

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

(1)

CRA-D-271-DB of 2005

Anup alias Sonu

.... Appellant

Versus

State of Haryana

..... Respondent

(2)

CRA-S-781-SB of 2005

Ramesh

.... Appellant

Versus

State of Haryana

..... Respondent

Reserved on : 11.02.2020

Date of decision : 02.03.2020

CORAM :- HON'BLE MR. JUSTICE RAJIV SHARMA

HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

Present: Mr. A.P.S. Deol, Senior Advocate (amicus curiae), with
Mr. Vishal Rattan Lamba, Advocate,
for the appellants.

Mr. Vivek Saini, Deputy Advocate General, Haryana.

* * *

RAJIV SHARMA, J.

1. Since common questions of law and facts are involved in both these appeals, i.e. CRA-D-271-DB-2005 and CRA-S-781-SB-2005, therefore, these are taken up together and being disposed of by a common judgment.

2. These appeals are instituted against the judgment dated 03.03.2005 and order dated 07.03.2005, rendered by learned Additional Sessions Judge, Rohtak, in Sessions Case No. 16/2994 dated 11.06.2004. Appellants Anup alias Sonu and Ramesh were charged with and tried for the offences punishable under Sections 363, 366, 376 and 376 (2) (g) IPC. Appellant Ramesh was acquitted of the charge under Section 363 IPC and both the appellants were acquitted of the charge under Section 376 (2) (g) IPC. Appellant Ramesh was convicted and sentenced under Section 366 IPC to undergo rigorous imprisonment for seven years and to pay a fine of ₹ 5,000/-, and in default of payment of fine to further undergo rigorous imprisonment for one year. Appellant Anup alias Sonu was convicted and sentenced under Section 376 IPC to undergo rigorous imprisonment for fourteen years and to pay a fine of ₹ 10,000/-, and in default of payment of fine to further undergo rigorous imprisonment for two years.

3. The case of the prosecution, in a nutshell, is that complainant Nirmala met Assistant Sub Inspector Daya Nand on 18.04.2004. She submitted an application Ex.P12 before him. According to the averments made in the complaint, the prosecutrix was her daughter. She was aged 18 years. She was studying at Shiv Dharam Girls Senior Secondary School, Rohtak. On 14.04.2004, the prosecutrix went to Rohtak on the pretext of

getting the scholarship. She advised the prosecutrix to take her grand-father along with her. However, the prosecutrix obtained money from her grand-father and went alone. She followed her upto bus stand of village Kabulpur. When her daughter boarded the bus, accused Ramesh also boarded the bus. Her daughter did not come back. In the evening, she went to her brother-in-law Ashok at Arya brick-kiln Ladhot. She narrated the entire story to him. He told that on the previous day, at about 10.00 AM, the prosecutrix met him along with accused Ramesh at Sukhpura Chowk, Rohtak. The FIR was registered vide Ex.P13. The investigation was completed and challan was put up after completing all the codal formalities.

4. The prosecution examined a number of witnesses in support of its case. The accused were also examined under Section 313 Cr.P.C. They denied the case of the prosecution. According to them, they were falsely implicated. The accused were convicted and sentenced, as noticed here-in-above. Hence, these appeals.

5. Learned counsel appearing on behalf of the appellants has vehemently argued that the prosecution has failed to prove its case against the appellants. Learned counsel appearing for the State has supported the judgment and order of the learned Court below.

6. We have heard learned counsel for the parties and gone through the judgment and record very carefully.

7. PW.1 Dr. Kul Partibha medico legally examined the prosecutrix on 19.04.2004. In her opinion, FSL report showed that the possibility of sexual inter-course in this case could not be ruled out, because semen was detected on the *salwar* and underwear of the male person. In her cross-

examination, she deposed that mother of the prosecutrix told the age of the prosecutrix as 17 years and the prosecutrix told her age to be 18 years.

8. PW.2 Dr. Gajender Singh medico legally examined Anup alias Sonu. According to him, Anup was not unable to perform sexual intercourse.

