

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

356

CRA-S-4228-SB-2014 (O & M)

Date of Decision:12.05.2018

Nathu @ Raj Kumar

...Appellant

Versus

U.T. Chandigarh

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Davinder Bir Singh, Advocate for the appellant.

Ms. Ashima Mor, Advocate for U.T., Chandigarh.

ANIL KSHETARPAL, J.

Appellant-convict has been convicted for the offences under Sections 363, 366, 376 IPC and Section 4 of the Protection of Children from Sexual Offences Act (POCSO Act- for short) and sentenced to undergo by the learned trial Court as under:-

Name of Convict	Offence U/s	Period of sentence (RI)	Fine imposed (Rs.)	Period of sentence in default of payment of fine (SI)
Nathu	363 IPC	3 years	3,000/-	One month.
	366 IPC	5 years	5,000/-	Two months.
	4 POCSO Act, 2012.	7 years	10,000/-	Three months

Brief facts as noticed by the learned Additional Sessions Judge reads as under:-

“1. Brief facts of the prosecution case are that complainant Chanderwati moved an application before Police Post, Incharge, BDC, Sector 26, Chandigarh to the effect that she is

resident of House No.144 Ph-III BDC, Sector 26, Chandigarh. She works as a vegetable vendor in vegetable Market. She has four daughters and two sons. Her daughter aged 16 years (Prosecutrix) (name with-held to protect her identity and hereinafter referred to as Prosecutrix) was taken away by a boy named Nathu. She had lodged a missing report on 12.12.2012. Today, she has come to know from certain people that they have seen her daughter (Prosecutrix) roaming with Nathu at the Railway Station. She is dead certain that Nathu has enticed her daughter (Prosecutrix) away on the pretext of marrying her. Her daughter (Prosecutrix) is minor. Therefore, a legal action be taken against the accused.”

The prosecutrix under Section 164 Cr.P.C. stated before the Additional Chief Judicial Magistrate that she had gone to temple on Tuesday i.e. 11.12.2012. Raj Kumar had threatened her and stated that he would give her Rs.40,000/- and she should accompany him and if she does not go with him, he would kill her. She further stated that he took her along and she wants to punish him. She was specifically asked whether she wants to say anything, she said nothing.

Prosecution case as set up is that the appellant-convict had lured the prosecutrix and taken to Lucknow where they lived together for two days at the house where parents of the appellant stay and she was raped repeatedly. After two days, since she forced the appellant, therefore, they

came back to Chandigarh after purchasing railway tickets of the train and they were found roaming in the parking of the railway station, Chandigarh, when they were apprehended.

Prosecutrix when appeared in the witness box was got declared hostile by the prosecution. She changed her stand in the Court as compared to what was stated by her before the police authorities.

Dr. Amandeep Kaur has been examined as PW-7, Gynecologist, Government Medical GMSH-16. Relevant part of her statement is extracted as under:-

“The patient was having history of taking away by Nathu on the pretext of marrying her on 11.12.2012. On local examination I had found hymen admits two finger easily, old healed scar. I had taken two vaginal swabs on the sticks, which were handed over in a sealed parcel to LC Sharda.”

In order to bring home, the prosecution with respect to the age of the prosecutrix, she was got examined from Dr. Rubi Oberoi, who after conducting x-ray skia-gram. She opined that prosecutrix is more than 17 years. When doctor appeared in the evidence, she stated that prosecutrix is more than 17 years but less than 19 years. She further stated that the exact age of the patient from radiological examination cannot be ascertained. Prosecution also got prosecutrix examined from Dr. Shifali, Medical Officer, Dental, GMSH-16, Chandigarh. She reported that dental age of the prosecutrix cannot be more than 17 years. However, in the cross-examination she stated that the dental age can be 16-17 years but the chronological age and dental age may or may not coincide.

Further statement of the mother Chandravati, who has examined as PW-3 makes an interesting reading. She deposes that her eldest daughter is 30 years old whereas second child is 19 years old and third child is 14 years old whereas 4th child i.e. prosecutrix is 16 years old. When we read the statement of the prosecutrix she states that she is the 5th child amongst children of her parents.

From the aforesaid facts, it is not possible to conclude that prosecutrix was less than 18 years on the day of incident. Benefit of doubt has to be given to the accused-appellant.

Dr. Rubi Oberoi (PW-2) has herself stated that her age is more than 17 years but less than 19 years. Second doctor, who tried to determine the dental age, has also created a doubt. Neither date of birth from the register of Births and deaths has been produced nor any record from the school has been produced. It would be unsafe to convict the accused on the basis of aforesaid evidence that she was less than 18 years.

Now let us discuss the case as set up by the prosecution, mother is said to have lodged a missing report on 12.12.2002. It is the case of the prosecution that mother met ASI Tika Singh (PW-10) on 17.12.2012 when he was present near Kerosene Pump PDC. When she handed over a copy of the complaint and thereafter he sent information through Constable Anil Kumar for registration of FIR and asked the complainant to join and start searching for the prosecutrix and lastly they reached railway station where in parking place she was found with the appellant. When we read the statement of mother, she stated that her customer had told her, as she was fruit vendor, that he had seen her daughter with a boy at railway station and then she went in the police vehicle to the railway station and found

prosecutrix and the appellant. It was at about 11/12 mid night.

Still further, Ex.P-5 is recovery memo wherein it is recorded by Tika Singh ASI that when he reached in the parking area of the railway station, he saw one boy and girl coming by holding their respective hands. Further prosecutrix while appearing in the evidence has stated that she lost consciousness and regained consciousness at Lucknow where she found appellant near her and thereafter appellant took her to his parents house where parents of the appellant were present. Incident of rape is at the house of appellant at Lucknow. She claims that she raised cries but nobody came to rescue her. However, in the same statement she states that she along with the appellant purchased the ticket for coming from Lucknow to Chandigarh on train. She does not even state that she complained to anybody either at the railway station, Luknow or disclosed this fact to any co-passangers in the train. The evidence of the doctor, who examined her, has already been discussed.

In view of the above, this Court does not find that prosecution has successfully proved its case beyond any reasonable doubt. The conviction cannot be sustained once there are strong doubts which have remained unexplained.

In view of the discussion made above, the judgment passed by the learned trial Court is set aside.

Appellant is already on bail, bail bonds shall stand discharge. Appellant is given benefit of doubt.

Appeal is allowed.

12.05.2018
sheetal

(ANIL KSHETARPAL)
JUDGE

Whether Speaking/Reasoned: Yes/No
Whether Reportable : Yes/No