

CRA-S-2711-SB-2013 & CRA-S-2678-SB-2013

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-S-2711-SB-2013 &
CRA-S-2678-SB-2013
Decided On: 17.05.2024

CRA-S-2711-SB-2013

SONA SINGH @ SONU

...Appellant

Versus

STATE OF HARYANA

...Respondent

CRA-S-2678-SB-2013

HARMAN @ BUTTA SINGH

...Appellant

Versus

STATE OF HARYANA

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Sanjiv Gupta, Advocate
for the appellant in CRA-S-2711-SB-2013.

Mr. Nakul Sharma, Advocate
for the appellant in CRA-S-2678-SB-2013.

Mr. Vikas Bhardwaj, AAG, Haryana.

HARPREET SINGH BRAR, J. (ORAL)

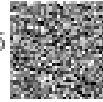
1. Both the abovementioned appeals have been preferred by the appellants-accused, individually, against the judgment of conviction dated 19.07.2013 and order of sentence dated 20.07.2013 passed by learned Additional Sessions Judge, Sirsa in Sessions Case No. 28 of 15.03.2013 arising out of FIR No.5 dated 06.01.2013 registered under Sections 363, 366-A, 376 and 506 of IPC at Police Station- Sadar, Sirsa. Both the appellants were sentenced as under: -

Under Section	Sentence
363 IPC	<i>R.I for 1 year along with a fine of Rs.500/- each and in</i>

	<i>case of default on fine, S.I. for 1 month.</i>
366-A IPC	<i>R.I for 3 years along with a fine of Rs.1,500/- each and in case of default on fine, S.I. for 2 months.</i>
376 IPC	<i>R.I for 7 years along with a fine of Rs.3,500/- each and in case of default on fine, S.I. for 3 months.</i>

2. This common order of mine shall dispose of both of the above-mentioned appeals as they arise out of the same impugned judgement. Also, for the sake of brevity, facts are being culled out from CRA-S-2711-SB-2013.

3. Compendiously, the facts are that on 06.01.2013, Ram Singh, Soma Bai daughter of Ram Singh, Joginder Singh and Sunita daughter of Joginder Singh informed the concerned police about the alleged incident, upon which, the ASI Satbir Singh along with other police officials and the aforesaid persons reached the house of Legal Aid Counsel Smt. Sanju Bala, Advocate for recording the statement of Soma Bai and Sunita, where statement of Soma Bai was recorded. In the said statement, it was alleged that on 05.01.2013, when both Soma Bai and Sunita, who were students of 9th Standard, went to the hospital during their recess break where the accused Harman was present with a motorcycle. Then the accused enticed them and took them near Ghaggar river on his motorcycle where accused Sonu was already present. Then Sonu caught hold of Soma Bai and Harman caught hold of her cousin Sunita and each of them were taken to different sides of the river by the respective accused where rape was committed on them. When they raised hue and cry, people from the nearby fields started gathering, due to which both the accused fled away on the motorcycle while threatening them with dire consequences in case

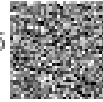
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they disclose the said incident. In the meantime, father of Soma Bai, i.e., Ram Singh and her uncle Joginder Singh, i.e., father of Sunita reached the spot and the entire incident was narrated to them. Thereafter, the prosecutrices were medico-legally examined by the concerned doctor and their clothes were taken into possession by him. ASI Satbir Singh made his endorsement on the statement made by Soma Bai on the basis of which, the FIR (supra) was registered.

4. The learned trial Court upon finding a prima-facie case, framed charges against the appellants for commission of offences punishable under Sections 363, 366-A, 376 and 506 of IPC, to which they pleaded not guilty and claimed trial. On assessing the material available on record, the learned trial Court convicted and sentenced the appellants under the aforesaid penal provisions. Aggrieved by the same, the appellants have approached this Court by way of the abovementioned appeals.

5. The remaining portion of the sentence awarded to the appellant Sona Singh @ Sonu in the present case, after he had already undergone a custody of 3 years out of the total sentence of 7 years, was suspended by this Court vide order dated 12.01.2016. Similarly, the sentence of the appellant Harman @ Butta Singh was suspended vide order dated 28.02.2014 after he had already undergone about 9 months of custody out of the total sentence of 7 years.

