

(2015) 07 P&H CK 0254

In the Punjab And Haryana At Chandigarh

Case No : CRA-S No. 2623-SB of 2011 (O&M)

Chetan Singh

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 22-07-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 354, 363, 366, 366-A, 376

Citation : (2015) 07 P&H CK 0254

Hon'ble Judges : R.P. Nagrath, J

Bench : Single Bench

Advocate : Ruchi Sekhri, for the Appellant; S. Gill, APP, Advocates for the Respondent

Judgement

R.P. Nagrath, J—The appellant faced trial for offences under Sections 363, 366-A, 376 read with Section 511 of Indian Penal Code (IPC) in FIR No. 160 dated 17.08.2010, Police Station- Sector 26, Chandigarh. The offence under third head of charge described in the charge- sheet was Section 376 IPC but that seems to be only an error. The prosecution story had throughout been that it was a case of attempt to rape and to the similar effect was also statement of allegation in the charge-sheet itself.

2. The trial Court convicted the appellant of the charges under Sections 366 and 376 read with Section 511 IPC. The appellant was awarded the sentence to undergo Rigorous Imprisonment for a period of three years and to pay a fine of Rs. 2,000/-; in default of payment of fine to further undergo Rigorous Imprisonment for two months under Section 366 IPC. Similar sentence was awarded to him under Section 376 read with Section 511 IPC. The sentences of imprisonment were to run concurrently.

3. Learned counsel for the appellant urged that appellant has undergone the sentence awarded to him and has since been released from jail.

4. The FIR was lodged with the police by mother of the victim. The prosecutrix was 14 years old at the time of occurrence and studying in the 7th standard.

5. The prosecution story briefly stated is that on 17.08.2010, the girl was sent for purchasing of match box from a shop located in the colony at about 7.00 am but did not return. The family was searching for the girl but no clue was found till the evening.

6. At about 6.45 pm, the complainant was going towards transport traffic light point that she saw prosecutrix coming from that side and crying. Prosecutrix narrated the incident to her mother. According to the prosecutrix while she was going to the shop in the morning, appellant who is their neighbour met and started saying that he was in deep love with her and wanted to marry her. On the pretext of marrying her, appellant took her to Sector 22, Chandigarh on his motorcycle. The appellant booked a room in hotel Victoria Palace, took her inside the room and bolted it from inside. The prosecutrix questioned him as to why the room was bolted. The appellant asked the prosecutrix to remove her clothes and he started using force against her. The prosecutrix somehow saved herself and came out of the room by opening the door.

7. Statement Ex.P5, was made by the complainant to the police on the same day at about 8.50 pm on the basis of which FIR Ex.P11 was registered. The prosecutrix was medically examined. The appellant was arrested on 17.08.2010 night itself and medically examined to find his potency. The doctor found nothing to suggest that the appellant was incapable of performing sexual intercourse. With regard to the medical examination of appellant, prosecution examined PW3 Dr. Parijat, Medical Officer of the Government Hospital, Chandigarh and the medical report is Ex.P4.

8. Certificate of date of birth of the prosecutrix showing her date of birth as 26.04.1996 and original register of Hotel Victoria, Sector 22, Chandigarh with regard to the entry of booking of room No. 110 in the name of appellant were also collected. The case was committed for trial to the Sessions Court.

9. The prosecution in support of its case examined nine witnesses.

10. During his examination under Section 313 Cr.P.C., the appellant denied all the incriminating circumstances appearing in the prosecution evidence against him and pleaded that he has been falsely implicated just to grab money from him and his parents. In defence, appellant examined Mamta Devi DW1, real sister-in-law of complainant and maternal aunt of the prosecutrix.

11. I have heard learned counsel for the appellant, learned State counsel and also perused the trial Court record extensively with their able assistance.

12. Learned counsel for the appellant attacked the prosecution version mainly on the ground that evidence of the prosecution is highly contradictory. It was further contended that even if the version of prosecution is accepted the offence of attempt to rape would not be attracted. It was also submitted that a close

relative of the family of prosecutrix has rather supported the defence version.

