

315

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of decision: 10.05.2024

1. CRA-S-2655-SB-2013 (O&M)

Krishan Kumar

...Appellant

Vs.

State of Haryana

...Respondent

2. CRA-S-2829-SB-2013 (O&M)

Anil

...Appellant

Vs.

State of Haryana

...Respondent

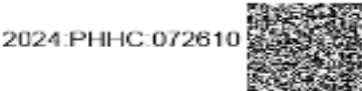
CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Gurinder Singh Dhillon, Advocate (*Amicus Curiae*)
for the appellant (in both cases).

Mr. Vikas Bharadwaj, AAG, Haryana.

HARPREET SINGH BRAR, J. (ORAL)

1. This common judgment shall dispose of both the aforementioned appeals as they arise from identical factual matrix. However, for the sake of brevity, the facts are taken from CRA-S-2655-SB-2013.



2. The present appeals are preferred against impugned judgment of conviction dated 12.07.2013 and the order of sentence dated 16.07.2013 passed by learned Additional Sessions Court, Narnaul in FIR No.33 dated 19.02.2012 under Sections 363, 366-A, 376, 34 of the Indian Penal Code, 1860 (for short ‘IPC’), registered at Police Station Sadar Narnaul, wherein both the appellants were sentenced as follows:

Offence under Section	Sentence
363/34 IPC	Rigorous imprisonment for 5 years and fine of Rs.15,000/-, in default of which further rigorous imprisonment for 6 months
366/34 IPC	Rigorous imprisonment for 5 years and fine of Rs.15,000/-, in default of which further rigorous imprisonment for 6 months

3. Succinctly, the facts are that on 16.02.2012, since there was a wedding in the family, the prosecutrix was carrying a suitcase containing the clothes of the bride and was standing at the Bashirpur bus stand, when appellant-Krishan Kumar forcibly kidnapped her in the vehicle of appellant-Anil bearing registration No.RJ-18-UA-3813. The prosecutrix was taken to Bikaner, where she was raped by appellant-Krishan. On the basis of secret information received by the police, the prosecutrix and appellant-Krishan were recovered from the house of one Jaffar Hussain in Bikaner.

4. The prosecution examined as many as 18 witnesses to establish its case. The respective statements of the appellants-accused under Section 313



Cr.P.C. were recorded, however, they did not lead any evidence in their defence. After assessing all the material available on record, learned trial Court delivered a guilty verdict against the appellants vide impugned judgment 12.07.2013. Aggrieved by the same, the appellants approached this Court and the sentence of appellant-Krishan was suspended vide order dated 27.11.2013 and of appellant-Anil was suspended vide order dated 06.03.2014.

5. Learned *Amicus Curiae* submits that to attract the offences under Sections 363 & 366 of IPC, it is necessary to prove that the prosecutrix was a minor on the date of the alleged event. In her statement under Section 164 Cr.P.C., the prosecutrix had disclosed her age as 17.5 years and while deposing as PW-14, reiterated the same. As per the declaration dated 10.11.1995 submitted by father of the prosecutrix before the concerned Army authority, the prosecutrix was born on 30.11.1994 at Government Hospital, Bharatpur. However, the age of the prosecutrix according to the secondary examination certificate (Ex. PN/1) is 15.08.1994. Since the alleged incident occurred on 16.02.2012, the prosecutrix, at that time, would be 17 years and 7 months old. Further, a two Judge Bench of the Hon'ble Supreme Court in ***P. Yuvaprakash Vs. State rep. by Inspector of Police, 2023 SCC Online SC 846***, has declared that the transfer certificate indicating the date of birth of the victim is not a credible source to conclude that the prosecutrix was a child under the provisions of Section 2(1)(d) of the Protection of Children from Sexual Offences Act, 2012. The above conclusion was made on the basis of the fact that the witness, who produced the transfer certificate, conceded that she



has no knowledge about the document, on the basis of which, the date of birth was recorded. Any documents presented in order to establish the age of the prosecutrix must be proved in accordance with the law laid down by a Division Bench of this Court in *State of Haryana Vs. Amarjit Singh @ Nevi, 2023(3) R.C.R (Criminal) 814*. Conspicuously, the prosecution did not conduct any ossification test to affirm the age of the prosecutrix in the absence of any convincing proof qua her date of birth.

