

(2012) 01 RAJ CK 0088

In the Rajasthan High Court

Case No : Criminal Appeal No's. 56 of 2009 with Criminal Appeal No. 849 of 2008 and Criminal Revision Petition No. 71 of 2009

State

APPELLANT

Vs

Sukhvinder Singh and Another

RESPONDENT

Date of Decision : 17-01-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 164
Penal Code, 1860 (IPC) — Section 120B, 363, 366, 376

Citation : (2012) 3 Crimes 398 : (2012) 4 RLW 2999

Hon'ble Judges : R.S. Chauhan, J

Bench : Single Bench

Advocate : R.S. Gill, for the Accused Person, for the Appellant; Anil Upadhyay, PP for the State and Mr. M.K. Garg, Advocate for the Complainant, for the Respondent

Final Decision : Dismissed

Judgement

R.S. Chauhan, J.—Aggrieved by, the judgment dated 18.11.2008 passed by the additional Sessions Judge (Fast Track) No. 3. Hanumangarh, whereby the learned Judge has acquitted Sukhvinder Singh @ Sukha for offence under Sections 366, 376 and 120-B IPC and has acquitted Gopi Ram for offences under Sections 363, 366, 376 and 120-B IPC, a criminal appeal, a criminal leave to appeal and a criminal revision petition have been filed before this Court. Sukhvinder Singh has challenged his conviction u/s 363 IPC, the State has challenged the acquittal by the learned Judge as aforementioned of both Sukhvinder Singh and Gopi Ram; the complainant, Nazira, in her revision petition, has challenged the acquittals as aforementioned. Since the criminal leave to appeal, the criminal appeal and the revision petition arise out of the same impugned judgment, they are being decided by this common judgment.

2. With the consent of the counsel for the parties, namely Mr. O.P. Singharia the learned Public Prosecutor for the State, Mr. R.S. Gill the learned counsel for the

accused persons, and Mr. M.K. Garg, the Seamed counsel for Smt. Nazira the complainant, all the three cases are being decided by this court at this juncture itself.

3. Shortly, the facts of the case are that on 05.02.2008. Smt. Nazira (P.W.7) filed a written report (Ex.P/13) wherein she claimed that her daughter. Seena Begum, aged about thirteen years, is studying in eighth class at the Government School situated at Kharachak. She further claimed that around 10:00 AM, her daughter had left for her school. Around 11:00 AM, her nephew. Akbar informed her max Seena Begum has not reached the school He further informed her that Sukhvinder Singh had taken away her daughter in a white coloured car. Upon this information she had gone to her daughter"s school. The PTI teacher told her that her daughter had not come to the School. She further alleged that Sukhvinder Singh has enticed her daughter and taken away her. On the basis of this, a formal FIR. FIR No. 18/2008 (Ex P/4) was chalked out for offences under Sections 363. 366 IPC However after Seena Begum was recovered, the of fence under Sections 376 and 120B IPC were added.

4. A charge sheet was submitted against Sukhvinder Singh for offences under Sections 363, 366 and 376 IPC and against Gopi Ram for offences under Sections 363, 366 and 120B IPC. In order to buttress its case, the prosecution examined fifteen witnesses, and submitted about nineteen documents. In turn, the defence examined two witnesses, and submitted five documents. After going through the oral and documentary evidence, the learned Judge acquitted Gopiram for the aforementioned offences. The learned Judge also acquitted Sukhvinder Singh for offences under Sections 366, 376 and 120-B IPC. But, convicted Sukhvinder Singh for offence u/s 363 IPC and sentenced him to three years of simple imprisonment and imposed a fine of Rs. 3,000/- and directed him to undergo a further sentence of three months in default thereof. Hence, these three cases filed by the parties.

5. Mr. O.P. Singharia, the learned Public Prosecutor, Mr. M.K. Garg, the learned counsel for the complainant, have vehemently contended that the learned Judge has misreading the evidence readily available on record. Drawing the attention of this court, they have vehemently argued that the learned Judge has committed an illegality in observing that Seena Begum (P.W. 10) in her statement given u/s 164 Cr.P.C. did not mention the fact that she was ravished by Sukhvinder Singh. According to both the counsel, the statement of the prosecutrix u/s 164 Cr.P.C. is available as Exhibit P/15. According to the counsel, in the said statement, she had clearly stated that Sukhvinder Singh had not only ravished her in Bikaner, and in Jodhpur but had also ravished her in Udaipur and other places. Therefore, the learned Judge could not have ignored her statements recorded u/s 164 Cr.P.C. in a cavalier manner. Secondly, on the one hand, the learned Judge has concluded that Seena Begum (P.W. 10) was minor at the time of the incident. Yet, on the other hand, the learned Judge has acquitted Sukhvinder Singh of offences under Sections 366, 376 and 120B IPC Thirdly, as far as Gopi Ram is

concerned there was sufficient evidence available against him too. The learned Judge has acquitted him for offences under Sections 366, 376 and 120B IPC. Therefore, the impugned judgment deserves to be interfered with.