9. PW.9 is the prosecutrix. According to her, on 14.04.2004, she had gone to take scholarship. She was with accused Ramesh. Ramesh told her that she would get a scholarship. When they were present at Sukhpura Chowk, her uncle Ashok met them. He gave her ₹ 50/-. Accused Ramesh assured her to leave at her house after taking scholarship. Accused Ramesh told her that Anup had called. Thereafter, accused Ramesh enticed her and took her to Anup at Safidon. Ramesh left her with Anup and came back. Thereafter, she stayed on 14/15.04.2004 at the house of accused Anup. Anup brought her to the bus stop of village Ritoli. Thereafter, he took her to a *kotha* (room) near bus stop situated in the fields of village Ritoli at about 8.00 PM. He did wrong act with her by force. Thereafter, they came back to Rohtak. She was kept at Railway Station, Rohtak. He again took her to Safidon in the train. On 17.04.2004 and 18.04.2004, he again did wrong act with her at Safidon. They came to Sunaria Chowk, Rohtak. Thereafter, she went to her home. She was medically examined. In her cross-examination, she deposed that they had gone from Rohtak to Ritoli on 16.04.2004. From 5.30 PM to 8.00 PM, they remained at Rohtak. No body met them during this period. There were so many passengers in the bus, when they went to Ritoli. Her co-villagers were also present in the bus. They came back to Rohtak in auto rickshaw. They had gone to Court at Safidon but the accused

had taken her against her wishes. She did not meet any advocate there. Many advocates were present. General public was also present. Her photographs were taken in a temple. The room at Ritoli was at a distance of about 6/7 acres from the road. She did not resist because the accused had threatened to kill her brother. On 19.04.2004, they started from Safidon for Rohtak at about 9.00 AM. They reached Rohtak at about 1.00 PM. Her date of birth in Matriculation certificate was 02.02.1986, but actual date of birth was 25.09.1986.

10. PW.10 Nirmala is the mother of the prosecutrix. She deposed that the prosecutrix took money from her grand-father for going to Rohtak to get scholarship. She asked the prosecutrix to go with her grand-father. However, the prosecutrix replied that she would go all alone. The prosecutrix came to Rohtak. She followed her upto bus stop Kabulpur. Accused Ramesh and the prosecutrix boarded a bus. She waited for her daughter till the evening. When she did not return, she informed Ashok. In her cross-examination, she deposed that her marriage took place about 20/22 years ago. The prosecutrix was born after one year of the marriage.

11. PW.11 Ashok testified that on 14.04.2004, he saw the prosecutrix at Sukhpura Chowk. Accused Ramesh was present with her. She demanded some money. He gave her ₹ 50/-. In the evening, he received a telephonic message that the prosecutrix had not reached the house. Then he told the family members that the prosecutrix had met her at Sukhpura Chowk. They reported the matter to the police on 18.04.2004. The prosecutrix met them on 19.04.2004.

12. PW.12 Dayanand ASI deposed that PW Nirmala met him on

18.04.2004. She submitted an application Ex.P12. He recorded the statement of PW Ashok Kumar and Har Bhagat. On 19.04.2004, he went to village Kabulpur. While coming back, they were present at Sunaria Chowk. PW Phool Kumar and Santosh pointed out towards a boy and a girl standing at a distance of about 20 paces. They told that the girl was their daughter and the boy was Anup. However, accused Anup ran away. Statement of the prosecutrix was recorded. They went to the fields of Ritoli. He inspected the spot. Thereafter, they came to General Hospital, Rohtak and got the prosecutrix medically examined. On 20.04.2004, the radiological examination of the prosecutrix was got done. Both the accused were arrested on 20.04.2004 on the basis of secret information. They were interrogated. Accused Anup made disclosure statement to the effect that on 16.04.2004, he committed an illegal act with the prosecutrix in a room situated in the fields of Ritoli. Both the accused were also medically examined.

13. DW.1 Sandeep Kumar deposed that he knew accused Anup. He was employed as a security guard at Hanuman Rice Mills, Safidon. The prosecutrix came to Anup on 14.04.2004. She was saying that she was willing to marry accused Anup. However, her family members were annoyed. She disclosed her age to be 18 years. She had shown her Matriculation certificate Ex.D4. Thereafter, they went to a temple on 15.04.2004. Marriage was performed in the temple. Photographs were also taken.

14. DW.2 Narender Kumar had taken the photographs. The photographs are Ex.D4 to Ex.D8.

15. DW.3 Kaptan Singh deposed that on 15.04.2004, the prosecutrix purchased stamp paper from him as per Serial No. 452-53 in his register Ex.D17. She also put her signatures against this entry.

16. DW.4 Rampal testified that he was present in his fields during the intervening night of 15/16.04.2004. No body came to his room in the fields on that night. He had heard that the prosecutrix had eloped, but he did not know the name of the person, with whom she had gone.

