

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRA-S-816-SB of 2004 (O&M)
Date of decision : 26.9.2018

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Budh Ram and others

.....Appellants

vs.

State of Punjab

.....Respondent

Coram: Hon'ble Mr. Justice H. S. Madaan

Present: Mr. R.K. Gupta, Advocate
for the appellants.

Mr. Rakeshinder Singh Sidhu, AAG, Punjab.

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H. S. Madaan, J.

This appeal is directed against judgment and order dated 24.1.2004 passed by Additional Sessions Judge, Mansa, vide which he had convicted accused Budh Ram, his son Raju and wife Anaro, for offences under Sections 366A, 363, 376(g) IPC, sentencing them as under:-

<i>Offence u/s</i>	<i>Sentence</i>
U/s 366A IPC	To undergo rigorous imprisonment for a period of three years and fine of Rs.500/-, or in default of payment of fine to further undergo rigorous imprisonment for a period of one month, by each of the accused.

<i>Offence u/s</i>	<i>Sentence</i>
U/s 363 IPC	To undergo rigorous imprisonment for a period of three years and fine of Rs.500/-,or in default of payment of fine to further undergo rigorous imprisonment for a period of one month, by each of the accused.
U/s 376 (g) IPC	To undergo rigorous imprisonment for a period of ten years and fine of Rs.1,000/-, or in default of payment of fine to further undergo rigorous imprisonment for a period of one month, by each of the accused.

All the sentences were ordered to run concurrently.

Briefly stated, facts of the case are that complainant Girdhari Lal s/o Godha Ram Mahajan, r/o Ward No. 3, Bhikhi, aged about 60 years, got his statement recorded with ASI Baldev Singh, on 20.5.2002 at 7.30 P.M., contending therein that house of Maya Devi w/o Chuhar Mal Aggarwal is situated in their neighbourhood, where Budh Ram s/o Hira Lal, alongwith his wife Anaro and son Raju had been residing as tenants for the last about two months. Inter alia in the statement, the complainant stated that on 6.5.2002, in the evening when he returned home from his shop, then his wife Kanta Rani told him that on 4.5.2002, in the evening Budh Ram, Anaro and Raju came to their house, as they have shifted their residence. They had taken their daughter – prosecutrix (name withheld to conceal the identity), aged about 16 ½ years, to some distance and then after telling her something went away. After some time their daughter told her mother that she was going to the house of her neighbour. However, she did not return home till 7.00 P.M. Then a search was launched and it came out that Budh Ram, Anaro and Raju had enticed away their said daughter with an intention to solemnize her marriage with Raju. All the efforts to search for the prosecutrix proved futile. Ultimately, the matter was reported to the police. On the basis of such

statement of the complainant Girdhari Lal, formal FIR was registered.

Investigation in the case started. Statements of witnesses were recorded and several documents were taken into possession. On 18.8.2002, a Police Party headed by ASI Baldev Singh, was present at bus stand of Goniana Mandi. There on receipt of a secret information that in house of Mohants, Budh Ram, Anaro and Raju had detained one girl. A raid was accordingly conducted there. The accused person were apprehended while sitting on a cot in front of a room. The prosecutrix was rescued from a closed door of a room. Her statement was recorded, in which she stated that Raju had been committing rape upon her without her consent and Anaro and Budh Ram used to close the door from outside, so that Raju and prosecutrix were detained in the room.

The prosecutrix and accused Raju were got medico legally examined. Raju was opined to be fit for sexual intercourse. Swabs/samples were sent to the Forensic Science Laboratory and ultimately report there from was received.

After completion of the investigation and other formalities, challan against the accused was prepared and filed in the Court.

On presentation of challan, copies of documents relied upon therein were supplied to the accused free of cost, as provided under Section 207 Cr.P.C. The case was committed to the court of Sessions. Then the accused were charge sheeted for the offence under Sections 366-A, 363, 376 (g) IPC, to which they pleaded not guilty and claimed trial.

