

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

1)

CRA-S-752-SB-2003
Decided on : 15.01.2020

Jai Bhagwan

... Appellant(s)

Versus

State of Haryana

... Respondent(s)

2)

CRA-S-1013-SB-2003

Raj Kumar @ Billu

... Appellant(s)

Versus

State of Haryana

... Respondent(s)

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

PRESENT: Mr. Sudhir Sharma, Advocate
for the appellant(s) (in CRA-S-752-SB-2003).

Mr. B.S. Saroha, Advocate
for the appellant(s) (in CRA-S-1013-SB-2003).

Mr. Ashish Sanghi, DAG, Haryana.

MANJARI NEHRU KAUL, J.

This order will dispose of two cases i.e. CRA-S-752-SB-2003 and CRA-S-1013-SB-2003, as the appeals have arisen out of the same judgment. For the sake of convenience, the facts are being extracted from CRA-S-752-SB-2003.

1. The above mentioned appeal has been preferred against the impugned judgment dated 03.04.2003 and order of conviction dated 08.04.2003, passed by Addl. Sessions Judge, Bhiwani, vide which the

accused-appellant(s) were convicted and sentenced as under : -

Name of Convict(s)	Offence(s)	Rigorous Imprisonment/ Period of sentence(s)	Fine(s) imposed	Period of sentence(s) in default of payment of fine(s)
1. Rajesh 2. Raj Kumar @ Billu 3. Jai Bhagwan	363 IPC	2 years (each)	₹ 1000/- (each)	RI for six months
	366-A IPC	5 years (each)	₹ 2000/- (each)	RI for one year
Rajesh	376 IPC	7 years	₹ 3000/-	RI for one year
Rajesh	Section 3 of the SC/ST Act, 1989	2 years	₹ 1000/-	RI for six months

All the sentences were ordered to run concurrently.

2. The prosecution case in brief is that on 09.04.1998 at about 04:00 P.M., PW-9/Ashok Kumar, brother of the minor prosecutrix, who was a student of 09th class, registered an FIR that on the previous day i.e. on 08th April, 1998, while he was away to his fields and his parents too were not at home, on return were informed by PW-8/Chand Ram that accused Rajesh had visited their village a number of times and taken a few rounds of their house. Thereafter, at about 07:00 P.M. when the prosecutrix, had gone outside the house to ease herself, accused-appellants Rajesh came and enticed away his minor sister with a bad intention. All efforts to trace the prosecutrix proved futile. On the basis of the said complaint of PW-9/Ashok Kumar, a case under Sections 363, 366 and Sections 3 & 4 of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 was registered. On 09th April, 1998, the statement of PW-8/Chand Ram was recorded under Section 161 Cr.P.C., wherein, he stated that accused-appellant No.1/Rajesh alongwith accused-appellant No.3/Jai Bhagwan, had come to the house of the prosecutrix. Thereafter, on the same day at about

07:00 P.M., he had seen these two boys take away the prosecutrix on their scooter.

In the above facts, FIR No. 66, dated 09.04.1998, under Sections 363, 366, 376, 120-B IPC and under Sections 3 & 4 of the S.C. & S.T. (Prevention of Atrocities) Act, 1989, was registered at Police Station Badhma, District Bhiwani (Ex.PL) on the statement of PW-9/complainant Rajesh Kumar.

On completion of the investigation, the accused-appellants were charged for offences punishable under Section 363, 366-A IPC. Accused Rajesh was additionally charged under Section 376 IPC and under Sections 3 & 4 of the S.C. & S.T. (Prevention of Atrocities) Act, 1989, to which they pleaded not guilty and claimed trial.

In support of their case, the prosecution examined as many as 12 witnesses including PW-6/Prosecutrix and Dr. Anupama Mittal, who medico legally examined the Prosecutrix as PW-12.

All the accused when examined under Section 313 Cr.P.C. denied the charges and pleaded false implication.

On an analysis of the evidence led, the trial Court held the accused-appellants guilty and convicted them under Sections 363, 366-A IPC and sentenced them as already detailed hereinabove.

