

In the High Court for the States of Punjab and Haryana at
Chandigarh

CRA-S-2208-2022 (O&M)
Reserved on: August 10, 2023

Date of Decision: August 17, 2023

Deepak ... Appellant
Versus
State of Haryana .. Respondent

CORAM: HON’BLE MR. JUSTICE VIVEK PURI

Present: Mr. Gunjan Mehta, Advocate,
for the appellant.

Mr. Ram Kumar Singla, DAG, Haryana.

Mr. L.K. Narang, Advocate,
for the victim.

VivekPuri, J.

1. The appellant has assailed the judgment of conviction and order of sentence dated 04.10.2022 passed by the Court of learned Additional Sessions Judge, Rohtak, vide which he has been convicted under Sections 363, 366, 376 of the Indian Penal Code (for short `IPC’) and Section 4 of the Protection of Children from Sexual Offenders Act (for short `POCSO Act’) and sentenced as following:-

Offence	Sentence
363 IPC	Rigorous imprisonment for a period of three years and fine of Rs.500/-. In default of payment of fine, to further undergo RI for 07 days.

366 IPC	Rigorous imprisonment for a period of three years and fine of Rs.1000/-. In default of payment of fine, to further undergo RI for 15 days.
376 IPC	Rigorous imprisonment for a period of ten years and fine of Rs.2000/-. In default of payment of fine, to further undergo RI for one month.
4 of POCSO Act	Rigorous imprisonment for a period of ten years and fine of Rs.2000/-. In default of payment of fine, to further undergo RI for one month.

2. Briefly, as per the allegations of the prosecution, the father of the victim had submitted a complaint on 12.04.2018 before the police authorities alleging that on 12.04.2018 at about 6 a.m., the victim who is a student of 10+1 standard went missing from the house. An effort was made to locate her, but to no effect. On the basis of the said complaint, the FIR was registered. During the course of investigation, the victim was recovered on 14.04.2018. The statement of the victim under Section 164 of the Code of Criminal Procedure (for short 'Cr.P.C.') was recorded on 19.07.2018.

3. On completion of the investigation, the challan was presented against the appellant. A prima facie case under Sections 363, 366, 376 IPC and 4 of POCSO Act was made out against the appellant and accordingly, the accused pleaded not guilty and claimed trial.

4. To substantiate its case, the prosecution has examined 16 witnesses, besides producing documentary evidence. The statement of the appellant under Section 313 Cr.P.C. has been recorded. However, no defence evidence has been led by him.

5. Vide judgment of conviction and order of sentence dated 04.10.2022, the appellant was convicted and sentenced as aforesaid. Aggrieved by the said judgment, appellant has preferred the instant appeal.

6. The prosecution has put forth a case to the effect that the victim, who was aged less than 18 years, has been kidnapped by the appellant and subjected to penetrative sexual intercourse.

7. To substantiate its case, the prosecution has examined the father of the victim as PW1, who has testified to the effect that on 12.04.2018, the victim went missing from the house in the morning hours. The victim has been examined as PW3, but significantly, she has not supported the prosecution version. ASI Ram Pal, PW2, had registered the FIR (Ex.PW2/1), on the receipt of the complaint and sent the special report to the higher authorities. Ravi Saini, PW4, is working as halqa patwari and had prepared the site plan (Ex.P4). Parveen, PW5, is working as Ahlmad in the Court of learned Judicial Magistrate First Class and had identified the signatures of the learned Judicial Magistrate on the

statement under Section 164 Cr.P.C. (Ex.PW3/1). Lady ASI Sudesh, PW6, had taken the victim to General Hospital, Rohtak for the medical examination of the victim. Dr. Natasha Attri (PW7) had conducted the medical examination of the victim on 19.07.2018 and the examination report is Ex.P8. However, the victim had refused for internal medical examination. Dr. Manoj, PW8, had medically examined the appellant and as per his opinion, there was nothing suggestive of the fact that the appellant was not able to perform sexual act. SI (retired) Hari Om, PW15, had interrogated the appellant in the presence of EHC Sandeep Kumar, PW9 (again examined as PW12) and the appellant had demarcated the place of occurrence. The complaint submitted by the father of the victim was received by SI Harbagh Singh and he had made an endorsement (Ex.P13) thereupon and sent the same for registration of the FIR. Principal Brijender Hooda, PW11, has testified with regard to the date of birth of the victim in the school record to be 05.01.2001. Dr. Pardeep, PW13, had testified to the effect that the medical examination of the victim was not conducted and was referred to the Civil Hospital, Rohtak, as there was no lady medical officer. Dr. Akansha Ahlawat had given the opinion that the possibility of sexual intercourse with the victim cannot be ruled out. On completion of the investigation, the report under Section 173 Cr.P.C. has been

presented under the signatures of the Inspector Kuldeep Kumar, PW14.

8. In the statement under Section 313 Cr.P.C., the appellant has denied the correctness of the incriminating evidence appearing against him and pleaded false implication. He has denied the fact of recording of any disclosure statement and further stated that he has no concern with the present case.

9. I have heard learned counsel for the parties and perused the record.

10. Learned counsel for the appellant submits that the victim has not supported the prosecution version. Even the father of the victim while appearing in the witness box as PW1 has testified to the effect that name of the appellant has been mentioned on the basis of the suspicion. There is no reliable medical evidence to indicate that the victim was sexually abused. Furthermore, after attaining the age for valid marriage, the victim has solemnized marriage with the appellant on 27.12.2021 and the couple has also been blessed with a daughter.