13. On the other hand, learned State counsel vehemently contended that the prosecution story is beyond suspicion and that in case the intervening act of prosecutrix rushing out of the hotel room had not taken place, the accused would have moved forward to commit rape. This is especially in reference to the story that a room was booked in the hotel by the appellant to take the prosecutrix inside. On the defence witness the learned State counsel submitted that DW1 was inimically deposed against the family of prosecutrix.

14. It would be first of all necessary to see if the trial Court correctly held the prosecutrix to be 14 years and 4 months old at the time of occurrence. PW7 Gulab Singh, Statistical Assistant in the office of the Registrar, Births and Deaths, Municipal Corporation, Chandigarh brought original record relating to the entry of birth certificate Ex. P8. Name of the prosecutrix a female child born on 26.04.1996 is mentioned in the certificate. The parentage of the prosecutrix as mentioned in the certificate is also in consonance with the prosecution story. So on the day of occurrence the prosecutrix was just about 14 years and 04 months of age. The only material question put to the witness is that in the entry, address of the parents of the female child is 606-A, Sector 26, Bapu Dham Colony, Chandigarh. During arguments, learned counsel for the appellant was unable to challenge the finding of learned trial Court on this aspect. There is also the testimony of PW4 and PW5 that the age of prosecutrix was about 14 1/2 years at the time of occurrence.

15. To prove the charge, most important is the testimony of prosecutrix herself examined as PW5 who stated that she was sent to the market at about 7.00 am to fetch milk. The appellant who was present there asked PW5 to sit on the motorcycle saying that he would drop her at her residence. The appellant, however, brought her to Sector 22, Chandigarh on his motorcycle outside Hotel Victoria and took her in the room of hotel. PW5 asked the appellant as to why she was brought there but appellant told her to sit in the room. The appellant bolted the room from inside and told the prosecutrix that he wants to marry her. The prosecutrix objected to it and wanted to go to her house. The appellant used force against her and asked her to sit on the bed. The appellant caught hold of her arms and tried to hug her but was pushed away and prosecutrix was able to come out of the room. From there she went to the park and kept weeping for one hour. Then she started walking towards her house. Near the transport area, mother of prosecutrix met her to whom the incident was narrated. They lodged report with the police. While returning home, they saw the appellant coming on the motorcycle. At the instance of PW5 the appellant was arrested by the police.

16. PW4 mother of prosecutrix also supported PW5 and brought the evidence of immediate conduct of the prosecutrix telling her about the whole incident. Ex.P5 is the statement of PW5 recorded by the police.

17. Learned counsel for the appellant contended that the evidence of

presumption is highly contradictory. According to PW5 she was told to fetch milk from the market whereas the version stated in the FIR was that she was to buy match box from the shop. This is an insignificant discrepancy. In fact the prosecutrix was not confronted with her previous statement on this aspect. PW4, however, stated that she sent her daughter to purchase match box from the shop of colony. It is also pertinent to observe that PW4 (complainant) in cross-examination stated that her daughter went to take milk in the morning. She was given Rs. 20/- for purchasing milk and biscuits. I am thus of the considered view that the incident of 14 years old girl missing from the house for so many hours, was bound to cause immense stress and pressure on the mind of the mother (complainant) that such a minor contradiction has come.

18. The fact that the appellant took the girl to hotel was virtually admitted. It was suggested to PW4 that on the date of occurrence she called the appellant from the mobile phone of her mother. A contrary suggestion put to her was that the appellant had not taken her to Hotel Victoria Palace.

