

Before Ritu Bahri, J.

PARVEEN KUMAR—Appellant

versus

STATE OF HARYANA—Respondent

Crl. A. No. S-665-SB of 2004

January 13, 2015

Indian Penal Code, 1860 – Ss. 363, 366A & 376 – Code of Criminal Procedure, 1973 – Ss. 161, 164, 313 – Kidnapping and rape of minor – Finding that prosecutrix was a minor, plea of consent does not survive– Conviction was confirmed.

Held, that the Headmaster while appearing as P.W.3 had stated that the victim was studying in 8th class and had taken admission in class 8th in Holy Heart High School, Hisar on 10.07.2001 and as per the school record, her date of birth is 08.01.1989. Her elder brother was also studying in the same class. He further stated that the admission form was filled in and duly signed by Sarita (elder sister of the prosecutrix) as a guardian. The affidavit of Ram Kishan, father of the prosecutrix, was also attached with the admission form This fact has not been controverted by the defence by producing any oral or documentary evidence to contradict the same. The age of the victim was 14 years at the time of alleged occurrence and thus, she could not be a consenting party to a relation where she had been exploited by the appellant. The appellant who was in close family relations of the victim could have led any evidence by placing on record the date of birth certificate or any other evidence from Municipal Council or hospital to show that she was major at the time of alleged occurrence. Therefore, Ex PB at best can be taken as a secondary evidence.

(Para 13)

Further held, the school headmaster had proved Ex PB *i.e.* certificate issued by the school and the age of the victim has been examined by the trial Court by making reference to the deposition of Dr. Anita Bansal, P.W.6 where the age of the victim was stated to be 14 years.

(Para 14)

Further held, that the appellant, being a close relative of the family, the deposition of the prosecutrix that she was being raped even

before 25.06.2002 is not liable to be discarded as in the cross examination, Dr. Bansal stated that the prosecutrix was habitual to sexual intercourse. The prosecution has thus proved that the appellant had taken the minor girl along with him and committed rape upon her. Thus, the appeal is liable to be dismissed.

(Para 22)

Further held, that the offence of rape by kidnapping the minor girl is a serious offence. The honour of the family was at stake. Sexual violence apart from being dehumanizing act is an unlawful intrusion on the right of privacy and sanctity of a female. It is a serious blow to her supreme honour and offends her self esteem and dignity. It degrades and humiliates the victim and in case of innocent minor girl, it leaves behind a traumatic experience. Rape is not only a crime against person of a women, it is a crime against the entire society.

(Para 23)

Further held, that thus, apart from suffering low self esteem to live with feeling of rejection in society, the victim lost the emotional support of his father, who died within a short span of one week *i.e.*, 02.07.2002 after registration of the complaint on 28.06.2002.

(Para 25)

Further held, that the present appeal is dismissed on merits. However, applying the ratio of the abovesaid judgment, this Court directs the State to make a payment of Rs.5 lacs as compensation to the victim and another Rs.5 lacs be also given to the victim as she had lost her father, who died on 02.07.2002 after registration of the complaint on 28.06.2002.

(Para 27)

N.C. Kinra, Advocate, *for the appellant.*

C.S. Bakhshi, Addl.A.G. Haryana

RITU BAHRI, J.

(1) The appellant has filed the present appeal against the judgment of conviction dated 11.03.2004 and order of sentence dated 12.03.2004 passed by Additional Sessions Judge, Hisar, whereby he has been convicted substantially for a period of seven years under Section 363/366-A/376 of the Indian Penal Code (for short “the Code”) in FIR No.324 dated 28.06.2002 registered at Police Station City Hisar.

(2) According to the prosecution, a complaint was lodged on 28.06.2002 by the complainant Ram Kishan, who was working as peon in B.D.O. Office, Barwala with the police alleging therein that he had three daughters and one son namely Sangita, Sarita, Satish and Kiran. The eldest Sangita and Sarita are married. The prosecutrix Kiran is of age 14/15 years and had appeared in the annual examination of 8th class. Accused-Parveen is the brother-in-law of Krishan (who is brother-in-law of the complainant). Parveen is living with Krishan and was on visiting terms with the complainant and used to frequently visit his house. On 25.06.2002, the complainant and his wife were not at their house and when the wife of the complainant Santosh returned to house, she found Kiran missing and told this incident to the complainant. The complainant searched for Kiran in his relations. The complainant suspected that his daughter Kiran has been allured and enticed by Praveen and therefore, the above F.I.R. was got registered by him. Subsequently, the prosecutrix Kiran was recovered from the custody of accused-Parveen on 30.06.2002 from Bus Stand, Hisar. They both were medically examined in C.H., Hisar. The swab, salwar and the underwear of the prosecutrix were also taken into possession by the doctor and handed over to the police after converting into Pulanda. The underwear of the accused was also taken into possession. The swab and clothes of the prosecutrix as well as underwear of the accused were sent to FSL for analysis. The report was received whereby human semen was detected on the swab and clothes of the prosecutrix and underwear of the accused. A rough site plan was prepared by the Investigating Officer and the school certificate of the prosecutrix was also collected to prove that she was minor at the time of commission of offence. The statement of the prosecutrix under Section 164 Cr.P.C was recorded before the Illaqa Magistrate on 23.07.2002. Section 376 IPC was also added.

