
(1969) 04 P&H CK 0012
In the Punjab And Haryana At Chandigarh
Case No : Criminal Appeal No. 768 of 1968

Raunki Saroop

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 03-04-1969

Acts Referred:

Evidence Act, 1872 — Section 45
Penal Code, 1860 (IPC) — Section 366

Citation : AIR 1970 P&H 450 : (1970) CriLJ 1383

Hon'ble Judges : Gopal Singh, J

Bench : Single Bench

Advocate : Baldev Kapur as Amicus Curiae, for the Appellant; R.K. Chhokar, for A.G., for the Respondent

Final Decision : Allowed

Judgement

Gopal Singh, J.—This is appeal by Raunki Saroop from the judgment of the Sessions Judge, Ambala dated June 6, 1968 convicting the appellant u/s 366, Indian Penal Code and sentencing him to rigorous imprisonment for one year.

2. The prosecution case is that Smt. Mohani Kumari lives with her father Dial Chand in Ambala Cantt. There is a temple In the Cantt. The appellant used to play harmonium at the time kirtan was recited in the temple. Smti. Mohani Kumari visited the temple in the company of her mother. Mother of Smti. Mohani Kumari arranged kirtan at her house. The appellant participated in it. This happened couple of months before the date of occurrence, which came off on October 13. 1967,

3. On the night between October 13 and 14, 1967, Smti. Mohani Kumari was sleeping in the house. It was 10.00 p. m. Krishan Lal neighbour of Dial Chand knocked the door of his own house. Smt. Mohani Kumari got awakened as a result of the knocking of the door of the house of Krishan Lal. She left the house and proceeded for seeing drama, which was going on in Anai Mandi in the Cantt. It is stated by her that the appellant met her near Ganda Nullah and on his

request to accompany him, she at first declined but later agreed to accompany him to Bhiwani, where the appellant said he was employed as professor of Music. Both of them proceeded to the Railway Station at Ambala Cantt, and got into a train for Delhi. They reached Delhi the following morning.

4. The appellant brought Smti. Mohani Kumari from Delhi to Bhiwani and took her to his quarter where the appellant was staying. She was kept in the quarter. He confined her in the quarter by locking the door from outside. It is stated that the appellant proposed himself for marriage to Smti. Mohani Kumari but she did not accede to his proposal. The appellant committed rape upon her at night. She was kept there for five days.

5. Finding that Smti. Mohani Kumari disappeared from the house and was missing since 10.00 p. m. on October 13, 1967, Dial Chand lodged report Exhibit P. L, on October 18. 1967 at Cantonment Police Station, Ambala Cantt.

6. In pursuance of the report lodged by her father. Smti. Mohani Kumari was recovered by the Police from the quarter of the appellant on October 19, 1967. She produced her clothes. Memo pertaining to their recovery is Exhibit P. A.

7. Smti. Mohani Kumari was medically examined at 10.00 a. m. on October 21, 1967 by Dr. Shanti Sachdeva. She gave the opinion that the girl was not (sic) accustomed to sexual intercourse, that she had been subjected to sexual intercourse, that her hymen was not freshly torn, that there were no injuries on her private parts or any other part of the body and that her age was about 20 years.

8. Dr. K. C. Marwaha, Radiologist conducted X-ray examination of the girl on October 21. 1967. He found that the ends of bones of joints of the arms and the legs were fused and their epiphyses was complete. He however, found that epiphysis of iliac crest had not fused. He gave the opinion that the age of the girl was about 18 years but not more than 19 years.

9. In support of the age of the girl, Dial Chand father of Smti. Mohani Kumari produced in course of investigation her school pass certificate. Exhibit P. B. In that certificate, date of her birth shown is April 6, 1950.

10. The appellant was proceeded against for trial u/s 366 Indian Penal Code. In support of the case of the prosecution, the evidence of Smti. Mohani Kumari P. W. 3, Amar Dass P. W. 5, Dial Chand P. W. 6 and Smti Phulla Wati mother of Smti. Mohani Kumari P. W. 7 was adduced to show that Smt Mohani Kumari had been kidnapped or abducted by the appellant.

11. In his statement u/s 342, Criminal P. C., the appellant admitted that he took the girl to Bhiwani with her consent, that he had kept her in his quarter and she was recovered from there.

12. The trial Court took the view that the girl had left the house of her own free will without any coercion or deception practiced upon her and was thus a willing

party to the disappearance with the appellant from the lawful keeping of her parents. On the question of the age of the girl, the trial Court held that the school certificate produced on behalf of the girl coupled with the testimony of Dial Chand, Smti. Phulla Wati and Smti. Mohani Kumari herself, her age was less than 18 years and as such the question of consent was inconsequential. In the result, he held the appellant guilty u/s 366, Indian Penal Code and convicted and sentenced as referred to above.

13. Shri Baldev Kapur appearing on behalf of the appellant has contended that in the face of finding to the effect that the girl willingly left the house with the appellant and never raised her little finger during the course of her journey from Ambala Cantt. to Delhi and from Delhi to Bhiwani and of her own free will without any demur remained with the appellant at his quarter, the only question, which remains to be considered, is the age of the girl. He contended that the age of the girl is more than 18 years and in any case as the evidence is equivocal and not free from difficulty as to the girl being either less than 18 or more than 18, benefit of doubt should be given to the appellant.