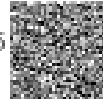
6. Learned counsel for the appellants contend in unison that certificates issued by the school which have been relied upon by the

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learned trial Court in determining the age of the prosecutrices are not a reliable piece of evidence since the admission forms of both the prosecutrices were not accompanied by any birth certificate of affidavit qua their respective date of births. Moreover, the prosecutrix Sunita, who is the cousin of the other prosecutrix Soma Devi, categorically deposed in her statement when she was examined as PW4 that her date of birth is 14.03.1994 which makes her 19 years of age at the time of the alleged incident. Since both the prosecutrices were students of 9th standard and also related to each other, age of other prosecutrix Soma Devi cannot be held to have been duly established in absence of a birth certificate or any ossification test. They further contend that the sexual relation between them was consensual, as clearly established from the statement of Sunita as well as the conduct of the prosecutrix Soma Devi, who admittedly, did not raise any hue and cry while they were riding on the motorcycle of the accused. It is further argued that there was previous enmity between the father of Soma Devi and the appellants due to an incident outside a mosque as corroborated by DW1.

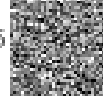
7. Learned State contends that there is ample evidence on record to establish that the appellants had committed rape on the prosecutrices and the same has been proved beyond the shadow of reasonable doubt. Therefore, the respective appeals filed by the appellants are devoid of any merit and thus, are liable to be dismissed.

8. I have heard learned counsel for the parties and after perusing the paper-book with their able assistance, it transpires that

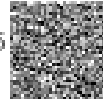
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prosecutrix Sunita who was examined as PW4, categorically stated her date of birth as 14.03.1994, albeit, the school certificate taken into possession by the concerned police and produced before the learned trial Court shows her date of birth to be 14.03.1996. Further, the entire incident has been denied by Sunita, who after being declared hostile, was cross-examined by the learned Public Prosecutor, wherein, she has categorically stated that her signatures were obtained by the police on a blank piece of paper and that she never signed the statement Ex.PA made by Soma Devi before the Legal Aid Counsel namely Sanju Bala. She further stated that her medico-legal examination was forcibly done and her signatures were forcibly obtained by the doctor at the instance of the police. Even Joginder Singh, who is the father of prosecutrix Sunita, when examined as PW7 categorically denied the entire incident. Although, prosecutrix Soma Devi who was examined as PW1 and her father Ram Singh who was examined as PW2 supported the case of the prosecution throughout.

9. It further transpires that the birth certificates of the prosecutrices were issued by Lal Chand being a clerk in the Government High School where they were studying, upon an application by the police. The said clerk was examined as PW8 by the prosecution and in his cross-examination, he admitted that the admission form of Sunita when she was admitted to the said school was not initially accompanied by any date of birth certificate or even by an affidavit of the person who got her admitted and also he did not have any record of her prior admission to the lower

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classes. The birth certificate of Soma Devi issued by him to the police shows her date of birth as 13.06.1997 but in his cross-examination, he admitted that Soma Devi was admitted directly to 9th Standard in their school after she had completed her 8th standard from a private school and her date of birth was entered into their records on the basis of the certificate issued by her previous school. He further admitted that he did not seek any verification from the previous school of Soma Devi regarding her age. It was also admitted by Lal Chand that they never sought any birth certificate from the village chowkidar to ascertain the age of the prosecutrices. Further, the learned trial Court relied on the age of the prosecutrices mentioned on the Medic-Legal Reports Ex. PW3/B and PW5/A, wherein, age of Sunita has been recorded as 15 years and age of Soma Devi is recorded as 16 years, respectively. It is pertinent to note here that even as per the prosecution case, age of Sunita was 16 years at the time of the alleged incident but the same has been shown as 15 years on the MLR as mentioned before. Further, Soma Devi has been shown to be an year older than Sunita in the said report. Deposition of Sunita and her father Joginder Singh state that Sunita was 19 years old at the time of the alleged incident. Even in the statement made by Sunita before the learned ACJM, Sirsa, who was examined as PW15, her age has been recorded as 19 years. The learned ACJM PW15, when cross-examined, has clearly stated that the statement made by Sunita before him were made freely and without any coercion. When such contradictory evidence was available before the learned trial Court, it was incumbent upon the



