

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

(1) CRA S-5430-SB of 2015 (O&M).

Date of Decision: 24.02.2018.

Meena @ Mona

... Appellant

Versus

State of Haryana

... Respondent

(2) CRA S-21-SB of 2016 (O&M).

Mukhtiar Singh

... Appellant

Versus

State of Haryana

... Respondent

CORAM : Hon'ble Mr. Justice Jitendra Chauhan

Present : Mr. Sanjeev Manhas, Advocate,
(Legal Aid Counsel),
for the appellant in CRA S-5430-SB of 2015.

Mr. Gopal Sharma, Advocate,
for the appellant in CRA S-21-SB of 2016.

Mr. Sharad Kumar Yadav, DAG Haryana.

JITENDRA CHAUHAN.J.

This judgment shall dispose of aforementioned two criminal appeals bearing number CRA S-5430-SB of 2015 and CRA S-21-SB of 2016 as the same are directed against the common judgment dated 03.11.2015 and order dated 05.11.2015 passed by Additional Sessions Judge, Faridabad.

The brief facts of the case as noticed in paragraph No.2 of the impugned judgment passed by the trial Court are as under:-

“The brief facts of the prosecution case are that

complainant (name withheld in order to protect her identity and herein after referred as prosecutrix) aged about 19 years made a complaint that she is the student of 9th class. She is youngest one in three brothers and sisters. Remaining to her all are married. She stays at home. Eight months ago, she visited her sister's house at Rewari where she met with her sister's neighbourer Meena wife of Satbir. She persuaded her to give Rs. 500/- and two photographs for clearing her examination. Her certificates were at her home in Partapgarh so they came to Partapgarh. On that night, prosecutrix slept with Meena. Meena removed her clothes and she started touching complainant's private body parts. She also behaved with her as a male and inserted her finger in the complainant private body parts. She also touched complainant's private parts by mouth. She also threatened to the complainant that if she will tell anyone regarding this then she will kill complainant and due to fear she did not tell anything to any one. It is further stated that on the next day complainant and Meena came back to her sister's house at Rewari. After one month accused Meena on the pretext of filling up the form took her to village Teet. There she

asked complainant that first they will purchase some medicine and thereafter they would fill up form. However, the accused Meena took her to Jaipur in a restaurant i.e. Kuber. There she slept close to complainant in a room. There on every night she forcefully removed complainant's clothes and behaved with her as a male person. She behaved with her in a carnal manner. It is further stated that accused Meena threatened and administered her some medicine and due to that effect she became unconscious and could not even rise from bed. When ever accused Meena go outside she used to apply lock on room. After 27 days accused Meena took back complainant to Rewari and making her sit on a tea stall, she went away to unknown place. After some time police came there and took her to police chowki. The complainant did not tell anything to the police persons because of the fear of the accused. The police persons called her sister and brother in law and they took her to Partapgarh. Accused Meena sent lewd message on her brother's phone numbers. The complainant further stated that because of threatening of accused Meena, she continued talking her on phone. On 22.01.2015 accused called her on her

phone and told her that she had made obscene film of complainant and she will show it to everyone. For the fear of the defamation complainant again went back to the accused Meena and when she was talking alongwith her, she saw that one motorcyclist was standing there. On that motorcycle accused Meena made her to sit. The complainant's sister in law came there and raised alarm. Many people gathered there and they rescued complainant from accused Meena and that motorcyclist. Accused Meena and motorcyclist were caught by the police.”

The FIR in the matter was registered and after completion of investigation, the challan was presented before Area Magistrate, Faridabad. The offences being triable by the Court of Session, the case was committed to the Court of Session vide order dated 10.04.2015.

Charges under Sections 342, 344, 365, 377, 506 and 120-B read with Section 511 IPC and Section 3 of the Scheduled Castes & the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short “the Act”) were framed against accused Meena alias Mona whereas, accused Mukhtiar Singh was charge-sheeted under Sections 365 and 120-B read with Section 511 IPC and Section 3 of the Act. The accused did not plead guilty to the charge and claimed trial.

In support of its case, the prosecution has examined

PW1-Prosecutrix, PW2-Dr. Sonia Upadhyaya, MO GH Ballabgarh, PW3- District Inspector-Saifuddin, PW4-Ranvir Singh, PW5-EASI Kanhiya Lal, PW6-Savita, PW7-Hari Singh ASI, PW8-DSP Shakuntla, PW9- LASI Savita, Police Lines, Faridabad, PW10-Constable Pardeep Kumar, PW11-HC Girraj Singh, PW12-Jitender Kumar, TRA to Tehsildar.

The statements of the accused were recorded under Section 313 Cr.P.C, wherein all the incriminating circumstances appearing in the prosecution evidence were put to the accused to which they denied and pleaded false implication.

No evidence in defence was led by the accused.

