
(2012) 08 P&H CK 0177

In the Punjab And Haryana At Chandigarh

Case No : C.R. A-D No. 815-DB of 2011 and C.R. A-S No. 1017-SB of 2011

Om Parkash

APPELLANT

Vs

State of Haryana and Another
 Sunil Kumar Vs State of
Haryana

RESPONDENT

Date of Decision : 28-08-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 164, 313
Penal Code, 1860 (IPC) — Section 376(1)

Citation : (2012) 08 P&H CK 0177

Hon'ble Judges : Jasbir Singh, Acting C.J.; Rakesh Kumar Jain, J

Bench : Division Bench

Advocate : R.S. Rai, with Mr. Anurag Arora in C.R. A-S No. 1017-SB of 2011 and Mr. J.S. Hooda in C.R. A-D No. 815-DB of 2011, for the Appellant; Pardeep Singh Poonia, Addl. A.G., Haryana, for the Respondent

Final Decision : Dismissed

Judgement

Rakesh Kumar Jain, J.—Two criminal appeals bearing CR A-D-815-DB of 2011 and CR A-S-1017-SB of 2011 are being decided together because both have arisen from the order dated 29.03.2001/31.03.2011 passed by the Trial Court convicting the appellant-accused for the offence punishable u/s 376(1) of the Indian Penal Code, 1860 [for short "IPC"] and sentencing him to undergo rigorous imprisonment for a period of seven years with fine of Rs. 1,00,000/- and in default of payment of fine, to undergo further simple imprisonment for one year. It is ordered that out of the amount of fine, if realised, a sum of Rs. 75,000/- shall be paid to the prosecutrix as compensation. CR A-S-1017-SB of 2011 is filed by the appellant-accused for his acquittal, whereas CR A-D-815-DB of 2011 is filed by appellant Om Parkash, father of the prosecutrix, for enhancement of the sentence.

2. Statement of the prosecutrix (PW 4) was recorded on 20.09.2008 by ASI Kundan Lai (PW 13) and formal FIR (Ex. PD/2) was recorded on the same day in

which it is alleged by her that she is a resident of village Nangli Pehanki and is 14 years of age. Her father is an agriculturist. They are four sisters and two brothers and she is at No. 2, studying in Govt. Girls High School, Aherwan in 8th class. About six months ago, when she was returning from the fields in the day time, after answering the call of nature, appellant-accused who was a Teacher in her school, called her by signal while standing in front of the school to take the dues of her mother who was working as a Cook in the school for preparing mid-day meal. She believed him and went inside the school where no-one was present. Appellant-accused forcibly took her in a room and committed rape and said that if she disclose anything to her family members, then he will kidnap her and eliminate her family. Thereafter, the appellant-accused committed rape upon her several times. About 15-20 days back, she felt that she is pregnant by the loins of the appellant-accused. On 18.09.2008, appellant-accused gave her a tablet with water for terminating the pregnancy because of which she had pain in her belly. Then she narrated all the matter to her mother. After some time, the foetus was aborted. Her parents did not take her to the hospital, but on the date of registration of the FIR, her mother told the matter to her father who called the police on telephone.

3. The prosecutrix was medico-legally examined on 21.09.2008 by Dr. Usha Mathur (PW 2) who did not find any external mark of injury on any part of her body. Her vagina was admitting two fingers easily but bleeding was present at that time. Her abdomen was tense and pregnancy test was positive. The appellant-accused was also medico-legally examined by Dr. Jayant Ahuja (PW 10), who filed his affidavit Ex. PW 10/A and opined that the appellant-accused was capable of performing sexual intercourse.

4. Dr. Rameshwari (PW 7), Dental Surgeon examined the prosecutrix on 26.09.2008 for determination of her age, but she referred her to Orthopedic Surgeon of B.K. Hospital for expert opinion about the age because dental findings were missing for oral cavity and so she was unable to give opinion about her age.

5. Dr. Lokveer (PW 1) conducted radiological examination on 22.10.2008 for determination of age of the prosecutrix and opined that she appeared to be between 15 to 17 years of age radiologically. Dr. Malti Goyal (PW 16), Pathologist, examined the report Ex. PW 16/A and opined that the possibility of termination of pregnancy one week ago cannot be ruled out.

6. Statement of the prosecutrix was also recorded u/s 164 of the Code of Criminal Procedure, 1973 [for short "Cr.P.C."]

7. In order to substantiate the charge against the appellant-accused, the prosecution examined as many as 16 witnesses.

Dr. Lokveer (PW 1) proved the MLR, X-ray report (Ex. PA) and x-ray films (Ex. PA/1 to Ex. PA/4) while opining age of the prosecutrix to be between 15 to 17 years radiologically.

8. Dr. Usha Mathur (PW 2) medico-legally examined the prosecutrix and opined that there was no external mark of injury on her body, her vagina admitting two fingers easily, bleeding was even present at that time and her pregnancy test was positive.

Anoj Kumar (PW 3), Draftsman, prepared the scaled site plan (Ex. PC).

