



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-S-1231-SB-2003 (O&M)
Reserved on: 03rd July 2024
Date of decision: 22nd October 2024

RUBIN KUMARAppellant

versus

STATE OF HARYANARespondent

CORAM: HON'BLE MS. JUSTICE HARPREET KAUR JEEWAN

Present: Mr. Ashish Gupta, Advocate
for the appellant.

Mr. Amrik Singh Narwal, D.A.G., Haryana.

HARPREET KAUR JEEWAN, J.

1. The instant appeal has been filed impugning the judgment dated 07.06.2003, passed by the Additional Sessions Judge, Fast Track Court, Sonapat, whereby, the appellant has been convicted and sentenced under Sections 363, 366-A and 376 of the Indian Penal Code, 1860 (*for short “the IPC”*).

2. Vide the aforesaid judgment of conviction and order of sentence dated 07.06.2003, the appellant has been convicted and sentenced in FIR No.332 dated 19.09.1999, under Sections 363, 366-A, 376 IPC, 1860, registered at Police Station Rai, Sonapat, as under:-

Offence U/s	Imprisonment	Fine	In default of payment of fine
363 IPC	R.I. for 02 years	Rs.500/-	R.I. for 01 month
366-A IPC	R.I. for 04 years	Rs.1,000/-	R.I. for 01 month
376 IPC	R.I. for 07 years	Rs.2,000/-	R.I. for 02 months

3. On 18.09.1999, at about 11:00 P.M., when the complainant-Nand Kishore (PW-1) came back to his house from Vrindavan, he was informed by his wife that their eldest daughter (PW-8), who is 15 years of age, has not returned

back from the school. The prosecutrix, who was a student of 10th class, had gone to



attend school in the morning and the school time was over by 2:30 P.M but she did not come back home. Upon inquiry in the school and neighbourhood, the mother of the prosecutrix came to know that the appellant, along with his co-accused/ Yogender, was seen talking to the prosecutrix near the school gate at 7:30 A.M. and they were also having a jeep bearing Registration No.HR-10B-2898. Upon inquiry, it was also learned that the appellant, along with his co-accused Lalit, had taken the prosecutrix to some unknown destination in the said jeep with allurement. When no clue of the prosecutrix was found, the matter was reported to the Police.

3.1 It is further the case of the prosecution that on 27.07.2001, the appellant was arrested at New Delhi Railway Station by ASI Ranjit Singh. The prosecutrix was also found in the company of the appellant. The prosecutrix informed the Investigating Officer that on 18.09.1999, she had gone to her school. She met the appellant-Rubin Kumar and his co-accused/Yogender at the school gate. The appellant told the prosecutrix that her father, who had gone to Vrindavan, had sustained injuries in a motor-vehicle accident and he was admitted in a hospital at Narela, as per the telephonic information received by him. The appellant further informed the prosecutrix that she had been called by her father to Narela. As such, the appellant and his co-accused Yogender and Lalit induced the prosecutrix to accompany them to Narela. When they covered a distance of half furlong, the appellant-Rubin forcibly took the prosecutrix to a deserted room constructed in a garden on the roadside, wherein, she was forcefully raped.

3.2 Thereafter, the appellant along with his co-accused, had taken the prosecutrix to Narela, wherefrom, she was taken to Mumbai by giving allurements. Yogmaya and Arti Devi were also allured by the co-accused of the appellant-Yogender. The appellant along with his co-accused as well as the prosecutrix and



and thereafter, they were taken to Guwahati. The appellant-Rubin told the prosecutrix that they will stay for the rest of their lives in Guwahati and they will enter into a marriage ceremony. The appellant continued to threaten the prosecutrix. A house was taken on rent by the appellant and the prosecutrix was continuously raped under threat. The co-accused/Yogender also took another room on rent and started living with Yogmaya, whereas, co-accused/Lalit started living separately with Arti Devi in another room. The prosecutrix was brought to Delhi on 25.07.2001. The appellant called his father at Delhi Railway Station. The prosecutrix told the appellant and the father of the appellant that she wanted to go back to her home, however, both replied that they would think over it. They kept the prosecutrix at the house of their relative in Delhi for two days.