Learned counsel for the accused-appellants has vehemently argued that in view of the categorical statement of the prosecutrix, the mischief of Sections 363, 366-A IPC is not attracted against the accused-appellants, as it was apparent that the Prosecutrix had left with the accused-appellants of her own accord and hence there was no question of her being

forcibly taken away. It was also urged that there was no definite proof of age of the prosecutrix on record and in fact, her date of birth, which was shown as 29th September, 1983 in Ex.PE1 was contrary to her date of birth shown in the school certificate. The Prosecutrix being less than 16 years of age did not stand established, hence, the accused-appellants were wrongly convicted under Sections 363, 366-A IPC.

Learned State counsel on the other hand while opposing the submissions made by the learned counsel for the accused-appellants submitted that the star witness i.e. the Prosecutrix had corroborated the prosecution version *in toto* and stood her ground *qua* the allegations levelled by her against the accused-appellants. It was further submitted that PW-2/Sadhu Ram, Statistical Assistant, General Hospital, Bhiwani had proved his report Ex.PE1, wherein, the date of birth of the prosecutrix, who was admittedly the fifth child of Ram Chand and Murti Devi i.e. the parents of the Prosecutrix, was mentioned as 29th September, 1983. Further, even in the Middle Examination Certificate Ex.PJ date of birth of prosecutrix was mentioned as 10th September, 1983. Hence, there was no doubt that on the day of occurrence, the prosecutrix was indeed below 16 years of age.

I have heard learned counsel for the parties and have reappraised the evidence and other material on record.

In the very first statement Ex.PK, recorded by PW-9/Ashok Kumar, complainant i.e. the brother of the Prosecutrix, he had categorically stated that PW-8/Chand Ram, who was their neighbour had told him that the accused-appellants Rajesh and Jai Bhagwan had taken away the prosecutrix on their scooter towards village Kadma on the fateful day. Further, PW-

8/Chand Ram corroborated the said fact while stepping into the witness-box, wherein, he also deposed that both the accused Rajesh and Jai Bhagwan had taken 2-3 rounds of the house of the prosecutrix before taking her away on scooter at about 07:00 P.M., when she had gone to answer the call of nature. Both these witnesses were subjected to aggressive cross-examination, which did not prove to be of any help to the defense.

The next submission of the counsel for the accused-appellants that the mischief of Sections 363, 366-A IPC was not attracted as Prosecutrix was above 16 years of age, deserves to be rejected out-rightly. The report of PW-2/Sadhu Ram, clinchingly proves that the Prosecutrix who is the youngest and fifth child of Ram Chand and Murti Devi (parents of the Prosecutrix) was born on 29th September, 1983, and thus, on the date of occurrence i.e. on 08.04.1998, the Prosecutrix was indeed below 16 years of age. In this factual background, even assuming for the sake of arguments that the prosecutrix had herself accompanied the accused-appellants Rajesh and Jai Bhagwan and consented to the sexual intercourse, the same would be inconsequential and would not help the case of the accused-appellants.

Coming to the case of accused-appellant/Raj Kumar @ Billu, on perusal of the FIR as well as the depositions of the complainant PW-9/Ashok Kumar, PW-8/Chand Ram and the prosecutrix, no overt act finds mentioned nor any allegation of accused Raj Kumar subjecting the prosecutrix to any sexual assault, much less, being present when co-accused Rajesh and Jai Bhagwan took the prosecutrix away with them on the fateful day. In fact, the only role attributed to him, is that on 08.04.1998 he got meals for accused-appellants Rajesh and Jai Bhagwan. Thus, on a perusal of the

evidence led, the mischief to attract offences under Sections 363, 366-A IPC, are clearly amiss *qua* accused-appellant/Raj Kumar @ Billu. There are some gaping holes in the testimony of the prosecution, for which he deserves the benefit of doubt. Consequently, the appeal filed by accused-appellant/Raj Kumar @ Billu stands allowed.

As far as, the accused-appellant/Jai Bhagwan is concerned, no interference is warranted in the impugned judgment of the learned trial Court, which deserves to be upheld, as the same is a well reasoned one. The appeal filed by accused-appellant/Jai Bhagwan, stands dismissed. The accused-appellant is on bail. His bail bonds/surety bonds stands cancelled. Necessary steps be taken to secure his custody.

**(MANJARI NEHRU KAUL)
JUDGE**

January 15, 2020

J.Ram

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No