

IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH

CRA-S-2091-SB-2013 (O&M)
Date of decision: 07.07.2018

Balwan Singh ... Appellant

versus

State of Haryana ... Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Mohan Singla, Advocate (Legal aid counsel)
for the appellant.

Mr. Saurabh Giridhar, AAG, Haryana.

Anil Kshetarpal, J.(Oral)

The accused-appellant has been convicted under Sections 363,
366, 365, 376 and 506 IPC and sentenced as under:

Under Section 363 IPC	R.I. three years and fine of Rs.1,000/-. In default to further undergo R.I. for three months
Under Section 366 IPC	R.I. five years and fine of Rs.1,000/-. In default to further undergo R.I. for three months
Under Section 365 IPC	R.I. five years and fine of Rs.1,000/-. In default to further undergo R.I. for three months
Under Section 376 IPC	R.I. ten years and fine of Rs.5,000/-. In default to further undergo R.I. for six months
Under Section 506 IPC	R.I. for six month

All the substantive sentences shall run concurrently.

The case set up by the prosecution as noticed by the learned
trial Court is extracted as under:

*“The prosecution case, in brief, is that on
24.12.2011 complainant Devi Singh produced an
application to SI Parkash Chand PW-10 in the police
station Madhuban wherein it was mentioned that they*

*are three brothers and three sisters and youngest is prosecutrix {name withheld in view of Section 228-A of IPC and judgment passed by the Hon'ble Apex Court in case of **State of Karnataka vs. Puttaraja, 2004(1) RCR (Cri.) 113 SC**] aged about 13 years. Accused Balwan Singh son of Ishar resident of Hariyapur District Kurukshetra was mason, who had come for work about 6-7 months earlier and had been employed to raise construction of the house of Hans Raj son of Baru Ram. The house was constructed within three months and thereafter Balwan took other similar work in the village. Said Hans Raj arranged the house of Krishan son of Om Parkash on rent for Balwan at his responsibility. Accused Balwan was residing in the rented house situated near the house of the complainant. In the evening of 18.12.2011, after taking their dinner, they had gone to sleep and in the morning at about 4-5 AM his sister/prosecutrix was missing from the house. He made search for her but of no avail and it was learnt that accused Balwan was also not available to his house. The complainant suspected that accused had exercised undue influence on prosecutrix and had taken her away while enticing her. On the basis of said application, a case under Sections 363, 366A IPC was registered in the police station and the investigation of this case was handed over to SI Parkash Chand, who on the same day along with complainant went to village Ucha Samana and recorded statements of witnesses. On 25.12.2011 SI Parkash Chand along with complainant, Phool Singh, Krishni and other police officials went in search of prosecutrix in a private vehicle. They searched her in hotels situated on G.T. Road, Karnal. Thereafter, SI Parkash Chand received information about the prosecutrix and accused and then they reached at Pipli*

and found that accused Balwan and prosecutrix were sitting under a tree in front of Bus Stand and they were identified by Devi Singh and other witnesses. The prosecutrix was taken into custody vide memo Ex.PK. SI Parkash Chand recorded statements of witnesses under Section 161 Cr.PC. Accused was formally arrested. The statement of the prosecutrix under Section 161 Cr.PC was also recorded. On the basis of said statement offence under Section 376 IPC was added. The Investigating Officer also prepared rough site plan Ex.PL of the place of occurrence. On return to the police, accused was put in police lock up and on the same day, he was taken out from the police lock up and accused as well as prosecutrix were medico-legally examined from General Hospital, Karnal by moving application Ex.PG. After medico-legally examination of the prosecutrix, the doctor handed over sealed parcels which were relating to accused were also taken into police possession vide memo Ex.PA. The Investigating Officer recorded statements of witnesses under Section 161 Cr.PC was got recorded from learned Magistrate by moving application Ex.PN. Scaled site plan of the place of occurrence was got prepared and after completion of investigation, challan was presented against the accused.”

Prosecution has examined as many as 13 witnesses including Dr. Prem Lata – PW-3, Prosecutrix – PW-11, Devi Singh, complainant – PW-12 and Sh. Rajan Walia, Addl. Chief Judicial Magistrate, Karnal as PW-13.