3.3 On 27.07.2001, the appellant brought the prosecutrix to New Delhi Railway Station, where appellant-Rubin Kumar was arrested by ASI Ranjit Singh and the prosecutrix was got released. On 28.07.2001, the prosecutrix and appellant-Rubin were got medically examined in General Hospital, Sonapat. The co-accused/Yogender was also arrested on 25.09.2001 and charges under Sections 363, 366-A, 376 IPC were framed.

4. The prosecution, in order to prove its case, examined as many as 12 prosecution witnesses. As per the prosecution version, the minor prosecutrix was forcibly taken by the appellant with an intention to solemnize marriage with her and later on, she was subjected to sexual abuse. The father of the prosecutrix (PW-1) corroborated the prosecution version and testified about reporting the matter to the police by way of filing a complaint. The prosecutrix (PW-8) supported the prosecution version and narrated about the details of the events. She further stated that the appellant-Rubin took her away from her school by giving



made to sit in the jeep. She testified that the appellant-Rubin took her to a garden and forcibly committed rape upon her in a *kutchra* room. Thereafter, she was forced to sit in the jeep and the appellant, along with his co-accused, proceeded towards Narela. The prosecutrix further deposed about going to Mumbai, Assam and then coming back to New Delhi Railway Station.

4.1 ASI Ranjit Singh (PW-12), who conducted the investigation, stated about the details of investigation and also proved various documents prepared during the investigation. Dr. Varsha (PW-10) stated about having conducted the medico-legal examination of the prosecutrix on 28.07.2001 in Civil Hospital, Sonapat. As per her testimony, on per-vaginal examination of the prosecutrix, two fingers were easily administered and there was no visible mark or injury on the person of the prosecutrix. Dr. R.N. Tahlan (PW-7) testified that he conducted the medical examination of the accused. Mrs. Pushpa Bhargava (PW-6) proved the date of birth of the prosecutrix as 01.04.1985, on the basis of the admission record of the school. Rest of the prosecution witnesses are formal in nature and they proved various documents prepared during the investigation.

5. In his statement recorded under Section 313 of the Code of Criminal Procedure (*hereinafter referred to as "Cr.P.C."*), the appellant-Rubin Kumar took a plea that the father of the prosecutrix intended to solemnize the marriage of the prosecutrix against her will. As such, the prosecutrix left her home with the appellant and went to Mumbai, Delhi and Guwahati with her own will. The appellant also took a plea that the prosecutrix was more than 18 years of age at the time of the alleged occurrence. However, the age of the prosecutrix has been wrongly mentioned in the school records.

6. After hearing the learned counsel for the appellant and the learned State counsel on the basis of evidence on record, the trial Court convicted the



appellant and accordingly sentenced him under sections 363, 366-A, 376 IPC, whereas, Yogender/co-accused of the appellant was acquitted.

7. The trial Court believed the school record and the Middle School Certificate issued by the Board of School Education, Bhiwani and held the date of birth of the prosecutrix as 01.04.1985. As such, the age of the prosecutrix was determined as 14 years 05 months and 17 days at the time of the alleged occurrence i.e. on 18.09.1999.

8. While holding the appellant guilty, the trial Court held that since the prosecutrix was below the age of 16 years, as such, the consent given by her to accompany the appellant and to have sexual intercourse with him, is of no consequence.