6. On the other hand, Mr. R.S. Gill, the learned counsel for Mr. Sukhvinder Singh and Gopi Ram, has vehemently contended that although the learned Judge may have overlooked the statement given by Seena Begum, the prosecutrix, u/s 164 Cr.P.C. but nonetheless, the learned Judge has meticulously examined her testimony in order to appreciate its veracity. It is only after critically analyzing the evidence that the learned Judge has correctly concluded that since Seena Begum had accompanied Sukhvinder Singh all over Rajasthan and in parts of Punjab without any whisper of protest, it cannot be said that she had been taken for the purpose of marrying her, or that she was ravished by Sukhvinder Singh.

7. However, simultaneously the learned counsel, while contesting against Sukhvinder Singh's conviction, u/s 363 IPC has raised the following contentions: firstly, the learned Judge has erred in concluding that Seena Begum (P.W. 10) was a minor. For, both the parents, namely Nazira (P.W. 7) and Liyakat Ali (P.W. 8) were not in a position to give the exact date of birth of Seena Begum. Moreover, the school certificate submitted before the learned trial Court could not be proved. For even according to the learned Judge, Sahabram (P.W. 14) could not reveal before the Court as to on what basis Seena Begum's date of birth is shown as 13.06.1996 in the school record. Therefore, in the absence of cogent evidence, oral and documentary, the only evidence worth accepting was the medical evidence. According to the Medical Report (Ex-P/6) and according to the testimony of Dr. Manoj Sharma (P.W. 3). Seena Begum was between the ages of fifteen years to seventeen years. According to the learned counsel, in case there are two interpretations of the same evidence, then the evidence in favour of the accused should have been accepted. Therefore, the learned Judge should have accepted her age to be seventeen years rather than fifteen years. Moreover, relying upon the case of S. Varadarajan Vs. State of Madras, the learned counsel has contended that since Seena Begum was seventeen years, she was mature enough to know the nature of her act. The learned counsel has brought the attention of this Court towards an application filed by Seena Begum (Ex.D/4) before the learned trial court on 19.02.2008. According to the said application, Seena Begum had alleged that her parents were about to sell her off to a fifty years old man. After hearing their conversation, she decided to leave the house. Therefore, on 05.02.2008 pretending to go to school, she left the house. According to the learned counsel, although the learned Judge has not believed the testimony, but nonetheless according to the order-sheets of the trial Court (Ex.D/6), even before the learned trial court, Seena Begum wanted the trial Court to ensure that her parents would not marry her against her wishes. According to the learned counsel, considering the fact that Seena Begum had expressed her anxiety before the teamed trial court that she is likely to be married against her wishes by her parents, this fact clearly points to the same anxiety expressed by her in Ex.D/4. Considering these facts and relying upon the

judgment in the case of S. Varadarajan (Supra), the learned counsel has strenuously contended that Sukhvinder Singh should not be convicted and sentenced for offence u/s 363 IPC.

8. As far as Gopi Ram is concerned, the learned counsel has contended that none of the statements of Seena Begum involved Gopi Ram as an accused. Therefore, the learned Judge was certainly justified in acquitting Gopi Ram for the aforementioned offences.

9. Heard the learned counsel for the parties, perused the record and examined the impugned judgment.

10. Needless to say, the entire evidence produced by the prosecution and the defence has to be appreciated in a holistic manner. While appreciating the testimony of the prosecutrix, one has to test her testimony on the same touchstone as the testimony of any other witnesses. Moreover, although the learned trial Court may have misappreciated a given fact, but its conclusion may still be legally valid. The appellate Court is not concerned with the reason given by the trial court; most importantly, it is concerned with the conclusion drawn by the trial Court. A bare perusal of the testimonies of Smt. Nazira (P.W. 7) and of Liyakat Ali (P.W. 8) clearly reveal that neither of the parents could tell the trial Court about Seena Begum's exact date of birth. Moreover, Sahabram (P.W. 14) could not tell the Court as to on what basis, the date of birth of prosecutrix as 13.06.1996 has been recorded. Obviously, when the parents are unaware of the exact date of birth, the said date of birth could not be recorded on their statement. Moreover, the record of the school where Seena was first admitted has not been produced before the learned trial court. Thus, merely because it is claimed that date of birth of Seena Begum is 13.06.1996, it cannot be accepted as a gospel truth. Hence, the only evidence which was available before the learned trial court with regard to the age of Seena Begum was the medical evidence. According to Dr. Manoj Sharma (P.W. 3) and according to the medical evidence, Seena Begum was fifteen to seventeen years on the date of the occurrence. It is, indeed trite to state that if there are two interpretations of the evidence, the interpretation in favour of the accused has to be accepted ipso facto by the Courts. Therefore, Seena Begum, should be taken to be seventeen years on the date of the incident. Hence, she was major enough to give consent for sexual intercourse.