19. There has been extensive cross-examination of the complainant as well as the prosecutrix and they have both withstood the test of scrutiny. Certain factors appeared in the cross-examination of the prosecutrix which attach veracity to her version. She stated that on the day of occurrence she did not go to the school because of ill-health of her mother's sister. The relevant portion of her cross-examination is reproduced as under: -

"I cannot tell exactly places which had come in the way (sic) to reach Hotel. However, I had seen Bus Stand Sector 17, Chandigarh while reaching Sector 22. So far I remember only one traffic light point was seen on the way. I cannot say that atleast 4 to 5 traffic lights are there while coming from Sector 26 to Sector 22. On that day I was wearing a sky-blue coloured suit. I did not try to escape on the light point of Sector 17 as the accused told me that he has some work and thereafter he would drop me at my residence. My house from Sector 17 may be about 4-5 km. When we reached Hotel Victoria I was asked to stand outside the gate and the accused went inside the hotel and thereafter he asked me to come inside the hotel. Cameras were installed in the hotel. One old man was sitting in the hotel and 2-3 persons were working there."

20. It is further stated by PW5 that after coming out of the hotel room she sat in the park for about 20 minutes. Then she met a lady and asked her the road for going to Bapu Dham Colony, her residential locality.

21. There is even nothing brought in the cross examination of PW4 the complainant for bringing any suspicion to her testimony with regard to the immediate conduct of the prosecutrix in narrating the whole incident to the mother. There is no suggestion to PW4 why she would falsely make statement against the appellant.

22. There is also clinching documentary evidence to the effect that a room in Hotel Victoria Palace was booked in the name of appellant on 17.08.2010 at the

time in proximity with the kidnapping of the girl.

23. Gurbachan Singh PW6 is owner of the Hotel Victoria Palace, Sector 22, Chandigarh. He brought register containing booking of the rooms in the hotel. As per record, room No. 110 was booked by the appellant on 17.08.2010 with residential address as 1565, Sector 26, Chandigarh. Arrival of Chetan was recorded at 8.29 am and departure at 10.00 am. PW6 further stated that the appellant was accompanied by a girl and remained in room No. 110. The relevant entry in the register is Ex.P7.

24. The learned counsel for the appellant vehemently contended that this register cannot be accepted as authentic record as entry just above the questioned entry in the register shows booking of two room Nos. 103 and 105 at 1.00 pm on 17.08.2010. No advantage of the above fact can be availed by the appellant unless PW6 was cross-examined on the subject for enabling him to furnish an explanation. PW6 has rather been fairly cross-examined and he withstood the test of scrutiny. It seems that in the entry of room Nos. 103 and 105 dated 17.08.2010, the time has been inadvertently written as 1.00 pm instead of 1.00 am. In fact immediately before the said entry is booking of room No. 109, at 8:00 pm on 16.08.2010. All the other entries before and after this entry are in proper order of timing of booking.

25. The register was taken into possession by PW9 SI Gurmail Singh, Investigating Officer on 18.08.2010 itself i.e. very next day of the occurrence when he went to spot for inspection of the site and prepared rough site plan Ex.13. The register was taken into possession vide memo Ex.P14. Last entry in the register relates to booking of room No. 102 on 18.08.2010 at 11.45.

26. The defence has rather not disputed the veracity of entry Ex.P7 in the register as it was suggested to PW6 that appellant had come alone in the hotel on 17.08.2010. PW6 also stated in cross- examination that the appellant had been visiting the hotel even prior to this occurrence. It appeared in cross-examination of PW6 that age of boy is recorded in the register as 23 years and that of the girl accompanying the appellant as 19 years. A contrary stand was then taken by suggesting that entry has been made at the instance of police and that appellant had not come to the hotel. There is absolutely nothing to disbelieve PW6.

27. There is thus complete evidence to prove the story as quite truthful. Why should the evidence of a girl who was just about 14 years old and has complained of sexual molestation, be viewed with doubt, disbelief or suspicion, especially when this further gets support from PW5 and the authentic record of hotel.

28. The learned trial Court was absolutely justified in rejecting the statement of DW1 examined by the appellant in defence. DW1 is the sister in law of complainant and maternal aunt of prosecutrix.

29. DW1 stated that the prosecutrix had left the house in the morning but did not return. On return of the girl, it was decided by the family that the matter be reported to the police. Maternal grand mother of the girl demanded money from father of appellant which he could not arrange. DW1 further stated that father of appellant was interested to solemnize marriage of appellant with PW5 but the girl's family did not agree. The above statement of DW1 rather supports the prosecution case.