(3) Charges were framed against him under Section 363/366-A/376 of the Code on 07.09.2002, to which the accused pleaded not guilty and claimed trial.

(4) At the trial, the prosecution examined 13 witnesses.

(5) In his statement recorded under Section 313 of the Code of Criminal Procedure, the appellant denied the prosecution allegations and pleaded innocence. In defence, he examined DW1 Babli as oral evidence.

(6) The trial Court after going through the entire evidence, convicted the appellant, as mentioned above.

(7) Mr. Kinra, learned counsel appearing for the appellant has argued that the sole evidence with regard to the date of birth of the prosecutrix Kiran was Ex PB issued by the Holy Heart High School, Hisar, for which she had taken admission in class 8th and only this EXPB is not sufficient to prove the age of the prosecutrix, as she was got admitted in the school on 10.07.2001 but the record of the school from which she had got earlier school education was not collected and produced by the prosecution. Further, this was the private school and except this certificate, there was no evidence to show that her date of birth is 08.01.1989.

(8) To give force to his contention, reference has been made to the judgment of Hon'ble the Supreme Court of India in a case of *Satpal Singh versus State of Haryana*¹. Further reference has been made to judgment of this Court in a case of *Arvinder Kaur and another versus State of Punjab*² and the judgment of Himachal Pradesh High Court in a case of *Ramesh Sharma versus. State of Himachal Pradesh*³.

(9) The next argument of learned counsel for the appellant is that the accused was in close relation of the family of the complainant and as per deposition of P.W.6, she stated that no external mark of injury was seen all over the body. No injury on external genitalia or thigh was found. No bleeding was found present. Hymen was absent. In cross examination, she stated that the prosecutrix was habitual to sexual intercourse. Thus, the accused has not forced the complainant to have intercourse with him. Hence, it was a case of consent of the victim and the allegation of rape under Section 376 of the Code has not been made out against the appellant.

(10) To deal with the argument of learned counsel that the prosecutrix was major at the time of commission of offence, reference can be made to the deposition of P.W. 3 Dharam Chand Dalal, Head Master of the School who had brought the admission record of the prosecutrix Kiran and stated that the daughter of Ram Kishan had taken admission in class 8th in their school on 10.07.2001 and as per the school record, her date of birth is 08.01.1989. In his cross examination,

¹ (2010) 8 SCC 714

² 2007 (3) RCR (Cr.) 818

³ 2013(3) SimLC 1386

he stated that the admission form was filled in and duly signed by Sarita (elder sister of the prosecutrix) as a guardian. The affidavit of Ram Kishan, father of the prosecutrix, was also attached with the admission form. He further admitted that except the affidavit of the Ram Kishan, no other proof from Municipal Council or hospital was attached with the form. Further Ram Kishan (father of the prosecutrix died on 02.07.2002 and he could not appear before the trial Court.

(11) In *Satpal Singh's case (supra)*, Hon'ble the Supreme Court while dealing with the similar case, held in paragraphs 27 and 28 held as under:-

“27. Thus, the law on the issue can be summarised that the entry made in the official record by an official or person authorised in performance of an official duty is admissible under Section 35 of the Evidence Act but the party may still ask the Court/Authority to examine its probative value. The authenticity of the entry would depend as on whose instruction/information such entry stood recorded and what was his source of information. Thus, entry in school register/certificate requires to be proved in accordance with law. Standard of proof for the same remains as in any other civil and criminal case.

28. In case, the issue is examined in the light of the aforesaid settled legal proposition, there is nothing on record to corroborate the date of birth of the prosecutrix recorded in the School Register. It is not possible to ascertain as to who was the person who had given her date of birth as 13.02.1975 at the time of initial admission in the primary school. Moreso, it cannot be ascertained as who was the person who had recorded her date of birth in the Primary School Register. Moreso, the entry in respect of the date of birth of the prosecutrix in the Primary School Register has not been produced and proved before the Trial Court. Thus, in view of the above, it cannot be held with certainty that the prosecutrix was a major. Be that as it may, the issue of majority becomes irrelevant if the prosecution successfully establishes that it was not a consent case.”

(12) Learned counsel appearing for the State has supported the conviction of the appellant and submits that the conviction given to the appellant is not likely to be interfered with and thus, the appeal is liable to be dismissed as the prosecution has successfully proved the allegations against the appellant beyond all shadow of doubts.