9. Learned counsel for the appellant submitted that he does not challenge the findings recorded by the trial Court regarding the conviction of the appellant. However, he submitted that the appellant was a young boy at the time of alleged occurrence. As per the version of the prosecutrix, she remained in the company of the appellant from 18.09.1999 to 25.07.2001 and during this period, they travelled to various places, including Bombay and Guwahati and at no stage, she had made any protest to anyone. It is further contented that at the time of the medical examination of the prosecutrix, which was conducted by Dr. Varsha (PW-10), the prosecutrix got recorded her age as 19 years, as such, the prosecutrix was a consenting party. The age of the prosecutrix recorded in the school certificate was not authenticated by the ossification test. The consent was evident from the act and conduct of the prosecutrix.

10. Learned counsel for the appellant further submitted that both the appellant and the prosecutrix are married to their respective spouses. They are



submission made by the learned counsel for the appellant is to take a lenient view regarding the sentence awarded to the appellant.

11. Learned counsel for the appellant has placed reliance upon the decision of the Hon'ble Apex Court in "Anversinh @ Kiransinh Fatesinh Zala vs. State of Gujarat" ; 2021 AIR (SC) 477 and the decision of the Hon'ble Apex Court in "Nehnu Ram @ Narendra vs. State of Rajasthan and another" ; 2020 (4) R.C.R. (Criminal) 104.

12. Learned State counsel has confirmed on the basis of the report of the Station House Officer, Police Station Rai, District Sonapat dated 03.07.2024, that the appellant-Rubin Kumar has solemnized marriage with Anu d/o of Sh. Murari Niwasi in the year 2010 and he is having a daughter, aged 06 years and a son, aged 3½ years. The prosecutrix also got married in the year 2004 and she is blessed with a daughter, aged 15 years and a son, aged 12 years. Both the appellant and the prosecutrix are living happily with their respective spouses.

13. I have heard the learned counsel for the parties and perused the relevant documents.

14. The judgment of conviction passed by the trial Court does not suffer from any illegality. Even the testimony of the prosecutrix is corroborated by medical evidence. As per the report of the Forensic Science Laboratory (Ex.PB), human semen was detected. The prosecutrix, who appeared as PW-8, has given the details of events. ASI Ranjit Singh (PW-12) has proved that the appellant was arrested on 27.07.2001 at New Delhi Railway Station and the prosecutrix was found with the appellant. As per the deposition of Dr. Varsha (PW-10), she has medico-legally examined the prosecutrix and taken the samples. As per the report of the FSL, Madhuban, Haryana (Ex.PB), human semen was detected on the



the testimony of Dr. R.N. Tahalan (PW-7), who conducted the medical examination of the appellant-Rubin, there is nothing on record to suggest that the appellant-Rubin was incapable of doing sexual intercourse. The age of the prosecutrix is proved by the school records. There is nothing on record to suggest any contradiction to the school records.

15. In view of the ocular as well as documentary evidence on record, the findings arrived at by the trial Court are factually and legally correct. No doubt, the prosecutrix remained away from the lawful guardianship of her parents and she remained with the appellant, however, keeping in view the age of the prosecutrix and in view of the provisions of Sections 361 and 366 IPC, the consent of the minor is immaterial.

16. Even as per the provisions of the Indian Contract Act, 1872, the minors are deemed incapable of giving lawful consent. The provisions of Sections 361 and 366 IPC define “kidnapping from lawful guardianship” and the punishment thereof.

Section 361 IPC reads as under:-

“361. Kidnapping from lawful guardianship.- Whoever takes or entices any minor under [sixteen] years of age if a male, or under [eighteen] years of age if a female, or any person of unsound mind, out of the keeping of the lawful guardian of such minor or person of unsound mind, without the consent of such guardian, is said to kidnap such minor or person from lawful guardianship.

Explanation.- The words "lawful guardian" in this section include any person lawfully entrusted with the care or custody of such minor or other person.”

16.1 Section 366 IPC reads as under:-

“366. Kidnapping, abducting or inducing woman to compel her marriage, etc.- Whoever kidnaps or abducts any woman with intent that she may be compelled, or knowing it to be likely that she will be compelled, to marry



any person against her will, or in order that she may be forced or seduced to illicit intercourse, or knowing it to be likely that she will be forced or seduced to illicit intercourse, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; [and whoever, by means of criminal intimidation as defined in this Code or of abuse of authority or any other method of compulsion, induces any woman to go from any place with intent that she may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall also be punishable as aforesaid].

