

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRA-S-3432-SB of 2012(O&M)

Date of Decision: December 01, 2018

Rahul @ Dholu

..... Appellant

Versus

State of U.T. Chandigarh

..... Respondent

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr.Arun Singla, Advocate
Legal Aid Counsel, for the appellant.

Mr. Gautam Kaile, Advocate
for Ms. Ashima Mor, Advocate
for UT Chandigarh.

LISA GILL, J.

Appellant has been convicted for the offence punishable under Sections 363, 366 and 376 of the Indian Penal Code, 1860 (for short-'IPC') by the learned Additional Sessions Judge, Chandigarh, vide impugned judgment dated 24.05.2012 and by a separate order of conviction dated 26.05.2012, he has been sentenced as under:-

Offence u/s	Sentence
363 IPC	Rigorous imprisonment for 03years; besides pay a fine of ₹1000/- and in default thereof to further undergo RI for 15 days
366 IPC	Rigorous imprisonment for 07 years; besides pay a fine of ₹5000/- and in default thereof to further undergo RI for two months
376 IPC	Rigorous imprisonment for 07 years; besides pay a fine of ₹5000/- and in default thereof to further undergo RI for 15 days

Aggrieved therefrom, present appeal has been filed by the appellant.

Brief facts essential for the adjudication of this case are that a

wireless message regarding missing of a girl was received on 16.01.2011 at

Police Post Sector 24, Chandigarh. SI Gurdial Singh along with other police officials reached the spot, where the mother of the victim recorded her statement to the effect that she was a housewife and her husband was doing the work of denting etc., in Sector 28 Chandigarh. Their daughter, aged about twelve (12) years was studying in 6th at the High Court in Sector 25, Chandigarh. It was stated that on the intervening night of 15/16.01.2011, the prosecutrix was sleeping in the house, while the complainant was sleeping in the Jhuggi adjoining the house. In the meantime, younger son of the complainant came and informed her that the present appellant had kidnapped the prosecutrix. Complainant's son tried to rescue her, but the appellant took away the prosecutrix. Complainant along with her husband tried to locate their daughter, but to no avail. It was alleged that the appellant had kidnapped their daughter with an intention to forcibly marry her. Necessary action was prayed for.

Ruqa was sent to the Police Station, on which formal FIR No.17 dated 16.01.2011, was registered under Sections 363, 366, 376 IPC. Investigation was set in motion. Site plan of the place of occurrence was prepared. Date of birth certificate of the victim was taken in custody. Appellant was apprehended on 19.01.2011 from the local bus stand at PGI, Chandigarh along with the victim. He was arrested on identification by the complainant. Prosecutrix was medico-legally examined at the General Hospital, Sector 16, Chandigarh by Dr. Suneet Walia, Medical Officer, General Hospital, Sector-16, Chandigarh (PW-5) on 20.01.2011. Vaginal swabs were taken in custody. The victim was referred for an ossification test. Sealed parcels taken in police custody were sent to Forensic Science Laboratory (for short 'FSL'), Madhuban for analysis. As per FSL report (Ex.P-4), semen was detected on the underwear of the victim. Final report

under Section 173 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') on completion of investigation was presented against the appellant. Charge against the appellant was framed on 11.08.2011, to which appellant pleaded not guilty and claimed trial.

In order to prove its case, the prosecution examined eleven (11) witnesses.

Appellant in his statement under Section 313 Cr.P.C., while denying the incriminating evidence put to him pleaded innocence and false implication. No evidence was led in defence.

Learned trial Court on considering the facts and circumstances of the case as well as the evidence on record concluded that the prosecution successfully proved its case beyond reasonable doubt against the appellant. Consequently, the appellant was convicted for the offence punishable under Sections 363, 366, 376 IPC and sentenced as detailed in the foregoing paras.

Aggrieved therefrom, the present appeal has been filed.

Learned counsel for the appellant vehemently argues that learned trial Court has grossly erred in convicting the appellant of the offences punishable under Sections 363, 366, 376 IPC. The appellant himself is an unmarried young boy. The prosecutrix was proved to be above 16 years of age (FIR in question is prior to the amendment of Section 376 IPC which came into force w.e.f. 03.02.2013). It is contended that if at all sexual intercourse was there, it was with the free consent of the prosecutrix. Therefore, the appellant cannot be held guilty for commission of any of the offences. Reference is made to the statement of PW-5-Dr. Suneet Walia, wherein it is mentioned that the prosecutrix revealed that she had indulged in sexual intercourse three (03) or four (04) times out of her own will. It is submitted that mother of the victim herself stated that the victim was

kidnapped by the appellant to forcibly marry her which reveals that the victim left her house out of her own free will. She remained with the appellant for three (03) days and never raised any kind of alarm nor made any attempt to escape. It is thus argued that the appellant has been falsely implicated in this case at the instance of the parents of the prosecutrix. It is thus prayed that this appeal be allowed and conviction of the appellant be set aside and he be acquitted of the charges against him.