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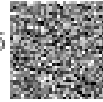
prosecution to conduct ossification test of the prosecutrices but the same was not done. Further, it is a settled law that any documents presented in order to establish the age of the prosecutrix must be proved in accordance with the law laid down, as also observed in the judgement rendered by a Division Bench of this Court in *State of Haryana Vs. Amarjit Singh @ Nevi, 2023(3) R.C.R (Criminal) 814*.

10. It is pertinent to note here that mere production of document is not sufficient but it has to be duly proved in accordance with the law. It has been settled through a catena of judgements. A two Judges Bench of the Hon'ble Supreme Court in **Roop Kumar vs. Mohan Thedani, AIR 2003 SC 2418**, speaking through Justice Arijit Pasayat, held as follows:-

"21. The grounds of exclusion of extrinsic evidence are N to admit inferior evidence when law requires superior would amount to nullifying the law, (ii) when parties have deliberately put their agreement into writing, it is conclusively presumed, between themselves and their privies, that they intended the writing to form a full and final statement of their intentions, and one which should be placed beyond the reach of future controversy, bad faith and treacherous memory."

11. Similarly, a two Judges Bench of the Hon'ble Supreme Court in **Narbada Devi Gupta vs. Birendra Kumar Jaiswal and another, 2003 (8) SCC 745**, speaking through Justice D. M Dharmadhikari, held as follows:-

"16. ...The legal position is not in dispute that mere production and marking of a document as exhibit by the court cannot be held to be a due proof of its contents. Its execution has to be proved by



admissible evidence, that is, by the 'evidence of those persons who can vouchsafe for the truth of the facts in issue...'

12. Furthermore, it is revealed that neither the prosecutrices make any effort to jump from the motorcycle nor raise any cries in order to attract the attention of the labourers present in the nearby fields. Sunita has categorically stated in her deposition that Soma Devi herself went away when they reached Ghaggar river. Moreover, the age of the prosecutrix has not been established in accordance with the settled law and since the element of consent cannot be ruled out from the alleged act, this Court is inclined to hold that the prosecution has failed to establish the guilt of the accused beyond the shadow of reasonable doubt. Jowitt's Dictionary of English Law and Stroud's Judicial Dictionary provide an identical definition of consent which reads as follows:

"An act of reason accompanied with deliberation, the mind weighing, as in a balance, the good or evil on either side."

The Black's Law Dictionary defines consent as:

"a concurrence of wills. Voluntarily yielding the will to the proposition of another; acquiescence or compliance therewith. "

It further refers to **Hallmark vs. State 22 Okl. Cr. 422** to define consent qua rape wherein it was held that

"consent of the will, and submission under the influence of fear or terror cannot amount to real consent. There must be an exercise of intelligence based on knowledge of its significance and moral quality and there must be a choice between resistance and assent."

Valid consent necessarily requires due and active consideration of all the relevant circumstances, actions, and consequences that flow from the said act, before assenting. Whatever choice one makes,

it must be reasoned and adopted after being alive to all the probable outcomes. While adjudicating a case, the factum of consent is to be inferred after closely scrutinizing the surrounding and relevant circumstances. Taking into account the aforesaid discussion, the consensual nature of the relationship between the appellants and the prosecutrices cannot be ruled out.

13. In view of the above discussion, this Court finds that respective learned counsel for the appellants have been successful in establishing their case. Hence, the both the abovementioned appeals are allowed and the impugned judgment of conviction dated 19.07.2013 and order of sentence dated 20.07.2013 passed by learned Additional Sessions Judge, Sirsa in Sessions Case No. 28 of 15.03.2013, is hereby set aside.

14. The appellants are hereby acquitted of the charges framed against them in the present case and their bail bonds and surety bonds also stand discharged.

15. Pending miscellaneous application(s), if any, shall also stand disposed of accordingly.

(HARPREET SINGH BRAR)

JUDGE

17.05.2024

Ajay Goswami

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