During the course of prosecution evidence, the prosecution examined as many as eight witnesses, namely, PW-1 Dr. Prem Kumar Garg, Civil Hospital, Bhikhi, PW-2 prosecutrix, PW-3 Smt. Ishwar Devi, Teacher, Senior Secondary School, Bhikhi, PW-4 Dr. Monika Singla, Medical Officer, Civil Hospital, Mansa, PW-4/A Kanta Rani, PW-5 Girdhari Lal, complainant, PW-6 ASI Baldev Singh, Investigating Officer, PW-7 Constable Avtar Singh, PW-8 ASI Gurdev Singh. With that the prosecution evidence got concluded.

Statements of the accused were recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing against the accused were put to them, but they denied the allegations, pleading innocence and false implication. During his defence evidence, accused Raju took up the plea that prosecutrix was involved in a love affair with him and both of them had sexual intercourse by mutual consent; that prosecutrix had come to their house at Goniana on her own will; that intimation in that regard had been sent by his parents to the parents of the prosecutrix, but they did not pay any attention. She was taken away from their house, by police alongwith her parents; that the prosecutrix was asked to make a statement against Raju regarding committing rape by threatening her. The other accused also took up a similar stand. The accused did not lead any evidence in defence, though afforded opportunities.

The trial Court has formulated following points for determination:-

1. What is the age of Anita Rani and what is the age of Raju?

2. Whether Raju have committed rape with or without consent of Anita Rani?
3. Whether accused persons have forced Anita Rani to go from Bhikhi to their house with the intention that said Anita Rani may be forced to illicit intercourse with Raju?
4. Whether accused persons Budh Ram, Raju and Anaro Devi kidnapped Anita Rani, a minor below the age of 18 years from the lawful guardianship of her father Girdhari Lal without her consent?
5. Whether on or after 6.5.2002 accused Raju in furtherance of common intention shared with co-accused Budh Ram and Anaro Devi, committed rape of Anita Rani?

After hearing arguments, the trial Court convicted and sentenced the accused as mentioned above, which left them aggrieved and they have filed the present appeal,.

Notice of the appeal was given to the respondent – State, who had put in appearance through State counsel.

I have heard learned counsel for the appellant, learned State counsel, besides going through the record and I find that there is no merit in the appeal.

From the matriculation certificate and result card of prosecutrix, issued by Punjab School Education Board, her date of birth has been mentioned as 2.10.1985, that means on the date of incident, she was aged less than 18 years, rather she was aged less than 17 years, as such a minor.

Now, it is to be seen whether such minor girl has been

taken out of the custody of her parents on the promise of marriage. From the evidence adduced by the prosecution in the form of examining the prosecutrix appearing as PW-2, Girdhari Lal, complainant, appearing as PW-5, his wife Kanta Rani appearing as PW-4, it comes out that Budh Ram, Raju and Anaro had kidnapped the prosecutrix, a minor girl, from the lawful guardianship of her father Girdhari Lal, without his consent. The accused by taking up a plea that prosecutrix had come to their house on her own and Raju had sexual intercourse with her, with her consent, have rather proved the case of the prosecution. The law is well settled that consent of a minor is of no value. Therefore, it comes out that Raju had sexual intercourse with the prosecutrix. The necessary ingredients of kidnapping of a minor girl, giving her allurements of marriage and then subjecting her to sexual intercourse, amounts to rape, has been established on the record. The medical evidence duly corroborated the ocular evidence.

The investigation in this case has been carried out in a fair and impartial manner. The Investigating Officer had no reason to involve the accused in this case wrongly or challan them falsely. The other evidence on record strengthens the prosecution story. The prosecution has been able to prove its charge against the accused beyond a shadow of reasonable doubt. The accused were rightly convicted and sentenced by the trial Court. Keeping in view the seriousness, of allegations, the sentence awarded to the accused cannot be said to be on higher side. The judgment passed by the Court below is well reasoned one, based upon proper appraisal and

appreciation of evidence and correct interpretation of law. There is no illegality or infirmity therein, which might have called for interference by this Court in appeal.

Therefore, finding no merit in the appeal, the same stands dismissed.

26.9.2018
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(H.S. Madaan)
Judge

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