11. The learned counsel for the victim and the learned State counsel have not disputed the fact that the victim has solemnized marriage with the appellant after attaining the age of valid marriage and the couple has been blessed with a daughter. However, the learned State counsel submits that

at the time of occurrence, the victim was aged about 17 years and 03 months.

12. At the very outset, it may be mentioned here that as per the school record, the date of birth of the victim is 05.01.2001. Even while appearing in the witness box on 21.10.2021, the victim has specified her age to be 20 years. The alleged occurrence took place on 12.04.2018. In these circumstances, it is amply clear that the victim was less than 18 years of age at the time of occurrence.

13. However, the conviction can be recorded on the basis of satisfactory and reliable evidence to indicate that the victim was kidnapped and subjected to penetrative sexual assault by the appellant. The learned trial Court has primarily relied upon the statements of the victim that have been recorded by the police, by the learned Judicial Magistrate under Section 164 Cr.P.C., statement before the Medical Officer and opinion of the doctor to the effect that the possibility of sexual intercourse cannot be ruled out. Moreover, it has also been observed by the learned trial Court that the appellant was on anticipatory bail and possibility to win over the victim was there. It has also been observed that even if a witness is hostile, the deposition cannot be discarded in toto and the same can be considered to the extent it supports the prosecution version.

14. It is pertinent to note that the victim has not supported the prosecution version. While appearing in the witness box, she has testified to the effect that on 12.04.2018, her brother teased, gave beatings and also threatened to kill her. For that reason, she left the house and had also got registered an FIR No. 201 of 2018 in Police Station Meham against her brother. She had gone to the house of her friend for two days and thereafter, police called him and recorded her statement. She was even sent to Nari Neketan as she never wanted to reside in her parental house.

15. Significantly, during the course of her deposition, the victim has not uttered any word implicating the appellant with the commission of crime. She has not deposed anything to indicate that the appellant had extended any threat or exercised any pressure or used force or allured her in any manner which made her to leave her parental house. Even she has not testified anything with regard to the commission of penetrative sexual assault upon her by the appellant. Although, the statement of a witness, who is hostile cannot be discarded in toto in the event, something favourable to prosecution appears, but it has to be evaluated and appreciated along with the other evidence appearing on record. However, in the instant case, there is total denial on the part of the victim. Although, she has

submitted that her statement under Section 164 Cr.P.C. was recorded but she has sought to put forth an explanation to the effect that it was got recorded under pressure of the family members. Even the statement under Section 164 Cr.P.C. has been recorded on 19.07.2018 after a lapse of period of about more than 3-1/2 months from the date of alleged occurrence. Where the witness does not support the prosecution story in the Court, then her statement under Section 164 Cr.P.C. cannot be used as a substantive piece of evidence. Such statement can be used only for the purpose of confronting or contradicting the witness. The Court is required to martial the evidence against an accused excluding such statement from consideration.

16. The victim has even denied the fact of making any statement to the police. She has even refused for her internal medical examination and her medical examination has been conducted after a lapse of period of about 3-1/2 months. In such circumstances, mere opinion of the doctor to the effect that the possibility of sexual intercourse cannot be ruled out becomes insignificant. Even the alleged history given at the time of medical examination to the effect that the victim had ran with her boyfriend i.e. the appellant with history of sexual intercourse cannot be termed to be sufficient to base the conviction of the appellant in the absence of the categoric denial of the victim in the Court and

the case of prosecution not supported with the reliable medical evidence.

17. The observations of the learned trial Court to the effect that the appellant was on bail and possibility of win over the victim was there, appears to be without any sufficient and reliable material to support such observations. Merely because the victim has not supported the prosecution version and the appellant was on bail cannot be construed as a circumstance to conclude that she has not supported the prosecution version at the instance of the appellant. There is nothing to suggest that the victim was threatened, intimidated or any attempt was made to win over her by the appellant.

18. There is another significant aspect emerging in the instant case. During the course of proceedings before this Court, it was projected on behalf of the appellant that after attaining the age of 18 years, the victim had solemnized marriage with the appellant and they have been blessed with a daughter. The learned State counsel sought time to verify this aspect of the matter. The verification report has been submitted which indicates that the victim has solemnized marriage with the appellant on 27.12.2021 and at the time of marriage, she had attained the age of majority. Furthermore, the appellant was on bail and the marriage was solemnized by the victim voluntarily and out of

her own free will. Furthermore, a daughter has also been born from the wedlock on 19.09.2022. The birth certificate issued by the Registrar (Birth and Death), Municipality, Jind, has also been submitted with the report which indicates the name of the victim and appellant as parents of the female child. The victim has solemnized marriage with the appellant after attaining the age for valid marriage and she has been blessed with a daughter. Presently, she is residing in her matrimonial house. In these circumstances, the ends of justice will also meet if the entire matter is put to a quietus.

19. Even otherwise, on the appraisal of material on record, there is lack of sufficient and reliable material to indicate that the victim was kidnapped by the appellant or subjected to penetrative sexual assault when she was less than 18 years of age.

20. As such, the prosecution has not been able to prove and establish the guilt of the appellant.

21. For the aforesaid reasons finding sufficient merit in the appeal, same is allowed. The judgment of conviction and order of sentence dated 04.10.2022 are set aside and the appellant is acquitted of the charges leveled against him.

AUGUST 17, 2023

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(VIVEK PURI)

Judge

Whether speaking/reasoned: Yes

Whether reportable: Yes