(13) In the present case, the Headmaster while appearing as P.W.3 had stated that the victim was studying in 8th class and had taken admission in class 8th in Holy Heart High School, Hisar on 10.07.2001 and as per the school record, her date of birth is 08.01.1989. Her elder brother was also studying in the same class. He further stated that the admission form was filled in and duly signed by Sarita (elder sister of the prosecutrix) as a guardian. The affidavit of Ram Kishan, father of the prosecutrix, was also attached with the admission form. This fact has not been controverted by the defence by producing any oral or documentary evidence to contradict the same. The age of the victim was 14 years at the time of alleged occurrence and thus, she could not be a consenting party to a relation where she had been exploited by the appellant. The appellant who was in close family relations of the victim could have led any evidence by placing on record the date of birth certificate or any other evidence from Municipal Council or hospital to show that she was major at the time of alleged occurrence. Therefore, Ex PB at best can be taken as a secondary evidence.

(14) Further Mr. Kinra, learned counsel appearing for the appellant has cited judgment of this Court i.e Arvinder Kaur vs. State of Punjab, which is of no help to the appellant as in that case under Section 376 IPC, the person who had got the victim admitted was not examined and in the absence of best evidence in the form of admission register, the prosecutrix was held to be 18 years of age and consenting party. In the present case, the school headmaster had proved Ex PB i.e. certificate issued by the school and the age of the victim has been examined by the trial Court by making reference to the deposition of Dr. Anita Bansal, P.W.6 where the age of the victim was stated to be 14 years.

(15) Further, in the present case, a complaint Ex PK was lodged by Ram Kishan, father of the prosecutrix and he categorically stated that the age of Kiran is 14/15 years and in June, 2002, she has already appeared in annual examination of 8th class. There was no concealment of fact after this complaint, Kiran was recovered from the custody of the accused Parveen on 30.06.2002 and she was got medically examined in C.H. Hisar and at the time of her medical examination, Kiran has given her age to be 14 years, which was further mentioned by P.W.6 Dr. Anita Bansal in MLR Ex PF.

(16) P.W.9- Kiran and P.W.10 Santosh Devi had stated that both the elder sisters Sangeeta and Sarita have been married and are elder to Kiran. The statements of P.W.9 and P.W.10 thereby giving the

approximate year of marriage of Ram Kisan and Santosh and also the gap in their children show that the age of the prosecutrix is about 14 years. The defence has failed to challenge the veracity of the statements of P.W. 9 and P.W.10 regarding the age of Kiran despite the fact that they were cross-examined at length.

(17) Hence, the argument of learned counsel for the petitioner that the prosecutrix was above 16 years of age as on 28.06.2002, is rejected.

(18) P.W.1, 2, 4 and 8 were official witnesses and have duly supported the prosecution version. As per the deposition of P.W.12 Jagdish Chander, S.I. he had recorded the statement of Kiran under Section 161 Cr.P.C and brought both the prosecutrix and the accused to Civil Hospital, Hisar.

(19) At best, there was a lapse on the part of the prosecution that they had not collected the preliminary evidence with regard to date of birth of the victim. This lapse itself cannot make a dent in the case of prosecution.

(20) The appellant being in close family relations of the victim had exploited her when her parents were not at home. The prosecutrix had accompanied the appellant on 25.06.2002 to village Mullanpur and thereafter they went to the house of Murti Devi. They then went to village Ladot by bus where they lived up to 29.06.2002 with the family of the uncle of the accused. They came back to Hisar on 30.06.2002 and were ultimately caught by the police. P.W.9 in her statement stated that the accused had committed rape upon her before 25.06.2002 as well. She had admitted that she had not disclosed to her parents of having been raped by the accused before 25.06.2002.

(21) In the present case, as per deposition of Babli (wife of Krishan), Krishan (brother-in-law of the complainant) had asked Parveen to marry Kiran but he did not agree and he was got falsely implicated in this case by Ram Kishan. After 4-5 days of occurrence, Ram Kishan came to her and felt sorry and also told that he would commit suicide. On the next day, Ram Kishan committed suicide by jumping into the water work tank, Hisar. After two months of the occurrence, Kiran also came to her house and disclosed that due to pressure of her parents, a false case was made against the accused. The prosecutrix Kiran was recovered from the custody of accused-Parveen on 30.06.2002 from Bus Stand, Hisar. They both were medically examined in C.H., Hisar and at the time of her medical examination,

Kiran has given her age to be 14 years, which was further mentioned by P.W.6 Dr. Anita Bansal in MLR Ex PF. Dr. Anita Bansal stated that she had medically examined Kiran, aged 14 years with an alleged history of rape on 28.06.2002. In cross examination, she stated that the prosecutrix was habitual to sexual intercourse. As per deposition of P.W.9- Kiran and P.W.10 Santosh Devi, the age of the prosecutrix was 14 years as was evident from the admission form, as she was got admitted in the school in 8th class on 10.07.2001, which was filled in and duly signed by Sarita (elder sister of the prosecutrix) as a guardian. Her date of birth was recorded as 08.01.1989. The prosecutrix had been taken away by the appellant on 25.06.2002 to village Mullanpur and thereafter they went to the house of Murti Devi. They then went to village Ladot by bus where they lived up to 29.06.2002 with the family of the uncle of the accused. They came back to Hisar on 30.06.2002 and were ultimately caught by the police.