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17. The Hon'ble Apex Court in Anversinh @ Kiransinh Fatesinh Zala (supra) has observed that the minor girl's infatuation with her alleged kidnapper cannot, by itself, be allowed as a defence, as the same would amount to surreptitiously undermining the protective essence of the offence of kidnapping. The observations by the Hon'ble Apex Court are as under:-

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13. Adverting to the facts of the present case, the appellant has unintentionally admitted his culpability. Besides the victim being recovered from his custody, the appellant admits to having established sexual intercourse and of having an intention to marry her. Although the victim's deposition that she was forcefully removed from the custody of her parents might possibly be a belated improvement but the testimonies of numerous witnesses make out a clear case of enticement. The evidence on record further unequivocally suggests that the appellant induced the prosecutrix to reach at a designated place to accompany him.

14. Behind all the chaff of legalese, the appellant has failed to propound how the elements of kidnapping have not been made out. His core contention appears to be that in view of consensual affair between them, the prosecutrix joined his company voluntarily. Such a plea,, in our opinion, cannot be acceded to given the unambiguous language of the statute as the prosecutrix was admittedly below 18 years of age.



15. *A bare perusal of the relevant legal provisions, as extracted above, show that consent of the minor is immaterial for purposes of Section 361 of IPC. Indeed, as borne out through various other provisions in the IPC and other laws like the Indian Contract Act, 1872, minors are deemed incapable of giving lawful consent. Satish Kumar Jayanti Lal Dabgar v. State of Gujarat, (2015) 7 SCC 359 Section 361 IPC, particularly, goes beyond this simple presumption. It bestows the ability to make crucial decisions regarding a minor's physical safety upon his/her guardians. Therefore, a minor girl's infatuation with her alleged kidnapper cannot by itself be allowed as a defence, for the same would amount to surreptitiously undermining the protective essence of the offence of kidnapping.*

16. *Similarly, Section 366 of IPC postulates that once the prosecution leads evidence to show that the kidnapping was with the intention/knowledge to compel marriage of the girl or to force/induce her to have illicit intercourse, the enhanced punishment of 10 years as provided thereunder would stand attracted.*

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18. In view of the facts and circumstances on record, the findings of the trial Court, holding the appellant guilty under Sections 363, 366-A, 376 IPC and convicting him accordingly, do not require any interference.

19. I have considered the submissions made on behalf of the appellant regarding leniency towards the punishment awarded by the trial Court. It is not disputed that the prosecutrix was a student of 10th standard at the time of the alleged occurrence. She was aged 14 years and 06 months at the time of alleged occurrence. However, as per her testimony, she visited various cities with the appellant. She has never made any attempt to inform anyone while travelling from one city to another. No doubt, this does not amount to a consent on the part of the prosecutrix, however, it gives an indication that it was an infatuation of that age.



20. As per the custody certificate, there is no history of any other crime having been committed by the appellant either before or after the alleged occurrence. The occurrence took place 23 years ago. Now, both the appellant and the prosecutrix are settled in their respective matrimonial lives. They are having children. Both the appellant and the prosecutrix have rehabilitated and they are productive members of the society. As per the custody certificate, there is no history of any other criminal event in the life of the appellant even after his conviction.