6. He further submits that the prosecutrix visited Jaisalmer with appellant-Krishan before going to Bikaner for the purpose of sight seeing. At no stage, during the travels, did the prosecutrix raise any alarm or attempted to escape, in spite of having several opportunities to do so. The material available on record suggests that the prosecutrix was a consenting party and was not taken by the appellants by force. Furthermore, appellant-Anil has not been named in the FIR (*supra*) or in the statement of the prosecutrix under Section 164 Cr.P.C. Also, the prosecution has failed to establish a nexus between appellant-Anil and the alleged offence as it is unclear, who was driving the vehicle, which was allegedly used to kidnap the prosecutrix.

7. Having heard learned *Amicus Curiae* and after perusing the record of the case with his able assistance, this Court is of the view that the age of the prosecutrix has not been proved in accordance with law. Pertinently, the Hon'ble Supreme Court has dealt with the issue of determination of age of the prosecutrix from school records in *Birad Mal Singhvi Vs. Anand Purohit, AIR 1988 SC 1796*,



wherein, it was observed that the date of birth in the register of a school would not have any evidentiary value without the testimony of the person, who made the said entry or the person, who informed the school of the date of birth. Speaking through Justice K.N. Singh, the following was observed:

“14. ...The date of birth mentioned in the scholar’s register has no evidentiary value unless the person who made the entry or who gave the date of birth is examined. The entry contained in the admission form or in the scholar’s register must be shown to be made on the basis of information given by the parents or a person having special knowledge about the date of birth of the person concerned. If the entry in the scholar’s register regarding date of birth is made on the basis of information given by parents, the entry would have evidentiary value but if it is given by a stranger or by someone else who had no special means of knowledge of the date of birth, such an entry will have no evidentiary value.”

8. In the present case, neither the school record was summoned, nor the parents of the prosecutrix were examined to establish the age of the prosecutrix. The brother of the prosecutrix Sanjay appeared as PW4 and deposed in his cross-examination that he cannot tell if the prosecutrix was born in the village or in the Army area. Admittedly, ossification test was not conducted either. Therefore, in the view taken in **P. Yuvaprakash**’s case (*supra*) and **Birad Mal Singhvi**’s case (*supra*), it cannot be said that the minority of the prosecutrix has been adequately proved.

8. PW16- Dr. Jyoti Yadav, in her affidavit, stated that human semen was found on the prosecutrix’s salwar and underwear and it was opined that sexual assault cannot be ruled out. However, the prosecutrix did not have any internal or



external injury marks or any marks indicating struggle, on her person. She also recommended radiological examination to ascertain the age of the prosecutrix, which was not done. In view of the circumstances surrounding the incident, coupled with the fact that the prosecutrix was at least over the age of 16 years, which was the statutory age of consent at the time of the alleged incident, the allegations of rape remain unsubstantiated and an inference is drawn that the prosecutrix was a consenting party.

9. Furthermore, appellant-Krishan suffered a disclosure statement, wherein he admitted that he was in a relationship with the prosecutrix and occasionally went to her school to meet her. They had allegedly gone to Jaisalmer on a holiday and stayed at the house of PW18-Jaffar Hussain, which was located in a densely populated locality, in spite of which the prosecutrix did not raise any alarm. Additionally, the seizure memo indicates that the prosecutrix was carrying a bag with her clothes in it, further reflecting that she had left her home voluntarily with appellant-Krishan. In addition to the above, appellant-Krishan, in his statement recorded under Section 313 Cr.P.C., stated that the prosecutrix mentioned her age to be over 19 years and she had herself asked him to take her to Bikaner. On her insistence, they stayed at the house of PW18-Jaffar Hussain, whom she claimed to be a friend of her brother. The prosecutrix introduced appellant-Krishan to Jaffar Hussain as her husband. They travelled to Bikaner and Jaisalmer for sightseeing. The same is corroborated by the statement of PW18-Jaffar Hussain, wherein he stated that he let the prosecutrix and appellant-Krishan



stay at his house as they had claimed to be legally married. In view of the surrounding circumstances read with the fact that the age of the prosecutrix has not been duly proved, it cannot be said with certitude that she was a minor on the day of the alleged incident, which is necessary to attract the offences under Sections 363 & 366 IPC.

10. In view of the facts and circumstance of the case, this Court is of the considered view that guilt of the appellants has not been established beyond reasonable doubt. As such, both the appellants, namely Krishan and Anil, deserve to be acquitted.

11. Accordingly, both the appeals are allowed and the impugned judgment of conviction dated 12.07.2013 and the order of sentence dated 16.07.2013 passed by learned Additional Sessions Court, Narnaul are hereby set aside.

12. All the pending miscellaneous application(s), if any, shall stand disposed of.

[HARPREET SINGH BRAR]
JUDGE

10.05.2024
vishnu

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