

(2005) 03 P&H CK 0163

In the Punjab And Haryana At Chandigarh

Case No : Criminal Appeal No. 453-SB and 765-SB of 1996

Ajab Singh and Jai Pal

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 09-03-2005

Acts Referred:

Penal Code, 1860 (IPC) — Section 363, 366

Citation : (2005) 2 RCR(Criminal) 807

Hon'ble Judges : Virender Singh, J

Bench : Single Bench

Advocate : Vipul Jindal, for Ajab Singh, Mr. P.C. Chaudhary, for Jai Pal, for the Appellant; S.S. Brar, D.A.G., Haryana, for the Respondent

Final Decision : Allowed

Judgement

Virender Singh, J.—Vide this judgment, I shall be disposing of Criminal Appeal No. 453-SB of 1996 filed by Ajab Singh son of Tej Pal and Criminal Appeal No. 765-SB of 1996 filed by Jai Pal son of Parkash, as both the Appellants have suffered conviction vide one and the same judgment of learned Additional Sessions Judge, Panipat dated 5.6.1996. They stand convicted under Sections 363, 366, 376(2)(g) of the Indian Penal Code and have been sentenced as under:

Under Section 363 read with Section 34 IPC

To undergo RI for one year each and to pay a fine of Rs. 500/- each, in default of payment of fine to further undergo RI for three months.

Under Section 366 read with Section 34 IPC

To undergo RI for three years each and to pay a fine of Rs. 2,000/- each, in default of payment of fine to further undergo RI for six months.

Under Section 376(2)(g) IPC

To undergo RI for ten year each and to pay a fine of Rs. 3,000/- each, in default

of payment of fine to further undergo RI for one year.

All the sentences were ordered to run concurrently.

2. Aggrieved by the impugned judgment of conviction and sentence, both the Appellants have preferred the instant appeals.

3. I am not disclosing the name of the prosecutrix in the light of the judgment rendered by Hon''ble the Supreme Court in State of Karnataka v. Puttaraja, 2004 (1) RCR (Crl.) 113 (SC). She will be hereinafter referred to as prosecutrix only.

4. I have heard Mr. Vipul Jindal, learned Counsel for Ajab Singh Appellant, Mr. P.C. Chaudhary, learned Counsel for Jai Pal Appellant and Mr. S.S. Brar, learned Deputy Advocate General, Haryana.

5. The learned Counsel for the Appellants do not join issue on merits and have instead confined their arguments with regard to quantum of sentence only. They contended that the prosecutrix has since entered into a compromise (Annexure A-1) with the present Appellants with the intervention of the Village Panchayat and other respectables; the prosecutrix had got married with one Naresh son of Dharam Singh of village Moi tehsil Gohana District Sonapat a few years back and is also blessed with a son and a daughter; she is now staying comfortably with her in-laws in the said village. The learned Counsel then contend that in the affidavit, the prosecutrix has categorically stated that she has no grievance against the present Appellants and she wants to live her life very respectfully and does not intend to take any action against the present Appellants. My attention has been drawn to affidavit. (The said affidavit has been taken on record vide Criminal Misc. No. 13540 of 2005 and disposed of today itself).

6. Dwelling upon their arguments, the learned Counsel further contend that even in the impugned judgment, it has been observed by the learned trial Court in para No. 49 that possibility of the prosecutrix going with the accused persons of her own cannot be ruled out, as Ajab Singh Appellant was a casual visitor to her house and she knew him very well. It is then observed in the said judgment that the prosecutrix and the present Appellants were teenagers and Ajab Singh Appellant being elder to all of them, might have helped them in leaving village. The learned Counsel have also drawn my attention to para No. 61 of the impugned judgment wherein the learned trial Court has observed that the prosecutrix was not traceable from 15.12.1993 to 2.1.1994. Another fact which has been brought to my notice from the evidence of the prosecutrix is that she had been staying at the house of sister of father (Bhua) of Jai Pal for a considerable period and ultimately on one day, she was apprehended by the police along with Ajab Singh. The Appellants have been convicted mainly for the reason that the prosecutrix was less than 16 years of age at the time of alleged occurrence.

7. It is then contended that Appellant Ajab Singh was of the age of 20 years and Appellant Jai Pal was of the age of 18 years at the time of alleged occurrence.

They also remained in custody for a considerable period which includes their period as undertrial prisoner as well. The split out of each of the Appellant is as under:

Ajab Singh (Appellant)

Years

Months

Days

As under trial prisoner

00

07

00

After conviction

04

02

07

Total

04

09

07

Jai Pal (Appellant)

Years

Months

Days

As undertrial prisoner

02

03

21

After conviction

04

02

26

Total

06

06

17

8. The prayer now made is that sending the Appellants once again to the Jail for serving out their remainder of the substantive sentence especially when the prosecutrix herself has compromised the matter with the Appellants, would be unjustified.