9. Prosecutrix (PW 4) stated the manner in which she was raped as mentioned in the FIR (Ex. PD/2).

10. Om Parkash (PW 5), father of the prosecutrix, testified that the prosecutrix was 14-15 years of age and was studying in 8th class of Girls High School, Aherwan. He stated that his wife informed him about the occurrence on 20.09.2008 and then he telephoned the police. The police came in the evening and recorded statement of the prosecutrix.

11. Rajo (P W6), mother of the prosecutrix, stated that age of the prosecutrix is 15 years. After the " abortion, the foetus was thrown in the jungle which might have been eaten away by the animals. After 2 days, she narrated everything to PW 5 who called the police and the law was set into motion.

12. Dr. Rameshwari (PW 7), Dental Surgeon, could not determine the age of the prosecutrix and referred her to Orthopedic Surgeon.

13. ASI Narain Singh (PW 8) stated that on 20.09.2008, he received the complaint along with endorsement of ASI Kundan Lal (PW 13) and recorded the formal FIR. He proved copy of the FIR (Ex. PD/2) and endorsement made by him (Ex. PD/3). He also stated that he prepared special report of the case and sent to the Area Magistrate and other senior Police officials" through Const. Khurshid Ahmad.

14. Udey Bhan (PW 9), Retired Head Master, Government Girls High School, Aherwan produced the admission and withdrawal register of the school in which date of birth of the prosecutrix was recorded as 25.07.1993 and her name was struck off in class 8th on 21.10.2008 due to non-payment of dues. He further proved the certificate (Ex. PF) which was taken into custody by the police vide recovery memo Ex. PF/1.

15. Dr. Jayant Ahuja (PW 10) proved the MLR (Ex. PG) of the appellant-accused and testified that he is capable to perform sexual intercourse in normal circumstances.

16. Inspector Narender Kumar (PW 11) stated that he filed challan in the Court after completion of the investigation.

17. Gajraj Singh (PW 12) stated that on 21.09.2008, ASI Kundan Lai (PW 13) deposited the case property, in Malkhana and he sent the "case property to FSL, Madhuban on 22.10.2008 through Const. Mahabir who handed over the receipt of it on the same day. He further stated that he did not temper with the case property during the period it remained in his custody.

18. ASI Kundan Lal (PW 13) is the Investigating Officer. He stated that on 02.09.2008, he recorded the statement (Ex. PD) of the prosecutrix and sent it to the Police Station through Const. Devender Kumar for registration of the case on the basis of which formal FIR (Ex. PD/2) was recorded by ASI Narain Singh (PW 8). The prosecutrix could not be medico-legally examined on that day because she was unable to move, but she was examined on the next day. The doctor handed over to him one parcel containing clothes etc. which was taken into possession vide recovery memo Ex. P13/A. On 22.09.2008, he arrested the appellant-accused and produced him in the Court. The appellant-accused suffered a disclosure statement (Ex. P13/C) and was medico-legally examined. Appellant-accused demarcated the medical store from where he had purchased the medicines for the purpose of aborting the foetus. He also demarcated the place where he committed rape with the prosecutrix. On 21.10.1998, PW 13 obtained the birth certificate of the prosecutrix vide memo Ex. PF/1 and also got recorded statement of the prosecutrix u/s 164 Cr.P.C.

19. Const. Mahabir Singh (PW 14) stated that on 22.10.2008, the case property was given to him by MHC Gajraj and he deposited the same in FSL, Madhuban on the same day and handed over the receipt to the MHC. He also stated that he did not temper with the case property during the period it remained in his custody.

20. Amarjit Singh (PW 15), Judicial Magistrate 1st Class, stated that the statement (Ex. PD/1) of the prosecutrix was recorded by him u/s 164 Cr.P.C.

Dr. Malti Goyal (PW 16) proved her report (Ex. PW 16/A).

21. The statement of the appellant-accused u/s 313 Cr.P.C. was recorded. He denied his involvement in the commission of crime and pleaded his innocence. He rather alleged that PW 6, mother of the prosecutrix, was working as a Cook for preparing mid-day meal in the school of the village. On suspicion of embezzlement, she was removed from the service as a result of which she was annoyed and threatened the appellant-accused that she would involve him in some false case. He further stated that family of the prosecutrix do not carry good moral reputation in the village and a Watchman, namely, Mahavir was working in the school who always remain present in the school.

The appellant-accused, in his defence, examined five witnesses.

22. Ajit Singh Rawat (DW 1), Deputy District Education Officer, has stated that in the year 2008, he was posted as Block Education Officer, Palwal and Government Primary School of village Nangli Pahanki was under his control. Appellant-accused Sunil Kumar was posted as a JBT Teacher in that school. There was a dispute between Rajo, mother of the prosecutrix, and the appellant-accused as the appellant-accused used to ask her to work honestly. Appellant-accused" made a complaint against PW 6 about her work and conduct.

23. Rajiv Kumar (DW 2), Head Master, produced the attendance register of Government High School, Village Badha and stated that the appellant-accused

was a Teacher in their school in the year 2008. As per attendance register, presence of the appellant-accused was marked from 15 to 18th of September, 2008. He had joined after having been relieved on deputation from the Government Primary School, Nangli to Government High School, Badha on 04.09.2008.