Learned trial Court noticed the above facts and convicted the appellant.

Learned counsel appearing for the accused-appellant has

submitted as under :

Statement of the prosecutrix under Section 164 Cr.Pc was recorded on 26.12.2011. Prosecutrix was first produced before Chief Judicial Magistrate on 25.12.2011. When Chief Judicial Magistrate observed that she is not normal, he ordered to produce her on the next day. He submits that from the reading of aforesaid statement it is apparent that she has specifically stated that accused-appellant did not commit any wrong act with her. He further drew attention of the Court to the statement of Dr. Prem Lata, who has been examined as PW-3. The relevant part of her statement is extracted as under:

“The LMP was 10.12.2011, no external mark of fresh injury was seen on her body. On examination of external genital area no external mark of fresh injury was seen on her breast and genital areas, pelvic region. The breast was well developed, pubic hair and auxillary hair were also well developed.

As per vagina examination, I found that the patient was uncooperative, the hymen was absent, vagina admits one finger easily. The patient was referred to radiologist and dental surgeon for her age confirmation. The opinion was kept pending till the result of FSL report.”

In the cross-examination, she admitted that as per FSL report, no semen was detected on the clothes of the prosecutrix and accused.

Hence, he submits that prosecution has failed to prove its case under Section 376 IPC. He has further submitted that even offence under Sections 363, 366, 365 and 506 IPC are not made out as case of the prosecution is that she was administered certain intoxicant and she became unconscious and thereafter she was taken away whereas learned trial Court

has found in para 27 of the judgment that the prosecution has failed to prove what intoxicant was administered to the prosecutrix on the day when she was allegedly kidnapped. He further drew attention of the Court to the statement of the prosecutrix made before the Court wherein she admits that she knows the appellant-accused. He has further drawn attention of the Court to the fact that the appellant-accused and the prosecutrix were taken in custody by the police, when they were sitting at Pipli under a tree in front of bus shelter. He submits that it was a public place and there was no evidence that prosecutrix was sitting with the accused against her wishes.

On the other hand, learned counsel for the State has submitted that as per the evidence of teacher – PW-7, she was 13 years old and therefore, even if, there is no evidence of rape or forcible sexual intercourse but at least evidence of kidnapping has been proved and the incident is of the night of 18/19.12.2011 and appellant-accused and prosecutrix were recovered on 25.12.2011. Therefore, it is proved that she remained in custody of the appellant-accused for almost 7 days.

This Court has considered the submissions of learned counsel for the parties. As far as evidence of forcible sexual intercourse is concerned, from the statement of prosecutrix under Section 164 Cr.PC, evidence of Dr. Prem Lata and report of FSL, it is established that prosecution has failed to lead any evidence beyond reasonable doubt to prove the allegations of rape. Now let us examine whether appellant-accused is guilty of offences under Sections 363, 366, 365 and 506 IPC. As per the statement of PW-3 i.e. Dr. Prem Lata, prosecutrix was referred to radiologist and dental surgeon for her age confirmation. Prosecution has not produced either report of the radiologist or dental surgeon. Still further

as noticed above, the appellant-accused and prosecutrix were known to each other and were neighbours. Prosecution has also failed to prove as to where prosecutrix was kept after kidnapping. The evidence led by the prosecution is not sufficient to hold that the prosecutrix was kidnapped and confined against her wishes. As regards age, no doubt School Leaving Certificate has been produced, however, no explanation is forthcoming as to why the report of radiologist or dental surgeon has not been produced before the Court. Non-production of the aforesaid evidence creates a doubt about the genuineness of the case. Prosecution is required to prove the case beyond any reasonable doubt.

In the present case taking into consideration the entire evidence produced and discussed above, this Court is of the considered opinion that the prosecution has miserably failed to prove the case beyond reasonable doubt. Hence, the judgment under appeal is set aside and the appellant is given the benefit of doubt.

The present appeal is allowed.

07.07.2018
sonia

(ANIL KSHETARPAL)
JUDGE

Whether speaking/non-speaking?	Yes/No
Whether reportable?	Yes/No