Learned counsel for the State while refuting the abovesaid arguments submits that there is clear and cogent evidence on record, which clearly reveals the commission of the offences as charged by the appellant. The appellant has been rightly convicted for the offences punishable under Sections 363, 366, 376 IPC and sentenced accordingly. Thus, it is submitted that there is no ground for setting aside the well reasoned and logical judgment of conviction dated 24.05.2012 and order of sentence dated 26.05.2012, which is based on a sound appreciation of the evidence on record.

I have heard learned counsel for the parties and have gone through the record of the case with their assistance.

First and foremost controversy which arises for consideration in this case is regarding the age of the prosecutrix. It is not in dispute that the victim was a student of 7th standard at Government High School, Sector 25, Chandigarh. As per the school record, which is duly proved by PW-6-Pavitra Yadav, TGT (Hindi), Govt. High School, Sector 25, Chandigarh, date of birth of the victim is recorded as 12.02.1996. PW-6 produced the original admission and withdrawal register of 6th Class. She also produced the admission file of the victim when she was admitted in school on 21.05.2008.

As per the record produced, date of birth of the victim was 12.02.1996. PW-

6 proved Ex.P-15 i.e., the report regarding date of birth of the victim issued by Sudesh Mittal, the Head Mistress of the school on request by the police. Victim had been admitted in Class-4 in the said school. Affidavit dated 07.05.2008 executed by the complainant in respect to the date of birth of her daughter at the time of admission in school is available on record as Ex.D-2. It was sought to be urged on behalf of the defence that as per the admission form, name of the father of the prosecutrix is mentioned as Baleshwar, whereas the complainant was married with Rajinder Kumar. Copy of the admission form, Ex.D-1, affidavit of the complainant, Ex.D-2 in respect to the age of the victim, copy of eligibility card Ex.D-3, copy of ration card Ex.D-4 besides copy of admission and withdrawal register Ex.D-5, depict the name of father of the prosecutrix to be Baleshwar and her date of birth as 12.02.1996.

However, this so called anomaly is succinctly explained by PW-1-Kamlesh, mother of the victim who clearly stated in her testimony that she remarried with Rajinder Kumar after the death of Baleshwar. The prosecutrix was born from the loins of Baleshwar. Therefore, there is no ambiguity in the same and it is proved that date of birth of the victim is 12.02.1996. Thus, on the day of occurrence, the victim was 14 years 11 months of age and not 16 years old as is sought to be projected. In this view of the matter, there is no question of reliance on the radiological report which mentions the age of the victim to be between 15 to 16 ½ years. There is nothing on record to prove that age of the victim was wrongly mentioned in the school records at the time of her admission which was much prior to the incident in question.

Apart from the fact that the question of consent or otherwise is irrelevant in view of the age of the prosecutrix, it is to be noticed that the

prosecutrix while deposing as PW-2 has specifically stated that the accused came to her house, made her unconscious and took her to an unknown place. The victim specifically stated that sexual intercourse was committed upon her forcibly, without her consent and she was kept confined by the appellant for three (03) days and the act repeated. The victim specifically denied the suggestions that no offence was committed by the appellant. As per the FSL report, semen was detected on the undergarment of the victim. There is no reason to doubt the clear and cogent statement of the victim herself. Therefore, commission of the offence is clearly proved. Appellant has been rightly convicted by the learned trial Court for the offences punishable under Sections 363, 366, 376 IPC. Prosecution has indeed succeeded in proving its case beyond reasonable doubt against the appellant.

No other arguments has been raised.

Learned counsel for the appellant is unable to point out any illegality, infirmity or perversity in the impugned judgment of conviction dated 24.05.2012 and order of sentence dated 26.05.2012, passed by the learned Additional Sessions Judge, Chandigarh. The said judgment and order dated 26.05.2012, is accordingly upheld.

Consequently, this appeal is dismissed.

The accused-appellant is on bail. His bail stands cancelled and bail bonds forfeited. Necessary steps be taken to secure his custody.

December 01, 2018

s.khan

[LISA GILL]
Judge

Whether speaking/reasoned : Yes/No.

Whether reportable : Yes/No.