

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

CRA-S-4430-SB-2018 (O&M)

Date of Decision : 15.07.2019

Nishan Singh alias Gurjant Singh

..... Appellant

Versus

State of Haryana

..... Respondent

CORAM : HON'BLE MR. JUSTICE RAJ SHEKHAR ATTRI

Present : Mr. Madan Sandhu, Advocate
for the appellant.

Mr. Parveen Kumar Aggarwal, DAG, Haryana

RAJ SHEKHAR ATTRI, J. (Oral)

Feeling aggrieved against the judgment of conviction dated 15.10.2018 and order of sentence dated 17.10.2018, passed by the learned Additional Sessions Judge, Kaithal, vide which the appellant has been convicted under Section 376 IPC and Section 4 of the Protection of Children from Sexual Offences Act, 2012 and sentenced to undergo rigorous imprisonment for a period of 07 years and to pay a fine of Rs.11,000/- and in default of payment of fine to further undergo simple imprisonment for a period of 15 days under Section 4 of the Protection of children from Sexual Offences Act, 2012, he has preferred the instant appeal.

This case has chequered history. Infact, the appellant-accused had solemnized marriage with the prosecutrix. She has been residing in the house of appellant as his wife till today and they have been blessed with a

son. Although, the prosecutrix has supported the version of her marriage and discarded her version during the trial. Yet the appellant has been convicted solely on the basis of medical evidence especially the report of forensic science laboratory with regard to DNA profile.

The prosecutrix left her house in the intervening night of 7/8th November, 2017 and eloped with the appellant, without informing her parents. Therefore, her father Nirmal Singh lodged the report with regard to disappearance of his daughter from the house and he suspected that she was kidnapped by the appellant. On his statement, formal FIR was registered.

The prosecutrix was recovered on 20.11.2017. she suffered statement under Section 164 Cr.P.C. wherein she has categorically stated that she left her house with her free will on the night of 7/8.11.2017 and she had solemnized married with the appellant on 11.11.2017 and thereafter everything has been done with her consent.

However, she was found to be minor, therefore, she was medico legally examined. The appellant was also medico legally examined.

After completion of investigation, the report under Section 173 Cr.P.C. was presented before the court below.

The prosecution, in order to prove its case, examined **PW1** Nirmal Singh, **PW2** Smt. Kanwaljeet Kaur, **PW3** prosecutrix, **PW4** Constable Virender, **PW5** Harpreet Kaur, **PW6** Ishwar Dutt, **PW7** ASI Laxman Singh, **PW8** Head Constable Shishpal, **PW9** Constable Nitish Kumar, **PW10** ASI Ramesh Chand , **PW11** Constable Dharam Pal, **PW12** Sub Inspector Darshana Devi, **PW13** Dharampal, **PW14** Pooja Jangra, **PW15** Dr. Sonali Dhillon and **PW16** Dr. Deneshwar.

After closure of the prosecution evidence, the appellant was examined under Section 313 Cr.P.C. in order to afford him an opportunity to explain the incriminating evidence appeared against him. However, he pleaded his false implication. He did not lead any defence evidence.

On appreciation of evidence, the appellant was convicted and sentenced, as stated above.

During the trial, the prosecution examined informant Nirmal Singh (PW1), who is the father of the prosecutrix. He has stated that his daughter had left the house without disclosing any facts that she was going to Gurudwara at Amritsar. He denied that her daughter was kidnapped by the appellant.

PW2 Smt. Kanwaljeet Kaur, who is the mother of the prosecutrix, has also stated that her daughter (prosecutrix) left the house to pay obsequies in a Gurudwara at Amritsar. She also completely exonerated the prosecution version. The prosecutrix stepped into the witness box as PW3 and has categorically stated that she has performed marriage with the appellant and was staying with him. This court would like to reproduce the examination-in-chief of the prosecutrix hereunder:-

“Stated that on 08.11.2017 I left my house and went to Pehowa with accused Nishan Singh. I had performed marriage with him with my own wishes. I remained with accused Nishan Singhat Pehowa as his wife. During this period we made physical relations. Accused had made physical relations with me with my consent. He did not kidnap me nor he forcibly raped me. On 20.11.2017, police had apprehended me and accused Nishan Singh from Pehowa Chowk, Pehowa. I identify my signatures on recovery memo Ex.PE at point A. Except this I do not know anything about

the present case.”

Although, she was declared hostile and prosecution was allowed to cross-examine her but nothing has been elicited from the cross-examination to connect the accused with the crime. She has categorically stated that neither the accused had kidnapped her nor committed sexual intercourse with her prior to her marriage. She has stated that she has performed marriage with the accused and now she is residing with him in his house as his wife. Thus, as per the evidence of the prosecutrix, she had solemnized marriage with the appellant on 11.11.2017 and only thereafter they have made physical relations. There is no evidence that the appellant was apprised of the fact that the prosecutrix was minor at that time. She was medico legally examined after 20.11.2017 i.e. after 09 days of her marriage. In these circumstances, if human semen has been recovered from her clothes or if it has been detected that the semen in DNA profile is matched with that of blood group of the appellant, same does not provide any help to the case of the prosecution because the sexual relations were maintained between them after the marriage of both of them. It stands proved that the prosecutrix had gone with the accused with her own consent. She never disclosed that she was under 18 years of age. There is ample evidence that she had gone with her free consent and by her own. Thus, the factum of kidnapping is not established.

Now coming to the factum of rape, the prosecutrix has categorically stated that she performed marriage with the appellant and only thereafter they developed physical relations being husband and wife. Thus, the offence of rape has not been established.

It has been argued that the appellant is blessed with a son and

both of them are residing happily as husband and wife. During the course of arguments, the prosecutrix also remained present having a kid in her lap. She has categorically stated that her husband (appellant) has been falsely implicated and both of them are residing together in a cordial environment as husband and wife.

In view of aforesaid discussion, this court is of the opinion that the appellant is entitled to the benefit of doubt with regard to the offence of rape.

So far as the age of the prosecutrix is concerned, the prosecution produced PW6 Ishwar Dutt, Headmaster, Government Middle School, Polar, District Kaithal. He has stated that as per the school record, the date of birth is entered as 10.02.2003 but in the cross-examination, he has stated that the prosecutrix took the admission in the school on 14.05.2013. On a specific question as to whether any birth proof is taken at the time of admission, he has shown ignorance and has stated that only his predecessor headmaster might have taken the proof of birth of child at the time of admission. But he has also stated that infact the child was admitted in 6th Class on the basis of school leaving certificate of the primary school. But neither admission form nor record of primary school has been produced. Thus, the birth certificate produced by Head Master PW6 is not admissible into evidence as it does not establish the actual age. It was mandatory for the prosecution to produce the primary school certificate as well as the original admission form vide which the prosecutrix was admitted in the school. Thus, the prosecution failed to establish the actual age of the prosecutrix.

Keeping in view the critical examination of the evidence

available on record, this court is of the view that the prosecution failed to prove the charges framed against the appellant under Section 376 IPC and Section 4 of the Protection of children from Sexual Offences Act, 2012. Hence, the appellant is entitled to the benefit of doubt and, therefore, is acquitted of the charges framed against him. He is stated to be on interim bail. His bail bond stands discharged and he be set at liberty forthwith, if not required in any other case.

The instant appeal stands allowed accordingly.

15.07.2019
mamta

(RAJ SHEKHAR ATTRI)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No