9. In support of their contentions, the learned Counsel rely upon two judgments of Hon''ble the Supreme Court rendered in Jarnail Singh v. State of Punjab, 1998 (8) SCC 629: 1999(1) RCR(Crl.) 166 (SC) Sukhwinder Singh v. State of Punjab, (2000) 9 SCC 204 the judgment of this Court rendered in Bhira @ Raghbir v. State of Haryana, 1999(2) RCR(Criminal) 813; Vinod Kumar v. State of Haryana, 1999(2) RCR(Criminal) 435 and a very recent judgment of this Court rendered in Ravinder alias Binder v. State of Haryana, 2005 (2) RCR(Criminal) 143 (P&H): Criminal Appeal No. 273-SB of 1992 decided on February 16, 2005.

10. The submissions made on behalf of both the Appellants are controverted vehemently by the learned State counsel stating that although the Appellants have now compromised the matter with the prosecutrix yet they do not deserve even the least sympathy in this case with regard to reduction in the quantum of sentence for the reason that both the Appellants had abducted the prosecutrix from her house and thereafter kept her confined in the house of the one of the relatives of the Appellants for a considerable period where she was also subjected to sexual intercourse.

11. After hearing the rival contentions of either side, I find force in the submissions made by learned Counsel for both the Appellants so far as quantum of sentence is concerned.

12. Although the impugned judgment has not assailed on merits by either of the Appellants yet being the Court of first appeal, I have rescanned the entire evidence and am of the considered view that there is no illegality factually or legally in the conviction recorded by the learned trial Court on all the charges. Consequently, the conviction as recorded by the trial Court is hereby reaffirmed.

Adverting to quantum of sentence.

13. No doubt it has been held by the Hon''ble Supreme Court that the cases of sexual crime/harassment against the women are to be seen with utmost sensitivity and should be dealt with very sternly but at the same it is to be kept in mind that the sentencing process can also be tempered with some mercy if the facts of the case so warrant. Let us examine the facts of the case in hand.

14. The prosecutrix, no doubt, was of the age of less than 16 years on the date of alleged occurrence. As stated by learned Counsel for the Appellants and not controverted by the State counsel, the Appellants were also of the tender age. The finding of the trial Court is to the effect that the prosecutrix in fact left her parental house on her own with the Appellants. The other fact which is also to be taken into account is that the prosecutrix remained with the Appellants for a considerable period in the house of sister of father of one of the Appellants at a place known as Jokhabad.

15. Above all the compromise now effected between the parties is also to be considered as one of the mitigating circumstances in favour of the Appellants. The prosecutrix has since got married. She is now sailing smooth married life having two children also. The affidavit reflects this aspect. The prosecutrix is also present in the Court. She makes the statement before me (without oath) admitting all the contents of the affidavit and states that she has compromised the matter with the Appellants on her free will with the intervention of the Panchayat and respectables. The affidavit in original has been shown to her in the Court. She owns the same and states that it bears her signatures. She was otherwise identified before the Executive Magistrate also. In view of above, there is no reason to doubt the affidavit and her statement. She has come present with her mother and states that her husband has allowed her to enter into this compromise as he is aware of all the facts of her previous life.

16. The mother also admits the factum of compromise.

17. The occurrence relates to the year 1993. By now long 12 years have elapsed. The whispering campaign by gossip peddlers is also to be avoided in the instant case. So following the ratio of the aforesaid judgments and keeping in view the peculiar facts of this case, the ends of justice would be adequately met if the substantive sentence as awarded by trial Court is reduced to the period already undergone by each of the Appellants. It is so ordered.

18. In Jarnail Singh's case (supra), while reducing the sentence of the Appellant to the period already undergone, the Hon'ble Supreme Court had imposed a fine of Rs. 12,000/- on the Appellant which was ordered to be paid to the prosecutrix as compensation. I also direct that both the Appellants shall deposit Rs. 10,000/- each as fine before the trial Court within one month from today and the same in turn shall be disbursed to the prosecutrix and in case she refuses to accept the same, then to her mother who is otherwise complainant/FIR-lodger. After the amount is deposited in the trial Court, it shall issue a notice to the prosecutrix or to her mother for collecting the same. It is, however, made clear that in default of payment of fine, the Appellants shall undergo the period awarded by the trial Court for default clause i.e. one year each. The amount now imposed shall be adjustable with the earlier amount of fine awarded by the trial Court.

19. Resultantly, while upholding the conviction of the Appellants, except with the modification in the quantum of sentence as indicated hereinabove, both the

appeals stand dismissed.

20. Copy of the judgment be also sent to the learned trial Court without any delay for compliance.

Appeals dismissed.