
(1986) 01 P&H CK 0035
In the Punjab And Haryana At Chandigarh
Case No : Criminal Appeal No. 5-SB of 1985

Molu Ram	Vs	APPELLANT
State of Haryana		RESPONDENT

Date of Decision : 29-01-1986

Acts Referred:

Citation : (1986) 01 P&H CK 0035

Hon'ble Judges : S.S.Dewan, J

Advocate : Ajai Lamba, Hari Mittal, Advocates for appearing Parties

Judgement

S.S. Dewan, J.

1. Molu Ram appellant has preferred this appeal against the judgment and order of Shri R.P. Bajaj, Additional Sessions Judge, Ambala, dated December 19, 1984, in Sessions case No. 24 of 1984, State v. Molu Ram, convicting and sentencing Molu Ram appellant under S. 366, Indian Penal Code to three years rigorous imprisonment. He has challenged his conviction and sentence in this appeal.

2. The prosecution case is that Molu Ram accused used to teach Santosh Kumari, daughter of Panni Lal, resident of village Saha. Santosh Kumari was student of 8th class and the accused used to teach her sometime in his house and some times in the house of Panni Lal. It is said that on April 2, 1984, the accused committed sexual intercourse with Santosh Kumari without her consent and then he kidnapped her and brought her to Shahbad. The accused had told the prosecutrix that he would educate her and get her a good job. The accused and the prosecutrix spent two nights at Shahbad and then she was taken to Nariangarh. Panni Lal, Father of Santosh Kumari, lodged the report with the police on April 3, 1984, when he found that her daughter was missing from the house. A suspicion arose against the accused because he was also absent from his house. The accused and the prosecutrix were secured by the police at Shahbad on April 6, 1984. The prosecutrix was medically examined by Dr. Mrs. Arun Pahwa PW2 on the same day at 4.15 pm. The doctor found no mark of external injury on her person. Her hymen was found ruptured but the vagina

admitted two finger tightly. Dr. Subhash Chander Goel PW 3 radiologically examined Santosh Kumari and vide his report Ex. PC found that she was 15 to 16 1/2 years of age. After necessary investigation, the accused was challenged and committed. The prosecution examined as many as nine witnesses in support of its case. The accused denied the prosecution allegations and pleaded that he was falsely implicated in the case because the parents of Santosh Kumari wanted him to marry her but he refused. He, however, led no evidence in defence.

3. The learned counsel appearing for the appellant vehemently contended that the evidence produced by the prosecution regarding the age of Santosh Kumari prosecutrix is not convincing and that she was more than 18 years and was a girl of loose character and therefore, the appellant was wrongly convicted. The question for determination in this case is as to what was the age of Santosh Kumari for the purpose of offence under S. 366, Indian Penal Code. The prosecution produced three types of evidence; (1) oral evidence, statement of the girl and her father ; (ii) medical evidence and (iii) evidence of the school certificate. Panni Lal PW 5, who is the father of the prosecutrix, gave her age as 16 years. During the days of the occurrence, the prosecutrix was studying in Government Girls High School, Saha. In the admission form, her date of birth was recorded as 5.4.1967. This means at the time of occurrence Santosh Kumari was aged 17 years. It is known that at the time of getting the child admitted in the school, the parents generally have in mind the prospect of the child getting into service for which the maximum age has been prescribed. It is just possible that an effort might be made to minimise the age of the child. It is upon these circumstances that an entry about the date of birth in the school record is not given any weight. In this view I am fortified by a Supreme Court decision in Brij Mohan Singh v. Priya Brar Narain Sinha and others A.I.R. 1965 S.C. 282. Dr. Subhash Chander Goel PW3 who radiologically examined the prosecutrix gave her age between 15 and 16 1/2 years. He has, however, himself stated at the trial that ossification test is not a sure test and it admits of margin of two years on either side. Therefore, the opinion of the Doctor based on such a test cannot be regarded as a conclusive evidence especially when the difference in the approximate age fixed by him and the one fixed under S. 366, Indian Penal Code, is not wide. In the absence of cogent evidence regarding the age of girl, no safe conclusion can be based on the opinion of the Doctor. The prosecution has miserably failed to establish that Santosh Kumari was aged below 18 years at the time of the alleged occurrence.

4. It was next contended on behalf of the appellant that the case of prosecution that the prosecutrix had been induced by the appellant to accompany him for getting her a good job does not appeal to reason. It appears that she willingly accompanied the appellant to Shahbad. She was not a child of tender years who was unable to think herself what was good and what was bad. She was not an uneducated or unsophisticated girl but a 8th class student and was thus far more capable of thinking herself. All the circumstances would lead to an irresistible conclusion that story about her being induced to accompany the appellant to

Shahbad, on the pretext that he would get her a job was only a made up affair. The prosecution has failed to establish that she was taken away by the appellant. For the reasons recorded above, this appeal is accepted and the conviction and sentence of the appellant are set aside. The appellant is on bail and as such his bail bonds are discharged.