

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CRA-S No. 658-SB of 2012
Date of decision : October 28. 2017

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Dalip Kumar

.....Appellant

Versus

State of Punjab

.....Respondent

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CORAM: HON'BLE MS. JUSTICE RITU BAHRI

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Present: Mr. Akshay Jain, Advocate for the appellant.

Mr. Arpinder Singh Sidhu, DAG, Punjab.

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RITU BAHRI, J.

The present appeal has been filed by the appellant Dalip Kumar
against the judgment of conviction and order of sentence dated 01.11.2011,
whereby appellant had been convicted for 07 years under Sections

376/366/363 IPC in FIR No. 126 dated 29.8.2009.

Briefly stated the facts of the case are that the present FIR was registered on the statement of Ajmer Singh son of Harpal Singh alleging that he was a tailor by profession. He was married and was having three daughters out of which Harpreet Kaur who was aged about 15 years was working at Neelon in Jogindra Thread Factory for the last about 1 ½ years. On 27.8.2009 at about 6.30 a.m, his daughter Harpreet Kaur boarded a private bus from Bus stand, Morinda for going to factory but did not return back to home since that day. They searched Harpreet Kaur at several places but she could not be found. Later on they came to know that one worker of the factory namely Dalip Kumar son of late Sohan lal had induced Harpreet Kaur and took her with him.

After registration of the FIR, Dalip Kumar was arrested on 1.9.2009. During interrogation Dalip Kumar confessed that he has committed rape with Harpreet Kaur. Thereafter, offence under Section 376 IPC was added. On completion of investigation and other formalities, the challan was presented before the Court. The accused was charge sheeted under Sections 363, 366, 376 IPC to which the accused pleaded not guilty and claimed trial.

Prosecution examined PW-1 Ajmer Singh, PW-2 Dr. Inderpreet Randhawa, PW-3, Ashok Kumar Verma, PW-4 Kusam Sharma, PW-5 Karamjit Singh, PW-6, Harpreet Kaur, prosecutrix, PW-7, ASI Garja Singh, PW-8, HC Bhag Singh, PW-9 Balwinder Singh, PW-10 ASI Dilbag Singh, PW-11 Balwinder Kaur, PW-12 HC Devinder Pal, PW-13, Dr. Rakesh Gupta, PW-14 Inspector Gurvinderpal Singh.

PW-1 Ajmar Singh, complainant supported the prosecution

version. PW-2 Dr. Inderpreet Randhawa, Rural Hospital, Morinda has deposed that on 1.9.2009 at about 1:40 p.m, she medico legally examined Harpreet Kaur d/o Ajmer Singh, aged about 16 years, ward no.9, Morinda. She also proved on record copy of MLR of Harpreet Kaur Ex.PW2/A. She also proved on record report of chemical examiner Ex.PW2/C according to which spermatozoa was detected in the contents of Ex.V. As per the medical evidence, the age of the prosecutrix was less than 18 years of age.

Relying upon the depositions of PW-1 Ajmer Singh, complainant, PW-6 Harpreet Kaur, prosecutrix and the MLR, the trial Court held that the victim had been raped. It was observed that as per Section 67 of the Factories Act, no child who has not completed his fourteenth year shall be required or allowed to work in any factory. Since the prosecutrix was working in the factory she must be above 14 years of age at the time of her employment and as per the complainant PW-1, Ajmer Singh, his daughter was employed on 1.4.2008 and at the time of her abduction she was 15½ years i.e 27.8.2009. Keeping in view that the prosecutrix was below 16 years of age, she had been taken by the appellant from the lawful guardianship of her parents. Prosecutrix was taken to Sirhind and allegedly from that place she was taken to Delhi and then to UP. The accused did not allow her to come back even when she requested him in his UP house. It was observed that the prosecutrix never left her house to accompany the accused or with intent to get away from the lawful custody of her parents rather she had come to the bus stand for boarding a bus to go to her job. At the bus stop the accused enticed her to go to UP. The prosecutrix was a minor and in view of the Supreme Court judgment in the case of **Parkash Versus State of Haryana AIR 2004 SC 227**, she could not be taken without

the consent of the guardian. Moreover, even if the minor was willing the act of taking her from the lawful guardianship of her parents would attract Section 363 IPC. Thus the appellant was held guilty for having committed the offences punishable under Sections 363/366 and 376 IPC against Dalip Kumar and was convicted for the same. He was sentenced as under:

<i>Offence Under Section</i>	<i>Sentence Awarded</i>
Section 376 IPC	To undergo rigorous imprisonment for a period of 7 years and to pay fine of Rs.5000/- in default of payment of fine to further undergo RI for a period of two months.
Section 366 IPC	To undergo rigorous imprisonment for a period of 4 years and to pay fine of Rse.3000/- in default of payment of fine to further undergo RI for a period of one month.
Section 363 IPC	To undergo rigorous imprisonment for a period of three years and to pay fine of Rs.3000/- and in default to further undergo RI for a period of one month.

All the substantive sentences were ordered to run concurrently.

This Court vide order dated 31.10.2013 suspended the sentence of the appellant after he had undergone more than 04 years and 01 month of imprisonment out of 07 years.

However, learned State counsel has filed the custody certificate of the appellant dated 28.10.2017 and as per this custody certificate, the appellant was released from jail on 22.09.2015 after the completion of his sentence.

In view of all that has been discussed above, appeal is dismissed.

October 28. 2017
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(RITU BAHRI)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	No