14. The statement of Dial Chand P. W. father of the girl and her own statement, leave no doubt that Smti. Mohani Kumari is a willing partner to her being taken away by the appellant and left her parents' house of her own free will to be in the company of the appellant. There is no doubt that, as she stated in Court, she felt at first hesitant to accede to the proposal of the appellant for accompanying him to Bhiwani but later on she toed the line of the desire of the appellant and agreed to go with him to Bhiwani. She left the house of her parents at 10.00 p. m, on October 13, 1967 when the appellant was nowhere near her. She states that she got awakened on hearing the knock at the door of Krishan Lal her neighbour and that she left the house in order to see the drama, which was going on in Anaj Mandi. It is her case that while proceeding towards Anaj Mandi, she came across the appellant and after some hesitancy agreed to accompany the appellant. She is a grown up girl of about 18 years. She is stated to have studied up to Matric. She was not taken away under any intimidation or as a result of misrepresentation and against her own will. She could have raised hue and cry and invited the help of the passers-by when the appellant wanted to take her to the Railway Station at Ambala Cantt. She voluntarily accompanied him to the Railway Station. She never raised any alarm or protest against the appellant at the Railway Station by bringing the matter to the notice of railway authorities or railway police nor she sought the help of any passenger travelling in the compartment of the train in which the two sat together. She nowhere sought the help of anyone either at Delhi Railway Station or Delhi Bus Stand or at Bhiwani Bus Stand against the act of abduction of the appellant, if it could be that act at all. In fact, she herself gave a slip to her parents and left the house without informing them. It appears, she had pre-planned with the appellant and left with him accordingly. She stayed for five days in the quarter of the appellant. He committed rape with her. She never raised any hue and cry nor solicited the assistance of the neighbours of the appellant. It appears that she was not only a

willing party to accompany the appellant by leaving her parent's house but also she was living with him in his quarter like a house-wife. Thus, the finding arrived at by the trial Court as to her having not been removed by the appellant from the lawful guardianship of her parents and having gone herself with her free consent and in fact according to her own choice left her parents' house and accompanied the appellant and stayed with him at Bhiwani, is unimpeachable.

15. The only question, which remains to be considered is whether the date of birth of the girl as given in the school certificate. Exhibit P. B. should be treated as precise and correct or the age of the girl as given by Dr. Shanti Sachdeva and Dr. K. C. Marwaha Radiologist should be taken to be the age of the girl. It is a matter of common knowledge that the ages given at the time of admission of girls and boys in schools are far from being precise. More often than not, attempt is made by the parents and guardians of their wards, who get admission in the schools, to understate their ages and to give a later date of birth than the real one. Thus, the ages given in the school certificates are not dependable for determination of the precise date of birth of a student, to whom the entry as to the date of birth in the school records pertains. According to Exhibit P. B., the date of birth of the girl is April 6, 1950. The girl disappeared from her house on October 13, 1967.

Thus, according to the date of birth given in that certificate, her age will be 17 years 6 months and 7 days. Now, if there is error in giving reduced age by six months, the age of the girl could be 18 years. The entry in the school register was sought to be supported by the oral testimony of Dial Chand father of the girl and Smti. Phulla Wati mother of the girl. They originally hail from West Pakistan. They stated that the girl was born about three years after their migration from Pakistan to India. They say that so far as they are able to remember, the girl was born in the month of Chait of Bikrami calendar and in the year of 1950 of Gregorian calendar. In other words, subject to the extent to which their memory could help them, they think she was born in 1950 some time at the end of March or beginning of April, 1950. If the age were given in the entry incorporated in birth register kept either in the office of the Civil Surgeon or maintained in the office of a Municipal Committee prepared in course of official business, the approach to the correctness of the date of birth would have been different and faith could be had in the correctness of the entry made therein. In the present case, the entry pertaining to the age of the girl has not been proved from any birth register but from a school register and the oral evidence in support of the date of birth as given in the school certificate cannot be relied upon with implicit faith, especially when doubt has been cast upon the correctness of that age by the medical evidence adduced in the case. Dr. Shanti Sachdeva has stated that the girl is fully developed and her age could be 20 years. On the basis of X-ray examination and the test of epiphyses, namely, the extent of fusion of joint bones in the limbs, the Radiologist has stated that the age of the girl could be about 18 years but below 19 years. The test of the age on the basis of fusion is a scientific test. The Radiologist has given the opinion that medial and lateral

epiphyses of humerus and head of radius had fused, epiphyses of lower ends of radius and ulna, epiphyses of lower end of femur and upper ends of tibia and fibula, epiphyses of tibia and fibula and epiphyses of head of numerous had fused with corresponding shafts. The complete fusion of the ends of these bones at the joint shows that the age of the girl was likely to be 18 and may be above it. The Radiologist has given the opinion that the age of the girl is about 18 and not above 19.

16. I feel inclined to accept the age of the girl given by the Radiologist to be 18 and not less than 18. as mentioned in the school certificate. Even on the basis of these two conflicting pieces of evidence, it could be held that the prosecution had not successfully established that the age of the girl was less than 18 and benefit of uncertainty as to the age of the girl being less than 18 should be given to the appellant.

17. For the forgoing reasons, I allow the appeal, set aside the conviction and sentence of the appellant and acquit him.