(22) The appellant, being a close relative of the family, the deposition of the prosecutrix that she was being raped even before 25.06.2002 is not liable to be discarded as in the cross examination, Dr.Bansal stated that the prosecutrix was habitual to sexual intercourse. The prosecution has thus proved that the appellant had taken the minor girl along with him and committed rape upon her. Thus, the appeal is liable to be dismissed.

(23) The offence of rape by kidnapping the minor girl is a serious offence. The honour of the family was at stake. Sexual violence apart from being dehumanizing act is an unlawful intrusion on the right of privacy and sanctity of a female. It is a serious blow to her supreme honour and offends her self esteem and dignity. It degrades and humiliated the victim and in case of innocent minor girl, it leaves behind a traumatic experience. Rape is not only a crime against person of a women, it is a crime against the entire society.

(24) However, after the incident on 25.06.2002, the father of the prosecutrix died on 02.07.2002 and the victim and its family members faced the second jolt by losing the sole earning member of the family in a short span of one week. The father of the prosecutrix was working peon in B.D.O. Office, Barwala and he was supporting the family i.e. wife, three daughters and one son. The victim apart from facing the agony of being raped by close relation, had to face the loss of her father as well as who died on 02.07.2002. As per deposition of (wife of Krishan), Krishan (brother-in-law of the complainant) had asked Parveen to marry Kiran but he did not agree and he was got falsely

implicated in this case by Ram Kishan. After 4-5 days of occurrence, Ram Kishan came to her and felt sorry and also told that he would commit suicide. On the next day, Ram Kishan committed suicide by jumping into the water work tank, Hisar.

(25) Thus, apart from suffering low self esteem to live with feeling of rejection in society, the victim lost the emotional support of his father, who died within a short span of one week i.e. 02.07.2002 after registration of the complaint on 28.06.2002.

(26) Recently, Hon'ble the Supreme Court in Suo Moto Crl. No.24 of 2014, decided on 28.03.2014, while awarding compensation to a victim which was to be given by the State, who was gang raped by the accused, has observed in paragraphs 20, 21 and 23 as under:-

“20) This Court, in P. Rathinam vs. State of Gujarat, (1994) SCC (Crl) 1163, which pertained to rape of a tribal woman in police custody awarded an interim compensation of ₹ 50,000/-to be paid by the State Government. Likewise, this Court, in Railway Board vs. Chandrima Das, (2000) 2 SCC 465, upheld the High Court's direction to pay ₹10 lakhs as compensation to the victim, who was a Bangladeshi National. Further, this Court in SLP (Crl.) No. 5019/2012 titled as Satya Pal Anand vs. State of M.P., vide order dated 05.08.2013, enhanced the interim relief granted by the State Government from ₹ 2 lakhs to 10 lakhs each to two girl victims.

21) The Supreme Court of Bangladesh in The State vs. Md. Moinul Haque and Ors. (2001) 21 BLD 465 has interestingly observed that “victims of rape should be compensated by giving them half of the property of the rapist(s) as compensation in order to rehabilitate them in the society.” If not adopting this liberal reasoning, we should atleast be in a position to provide substantial compensation to the victims.

23) The report of the Chief Secretary indicates the steps taken by the State Government including the compensation awarded.” Nevertheless, considering the facts and circumstances of this case, we are of the view that the victim should be given a compensation of at least ₹5 lakhs for rehabilitation by the State. We, accordingly, direct the Respondent No. 1 (State of West Bengal through Chief Secretary) to make a payment of ₹5 lakhs, in addition to the already sanctioned amount of ₹ 50,000, within one month from today. Besides, we also have some reservation regarding the benefits being given in the name of mother of the

victim, when the victim herself is a major (i.e. aged about 20 years). Thus, in our considered view, it would be appropriate and beneficial to the victim if the compensation and other benefits are directly given to her and accordingly we order so.

(27) The present appeal is dismissed on merits. However, applying the ratio of the above said judgment, this Court directs the State to make a payment of ₹ 5 lakhs as compensation to the victim and another ₹ 5 lakhs be also given to the victim as she had lost her father, who died on 02.07.2002 after registration of the complaint on 28.06.2002.

S. S. Sandhu