30. Now the question would be whether from the facts as proved on record the offence under Section 376 IPC read with Section 511 IPC is attracted. I would find from the facts of the case and also the evidence only Section 354 IPC is made out. The medical examination of the prosecutrix was conducted by Dr. Deepika Gupta PW2 of the Government Medical College and Hospital, Sector 32, Chandigarh. The girl was produced for medical examination on 17.08.2010 itself. The history of the patient recorded was the assault by appellant at about 9.00 am. There was otherwise no history of sexual intercourse.

31. In State of Rajasthan Vs. Sri Chand(2015) 7 AD (SC) 73 : (2015) ALLMR(Cri) 2437 : (2015) 3 BomCR(Cri) 168 : (2015) 3 CCR 1 : (2015) 3 MLJ(Cri) 244 : (2015) 2 NCC 576 : (2015) 2 RCR(Criminal) 1011 : (2015) 6 SCALE 224 : (2015) 6 SCJ 181 : (2015) 2 UC 1152 the prosecutrix a 12 years old child had gone to the jungle to graze buffaloes. Appellant whose house was in the jungle approached the prosecutrix and told her that his sister was calling her. By alluring in this way, the appellant took the prosecutrix to his house. No one was there in the house and the appellant took the prosecutrix inside the room, closed the door and forcibly started raping her. On the basis of the evidence led, there being no medical examination of the girl, the Hon''ble Supreme Court held that from the evidence led in the case what was proved beyond reasonable doubt was the offence under Section 354 of IPC and not attempt to rape. Hon''ble Supreme Court referred to the two earlier judgments on the subject. The same are reproduced as under:-

Aman Kumar and Another Vs. State of Haryana, AIR 2004 SC 1497 : (2004) CriLJ 1399 : (2004) 2 JT 274 : (2004) 2 SCALE 356 : (2004) 4 SCC 379 : (2004) 2 SCR 237 : (2004) AIRSCW 7373 : (2004) AIRSCW 827 : (2004) 6 Supreme 485 : (2004) 2 Supreme 5 , and Tarkeshwar Sahu Vs. State of Bihar (Now Jharkhand), (2006) 12 JT 559 : (2006) 10 SCALE 45 : (2006) 8 SCC 560 : (2006) 8 SCR 10 Supp . In both the cited judgments it was held that for the act to constitute offence of rape penetration is pre-requisite (this is the pre 2013 Criminal Amendment position of law) and therefore for the offence of attempt to rape the accused must have so advanced in his actions that it would have resulted into rape had some extraneous factors not intervened. It was held in Aman Kumar's case that in order to come to the conclusion that attempt to rape is committed it should be shown that the accused was determined to have sexual connection (penetration) with the prosecutrix at all events inspite of all resistance. In the present case the accused fled away on when the PW3 came to

the place of incident due to shouting of the prosecutrix. This shows he wasn't determined to have sexual connection with the prosecutrix despite all resistance and odds....."

32. Even in the present case it was not the version of prosecution that appellant undressed himself or the prosecutrix. The prosecutrix stated that accused caught hold of her from her arms, tried to hug her but she pushed him away and came out of the hotel room.

33. Other than this, there is complete evidence of the prosecution that the girl was taken from the locality on the motorcycle of the appellant to the hotel and that would attract the offence of kidnapping for the purpose of marriage or for committing sexual intercourse. From the aforesaid discussion, finding of holding the appellant guilty of the charge under Section 366 IPC cannot be disturbed.

34. The appellant is, however, acquitted of the charge under Section 376 IPC read with Section 511 IPC and instead convicted under Section 354 IPC. In the circumstances of the case and keeping in view the age of the girl, I uphold the sentence awarded by the trial Court under Section 366 IPC but the sentence awarded under Section 354 IPC is reduced to the period of one year instead of three years maintaining the amount of fine and the default clause.

35. The instant appeal is, therefore, partly allowed to the above extent, but dismissed on merits.