21. The Hon'ble Apex Court in Anversinh @ Kiransinh Fatesinh Zala (supra), while considering the various factors, including the mildness of the crime, young age of the accused, facts showing a love affair, occurrence having taken place 22 years ago and the appellant not having any criminal antecedents; has observed that in such circumstances, it might not further the ends of justice to relegate such an appellant back to jail at this stage. It was held as under:-

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21. True it is that there cannot be any mechanical reduction of sentence unless all relevant factors have been weighed and whereupon the Court finds it to be a case of gross injustice, hardship, or palpably capricious award of an unreasonable sentence. It would thus depend upon the facts and circumstances of each case whether a superior Court should interfere with, and resultantly enhance or reduce the sentence. Applying such considerations to the peculiar facts and findings returned in the case in hand, we are of the considered opinion that the quantum of sentence awarded to the appellant deserves to be revisited.

22. We say so for the following reasons: first, it is apparent that no force had been used in the act of kidnapping. There was no preplanning, use of any weapon or any vulgar motive. Although the offence as defined under Section 359 and 361 of IPC has no ingredient necessitating any use of



force or establishing any oblique intentions, nevertheless the mildness of the crime ought to be taken into account at the stage of sentencing.

23. Second, although not a determinative factor, the young age of the accused at the time of the incident cannot be overlooked. As mentioned earlier, the appellant was at the precipice of majority himself. He was no older than about eighteen or nineteen years at the time of the offence and admittedly it was a case of a love affair. His actions at such a young and impressionable age, therefore, ought to be treated with hope for reform, and not punitively.

24. Third, owing to a protracted trial and delays at different levels, more than twenty-two years have passed since the incident. Both the victim and the appellant are now in their forties; are productive members of society and have settled down in life with their respective spouses and families. It, therefore, might not further the ends of justice to relegate the appellant back to jail at this stage.

25. Fourth, the present crime was one of passion. No other charges, antecedents, or crimes either before 1998 or since then, have been brought to our notice. The appellant has been rehabilitated and is now leading a normal life. The possibility of recidivism is therefore extremely low.

*26. Fifth, unlike in the cases of State of Haryana v. Raja Ram (1973) 1 SCC 544. and Thakorlal D. Vadgama v. State of Gujarat (1973) 2 SCC 413, there is no grotesque misuse of power, wealth, status or age which needs to be guarded against. Both the prosecutrix and the appellant belonged to a similar social class and lived in geographical and cultural vicinity to each other. Far from there being an imbalance of power; if not for the age of the prosecutrix, the two could have been happily married and cohabiting today. Indeed, the present instance is an offence: *mala prohibita*, and not *mala in se*. Accordingly, a more equitable sentence ought to be awarded.*

27. Given these multiple unique circumstances, we are of the opinion that the sentence of five years' rigorous imprisonment awarded by the Courts below, is disproportionate to the facts of this case. The concerns of both the society and the victim can be respected, and the twin principles of



deterrence and correction, would be served by reducing the appellant's sentence to the period of incarceration already undergone by him.

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22. The Hon’ble Apex Court in Nehnu Ram @ Narendra’s case (supra), while considering the proviso to Section 376(1) IPC; which provides that the Court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for either description for a term of less than 10 years; reduced the sentence of the appellant having already undergone a period of 01 year and 07 months.

23. In the present case, as per the custody certificate, the appellant had already undergone a period of 02 years 03 months and 08 days of actual sentence. As such, keeping in view the aforesaid facts and circumstances and in view of the ratio of the decision of the Hon’ble Apex Court in Anversinh @ Kiransinh Fatesinh Zala (supra) and Nehnu Ram @ Narendra (supra), it is in the fitness of the things to modify the sentence awarded to the appellant and reduce the same to a period already undergone by him.

24. Thus, the conviction of the appellant under Sections 363, 366-A, 376 IPC is upheld. However, by invoking the proviso to Section 376(1) IPC, the sentence awarded to the appellant is reduced to the sentence already undergone by him.

25. In view of the above, the present criminal appeal stands disposed of.

26. Pending miscellaneous applications, if any, shall stand disposed of.

(HARPREET KAUR JEEWAN)
JUDGE

22nd October 2024
simran

SIMRANDEEP KAUR
2024.10.23 14:38
I attest to the accuracy and
integrity of this order/judgment.

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