After appraisal of the evidence, the learned trial court convicted and sentenced the accused as under:-

Meena

<i>Offence</i>	<i>Sentence</i>	<i>Fine</i>	<i>In default</i>
342 IPC	RI for one year	1,000/-	RI for one week
344 IPC	RI for three years	5,000/-	RI for one month
377 IPC	RI for ten years	10,000/-	RI for one year
506 IPC	RI for two years	5,000/-	Simple imprisonment for one week
365/511 IPC	RI for five years	10,000/-	RI for six months
120B	RI for three years	5,000/-	RI for one month

Mukhtiar Singh

<i>Offence</i>	<i>Sentence</i>	<i>Fine</i>	<i>In default</i>
365/511 IPC	RI for five years	10,000/-	RI for six months
120B IPC	RI for three years	5,000/-	RI for one month

The substantive sentences were order to run concurrently.

Feeling dissatisfied, the present two separate appeals have been filed by both the accused, Meena @ Mona and Mukhtiar Singh.

It is contended by the learned counsel for the appellants that the prosecutrix remained with the accused for a long period of 27 days which suggests that she was not taken by force rather she had willingly accompanied the accused and there was no kidnapping at all.

It is further contended that so far as accused Mukhtiar Singh is concerned, the only role assigned to him is that he took the prosecutrix on his motorcycle to the house of co-accused Meena. In the absence of any evidence that there was a conspiracy between Mukhtiar Singh and Meena, accused/appellant Mukhtiar Singh cannot be fastened with the liability.

On the other hand, the learned State counsel contends that there is sufficient evidence on record to convict the accused/appellants. He supports the judgment and order passed by the trial court.

Heard.

In the instant case, the prosecutrix is major. As per

her own version, accused Meena touched her private parts on

18.06.2014 when she had gone to her sister's house and accused Meena accompanied her to her house in Partapgarh for helping her out in securing a matriculation certificate. There is no evidence on record with regard to presence of anybody else in the house of the prosecutrix. Allegedly, the prosecutrix was allured and forced to accompany the accused to various places. However, the prosecutrix chose to remain silent till the date the accused/appellant, Meena allegedly told her that her act had been videographed which was allegedly sent to mobile phone of her brother. In the Statement recorded under Section 164 Cr.P.C, there is no reference of co-accused Mukhtiar Singh. During investigation, vide recovery memo, the mobile phone of accused/appellant Meena was recovered in the presence of Lokesh, brother of the prosecutrix. However, the same was not sent to any forensic laboratory for necessary examination to ascertain whether the obscene photograph was sent through the phone of accused. The obscene photograph is allegedly sent on the mobile phone of Lokesh, brother of prosecutrix. However, neither the recovery was effected nor the factum came on record whether any mobile phone was held by Lokesh, brother of the prosecutrix. The name of co-accused Mukhtiar Singh has surfaced only on 23.01.2015 when as per the case of the prosecution, an effort was made to abduct the prosecutrix and allegedly the prosecutrix raised an alarm and accused Mukhtiar Singh was nabbed on the spot by the police. Beyond that the co-accused Mukhtiar Singh was riding the motor cycle there was no further role of co-

accused Mukhtiar Singh in both the episodes, his conviction has been recorded only on the ground that he had extended help in abducting the prosecutrix. As stated earlier, alleged obscene photograph prepared by accused Meena was posted on the cell phone of brother of the prosecutrix, Lokesh, who was cited as one of the prosecution witness but for the reasons best known to the prosecution, this crucial witness was given up. In the absence of the forensic science laboratory report of the mobile phone of accused coupled with non-recovery of mobile phone of Lokesh and his non-examination goes to disapprove the story put forth by the prosecution. The prosecution has failed to explain as to why the recovery of the cell phone from said Lokesh was not effected and the reasons as to why he was given up.

Further, on the night of first alleged act of accused, Meena, at the house of the prosecutrix, no other person was present, thus, the prosecutrix who was major was under no threat and as per her own version, she stayed with the accused for 27 days and she never tried to raise any alarm which causes dent in the story of the prosecution. The another crucial witness Savita, sister of the prosecutrix did not support the case of the prosecution and therefore was declared hostile. She was cross-examined by the learned State counsel on all material points. Though, there is a overwhelming evidence from the testimony of PW-4 Ranvir Singh, owner of the Hotel, this fact is proved that the prosecutrix and the accused stayed in the hotel; the prosecutrix being major and in the absence of any

concrete evidence that any force was applied by accused Meena, the Court is inclined to give her benefit of doubt.

So far accused Mukhtiar Singh is concerned, there is nothing on record that appellant Meena allegedly conspired with him and he was approached to execute the nefarious purpose of abducting the prosecutrix. Except that he accompanied the co-accused to the house of the prosecutrix, no incriminating evidence has come against him suggesting him to be in conspiracy with co-accused Meena, therefore, his appeal succeeds.

In view of above, both the appeals are accepted. The impugned judgement and order passed by the trial Court are set aside. The accused/appellants are acquitted of the charges framed against them. They are stated to be on bail. Their bail bonds and surety bonds stand discharged.

A photocopy of this order be placed in the file of other connected case(s).

24.02.2018.
SN

(JITENDRA CHAUHAN)
JUDGE

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