17. The FSL report is Ex.P2. According to it, human semen was detected on exhibit-1a (Salwar), exhibit-2a (Swab) and exhibit-3 (underwear). However, semen could not be detected on rest of the exhibits.

18. The case of the prosecution is that at one place in the MLR Ex.P1, age of the prosecutrix was shown as 17 years and at another place, it was shown as 18 years. According to PW.1 Dr. Kul Partibha, mother of the prosecutrix told the age of the prosecutrix as 17 years. However, the prosecutrix disclosed her age to be 18 years. In application Ex.P12, the complainant mentioned the age of the prosecutrix to be 18 years. The prosecutrix, while appearing as PW.9, admitted that as per her Matriculation certificate, her date of birth was 02.02.1986. According to the ossification test Mark B, age of the prosecutrix was between 17 to 19 years. Thus, the learned trial court has rightly come to the conclusion that age of the prosecutrix was 18 years at the time of the incident.

19. According to the statement of PW.10 Nirmala, mother of the prosecutrix, her daughter had gone to Rohtak along with Ramesh on 14.04.2004. She did not come till the evening. Thereafter, she informed Ashok, uncle of the prosecutrix. PW.11 Ashok deposed that he had seen the

prosecutrix on 14.04.2004 at Sukhpura Chowk with accused Ramesh. He gave ₹ 50/- to her.

20. PW.1 Dr. Kul Partibha deposed that possibility of sexual intercourse could not be ruled out, because semen was detected on the salwar of the prosecutrix and underwear of the male person. The statement of the prosecutrix, who appeared as PW.9, is material. According to her, she was enticed by accused Ramesh and left with accused Anup. She had stayed on 14/15.04.2004 at the house of Anup. Thereafter, Anup brought her in the bus to village Ritoli. He committed wrong act with her. Thereafter, they came to Rohtak. He again took her to Safidon in the train and committed wrong act with her at Safidon. In her cross-examination, she admitted that there were many passengers in the bus, when they went to Ritoli. Co-villagers were also in the bus. They came to village Ritoli in auto-rickshaw. Surprisingly, she did not raise any alarm, when she was travelling in bus or in train. She could at least tell the co-villagers while travelling in the bus about the incident. She remained with the accused from 14/15.04.2004 till 19.04.2004. She had also not raised alarm, when she was residing in the house at Safidon. It can be inferred that she had gone willingly with the accused.

21. DW.1 Sandeep Kumar has deposed that the prosecutrix had met him and shown her willingness to marry Anup. Her marriage was performed in the temple. DW.2 Narender Kumar had taken the photographs Ex.D4 to Ex.D8. DW.3 Kaptan Singh deposed that the prosecutrix had purchased stamp paper from him on 15.04.2004 as per Serial No. 452-53. This was a consensus act.

22. Their Lordships of the Hon'ble Supreme Court in **Mukesh Vs. State (NCT of Delhi) and others, 2017 (6) SCC 1**, have held that onus of proving guilt is always on prosecution and never shifts even in rape cases. Their Lordships have held as under :-

*“382. In a case of rape, like other criminal cases, onus is always on the prosecution to prove affirmatively each ingredient of the offence. The prosecution must discharge this burden of proof to bring home the guilt of the accused and this onus never shifts. In **Narender Kumar v. State (NCT of Delhi) (2012) 7 SCC 171** it was held as under :*

“29. However, even in a case of rape, the onus is always on the prosecution to prove, affirmatively each ingredient of the offence it seeks to establish and such onus never shifts. It is no part of the duty of the defence to explain as to how and why in a rape case the victim and other witnesses have falsely implicated the accused. The prosecution case has to stand on its own legs and cannot take support from the weakness of the case of defence ... There is an initial presumption of innocence of the accused and the prosecution has to bring home the offence against the accused by reliable evidence. The accused is entitled to the benefit of every reasonable doubt.”

23. The prosecution has failed to prove its case against appellants beyond reasonable doubt.

24. Accordingly, both the appeals are allowed. The impugned

judgment dated 03.03.2005 and order dated 07.03.2005 rendered by the learned trial court are set aside. The appellants are acquitted of the charges framed against them. They are on bail. Their bail bonds and surety bonds are discharged.

(**RAJIV SHARMA**)
JUDGE

March 02, 2020
ndj

(**HARINDER SINGH SIDHU**)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable	Yes