208 of Cr.P.C and thereafter the case was committed to the Court of Sessions.”

Charges under sections 363, 366 and 376 IPC were framed against the accused to which the accused denied and pleaded false implication.

In order to prove its case, the prosecution has examined EASI Devender Kumar as PW-1 who delivered special report to the Illaqa Magistrate and senior police officers; Sunder Singh as PW-2 who deposed that prosecutrix is his daughter. On 29.12.2010 he received a telephonic message from Dharam Singh that the prosecutrix had gone to answer the call of nature at 4.00 am due to stomach pain but she did not return. She was kidnapped by the accused who was present in the Court at the time of deposition; Anand Kaur as PW-3 who proved the case of the prosecution; Dharam Singh as PW-4 who deposed that he along with the complainant went to the Police Station for reporting the matter; Narender as PW-5 who is brother of

the prosecutrix deposed that he searched for his sister in the village but she could not be found. He had every suspicion that his sister had been kidnapped by the accused; Dharambir Patwari as PW-6 who prepared site plan on the spot; Lady Constable Meena Kumari as PW-7 who took the prosecutrix to Civil Hospital, Bhiwani for medical examination; HC Satish Kumar as PW-8 who received the case property being MHC; Constable Amit Kumar as PW-9 who deposited the case property in FSL, Madhuban; Dr. Vijay Pal as PW-10 who medico-legally examined accused Anoop and found him fit to do sex; Dr. Agya as PW-11 who medico-legally examined the prosecutrix; Inspector Sanjay Kumar as PW-12 who recorded the statements of the witnesses under Section 161 Cr.P.C; ASI Upkar Singh as PW-13 who is the investigating officer of the case and proved all the investigation part; prosecutrix as PW-14 who proved the case of the prosecution on all material aspects; ASI Jagdish Chander as PW-15 who registered the formal FIR; SI Ran Singh as PW-16 who took into police possession the clothes of accused; and Mrs. Nirmal Chawla as PW-17, Principal Govt. Girls Senior Secondary School Bawani Khera who proved the date of birth of the prosecutrix as 20.11.1998 and closed its evidence.

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

In defence, no evidence was led by the accused.

After appraisal of the evidence, the learned trial Court, vide impugned judgement and order, convicted the accused/appellant as narrated above.

Feeling dis-satisfied with the judgment and order, the present appeal has been filed by the accused/appellant.

It is contended on behalf of the accused-appellant that it is a case of run away marriage in which the prosecutrix had eloped with the appellant. The prosecutrix had run away with the appellant out of her own sweet will. It is further contended that the couple even got their marriage registered vide Marriage Certificate Ex.DB. Dharam Singh PW-4, with whom the prosecutrix had been residing, has deposed that the prosecutrix had gone missing at 4.00 a.m on 29.12.2010 after she had gone to answer the call of nature. It was a day in pitch winters. Nobody wakes up at 4.00 am in winters to proceed to the fields to answer nature's call. The story concocted by the prosecution is not plausible on the face of it. Prosecutrix, PW-14 has categorically deposed that she had stayed with the appellant for over a month. It is further contended that there are material discrepancies in the statements of the prosecution witnesses. The prosecutrix has stated that she was kidnapped on 29.12.2010 at about 7-8 a.m while she was going to take examination in the school whereas, Dharam Singh, PW-4 with whom the prosecutrix was admittedly residing, has deposed that

she did not return back after 4.00 am when she had gone to answer nature's call. It is further contended that the date of birth of the prosecutrix was 29.09.1992, therefore, she was major and it was a consensual intercourse between the parties.

On the other hand, the learned State counsel supports the judgment and order passed by the trial Court. It is contended that the appellant had enticed the prosecutrix and then raped her.

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

The statement of PW-14, the prosecutrix was recorded by the learned Illaqa Magistrate, Bhiwani on 02.02.2011 wherein she disclosed her age as 15 years. The prosecution has also examined PW-17 Mrs. Nirmal Chawla, Principal Government Girls Senior Secondary School, Bawani Khera who proved the school certificate of the prosecutrix wherein it is mentioned that the date of birth of the prosecutrix is 20.11.1998. Even from the school certificate, the prosecutrix was about 12 years old and as per birth certificate she is about 11 years. Hence the date of birth of the prosecutrix was rightly held to be about 12 or 13 years at the time of commission of offence. The prosecutrix was recovered from the custody of the accused on 02.02.2011. In her statement recorded under Section 164 Cr.P.C and in the statement recorded before the trial Court, the prosecutrix has deposed that accused/appellant took her forcibly by putting hand on her

mouth and committed rape upon her. The prosecutrix was medically examined as per application made by PW-7, Lady Constable Meena Kumari. The medical examination of the accused was conducted in Govt. Hospital Bawani Khera. PW-10, Dr. Vijay Pal SMO, specifically deposed that he cannot suggest that the accused is not capable of performing sexual act and as per examination of Dr. Agya M.O. Govt. Hospital, Bhiwani, PW-11, the medical examination of the prosecutrix was conducted vide MLR Ex.PM. In the report of FSL, the result obtained was that "Human semen was detected on Ex. 4-d (underwear). However, semen could not be detected on rest of the exhibits mentioned above." The prosecutrix remained in custody of the accused from 29.12.2010 to 02.02.2011. The prosecutrix being minor, her consent is immaterial. This Court is of the opinion that the statement of the prosecutrix alone is sufficient to prove the offence of kidnapping and rape. It does not require any corroboration. Hon'ble the Supreme Court in State of Maharashtra vs. Chandra Prakash Kewal Chand Jain, 1990(1) SCC 550 has held that evidence of prosecutrix should ordinarily be accepted without corroboration in material particulars except rarest of rare cases and to insist on corroboration is to insult womanhood. Direct evidence is very rarely available in sexual offences and the Court must realize that ordinarily a woman will not stake her reputation by levelling a false charge concerning her chastity. The Court is entitled to base conviction on

evidence of prosecutrix unless the same is shown to be infirm and not trustworthy and prosecutrix has strong motive to falsely involve the accused. In the present case, the prosecutrix was aged about 12-13 years, therefore, even if she had given any consent, that does not undo the liability of the accused/appellant as it is a case of statutory rape, the prosecutrix being under sixteen years of age. She was taken from the lawful guardianship of her parents without their consent. Consequently, the guilt of the accused/appellant stands proved beyond shadow of reasonable doubt.

In view the observation made above, the present appeal is dismissed. The impugned judgment and order are upheld. The accused/appellant is stated to be on bail. His bail bonds and surety bonds are cancelled. He be taken into custody to serve the remaining part of the sentence.

Dismissed.

23.09.2017.
SN

(JITENDRA CHAUHAN)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No