24. Kartar Singh (DW 3), Head Master, Government Primary School, Nangli stated that on an application moved under the Right to Information Act, 2005, he issued the information (Ex. D2) which is with regard to admission of children of Ombir Singh in the school.

25. M.P. Gupta (DW 4), Senior Drug Control Officer, Faridabad stated that as per record, no license of medical shop exists in the name of Chaudhary Medical Store, Hathin.

26. Mahender Singh (DW 5), Statistical Assistant, Civil Surgeon, Faridabad stated that as per record, the date of birth of Suman daughter of Om Parkash and Smt. Rajwati is 14.03.1991 which is entered at serial No. 4 of 25.03.1991.

27. Appellant-accused also tendered in his evidence copy of resolution dated 05.07.2007 (Ex. DX) passed by the Village Education Committee vide which PW 6 was decided to be removed as a Cook from the Government Primary School, Nangli. He also placed on record copy of the information (Ex. DY) vide which Block Development Officer was informed that Watchman in the schools of the villages are appointed by the gram Panchayat. He also placed on record information (Ex. D2/1) regarding date of birth of children of Ombir son of Sohan Lal.

28. Learned counsel for the appellant-accused has argued that there was a huge delay in lodging the FIR as the prosecutrix has been allegedly subjected to rape by the appellant-accused from the last 5-6 months, prior to the registration of the FIR.

29. In this regard, learned State counsel has argued that though the prosecutrix did not make any complaint against the appellant-accused for 5-6 months, despite subjected to sexual intercourse several times during that period, but when she came to know about her pregnancy and the acute pain suffered due to administration of some medicines by the appellant-accused, she disclosed the incident to her mother. He further submitted that since the appellant-accused was a teacher and prosecutrix was a minor student, the delay in registration of the FIR cannot absolve him of his criminal liability. In this regard, he has relied upon a decision of the Supreme Court in the case of State of Himachal Pradesh Vs. Shree Kant Shekari, .

30. We have heard counsel for the parties in this regard and are of the view that registration of the case by the prosecutrix even after having been subjected to rape for many a times by the appellant-accused, who happens to be a teacher, and disclosing the fact only after having been pregnant is not a matter for which

benefit could be extended to the appellant-accused. In State of HP's case (supra), the girl of about 14 years of age was ravished by her teacher who did not disclose the incident to anyone else due to threats and the accused again committed sexual intercourse and thereafter she complained stomach ache, found to be pregnant and disclosed to her mother that her conception was due to sexual intercourse by her teacher, it was held by the Supreme Court that the victim was totally unaware of the catastrophe which had befallen her and the delay itself in lodging the FIR was not sufficient to hold the prosecution story to be false.

31. We are also of the view that after having been raped and threatened by the teacher (appellant-accused), the prosecutrix, who happens to be a minor and being daughter of the Cook in the school, must not have gathered courage to disclose the matter to her family members but when she felt acute pain without knowing that she was pregnant, the matter was disclosed to her mother, who further disclosed it to her father and ultimately a case was registered. In view thereof, we reject this argument raised by counsel for the appellant-accused.

32. The second and last argument raised by counsel for the appellant-accused is that the prosecutrix was a consenting party being more than 16 years of age as she had been radiologically examined by PW 1 who found her age between 15 to 17 years.

33. On the other hand, counsel for the State has argued that the complaint was made on 20.09.2008 in which the prosecutrix had alleged that she was raped about 5-6 months back, meaning thereby it was somewhere in the month of March or April, 2008. Her age has been proved by PW 9 to be 25.07.1993 and PW 1, after radiological examination of the prosecutrix, had opined that she could be between 15 to 17 years of age. It is, thus, submitted that since the prosecutrix was 16 years of age, therefore, there was no question of her consenting the sexual intercourse.

34. We have heard counsel for the parties in this regard and are of the view that the prosecution has proved that the prosecutrix was less than 16 years of age at the time of occurrence. According to the school record produced by PW 9, she was born on 25.07.1993 and it has been observed by the Trial Court that since the first child to the parents of the prosecutrix was born on 14.05.1991, the date of birth recorded in the school record as 25.07.1993 cannot be doubted especially when her radiological examination also shows that she was between 15 to 17 years of age at the time of commission of offence.

35. In view thereof, the argument raised by counsel for the appellant-accused that the Prosecutrix-was a consenting party is rejected.

No other point has been raised.

In view of the aforesaid discussion, we are of the considered opinion that the appellant-accused has been proved to be guilty by the prosecution of the crime

of rape and has been rightly convicted by the Trial Court u/s 376(1) IPC.

36. Insofar as the sentence part is concerned, about which CR A-D-815-DB-2011 has been filed by the father of the prosecutrix, since the Trial Court has observed that the appellant-accused is not a previous convict, he is sole bread earner in the family and having old aged ailing parents, therefore, keeping in view all the facts and circumstances, we are also of the opinion that the sentence awarded of 7 years rigorous imprisonment is justified and it does not call for any further enhancement. In view of the above, both the appeals are hereby dismissed.