11. According to Seena Begum (P.W. 10) on 05.02.2008, around 9:45 AM she had left for her school. On the way of the school, she met Sukhvinder Singh. He told her that he is willing to buy cloths for her. Therefore, she sat in the white coloured car. According to her, she was taken to place called Kachiya. When she asked him as to why he had brought her to Kachiya, he told her that in case she raises hue and cry, he would kill her. Subsequently, he took her to Manaksar by bus. From Manaksar, they went to Bikaner. In Bikaner, they stayed in Anand Hotel where she was allegedly ravished by him. Next day, from Bikaner they went to Jodhpur. They stayed at Priya Hotel. They stayed there for six to seven

days, where she again claims that she was ravished. From Jodhpur they went to Udaipur. From Udaipur they went to Ganganagar. From Ganganagar they went to Kartarpur, in Punjab. From Kartarpur to Anandpur and from Anandpur, in Punjab, back to Hanumangarh in Rajasthan. From Hanumangarh, he took her to a Court in Pilibanga. At Pilibanga, she met her parents. She went back to her parent's home. She told them about the entire incident.

12. In her cross-examination, she has claimed that when she boarded the bus for Bikaner she had become unconscious as Sukhvinder Singh had given her something to eat. She further claims that the distance between the hotel and the bus-stand is quite a long. She further admitted that both in the bus, and on the road leading to the hotel, there were large number of people whom she had met. Considering her testimony especially the fact that she had travelled with Sukhvinder Singh all over Rajasthan and in parts of Punjab, considering the fact that during the entire period of travelling with him, she neither raised any hue and cry, nor tried to run away from her clutches, the learned Judge has concluded that it is more a case of elopement than a case of rape. As mentioned above, Seena Begum was seventeen years old, thus she was certainly in a position to give her consent for sexual intercourse.

13. In the case of S. Varadarajan (supra), as far back as 1965, the Hon'ble Supreme Court has clearly opined that girls tend to mature too early these days. The said observation is more pertinent today, than it was about six decades back. Therefore, the prosecutrix, who is on the verge of becoming a major, would certainly realize what is good or what is bad for her. Moreover, even before the learned trial Court, Seena Begum had expressed her anxiety that her parents are likely to marry her off against her wishes. The fact that the anxiety existed when she appeared before the trial court and gives credence to her statement made in the application (Ex.D/5) filed by her, where she had narrated the fact that her parents were trying to sell her off to an elderly person of fifty years. Thus, it seems that in order to escape from a fifty years old man, when she herself was a young girl of seventeen years, she may have left the house of her own. In these circumstances, the learned Judge was not justified in convicting Sukhvinder Singh for offence u/s 363 IPC.

14. Considering the fact that Seena Begum had travelled with Sukhvinder Singh without protest, without any attempt to escape from his clutches, it seems that it is a case of elopement rather than rape. Hence, the learned Judge was certainly justified in acquitting Sukhvinder Singh for offences under Sections 366, 376 and 120B IPC.

15. As far as Gopi Ram is concerned, the learned Judge has given cogent reasons for acquitting him. For, according to the learned Judge, Gopi Ram has been roped in this case only on the statement made by Najmuddin (P.W. 11). According to Najmuddin (P.W. 11) Gopi Ram had made an extra-judicial confession to him, wherein he had claimed that Sukhvinder Singh and he had taken his niece, Seena Begum, in a car. However, the learned Judge found the extra-judicial

confession to be unbelievable. For, Najmuddin (P.W. 11) happens to be the real uncle of Seena Begum. Thus, it is very unlikely that Gopi Ram had confided to a relative of the prosecutrix. Needless to say law presumes that an extra-judicial confession is made to a person in whom the offender would have implicit faith. There is nothing on record to show that Gopi Ram would have faith in Najmuddin (P.W. 11), especially when he happens to be the prosecutrix's uncle. Secondly, the learned Judge has noticed the fact that Seena Begum did not make any mention about Gopi Ram as a culprit in this case. Lastly, Gopi Ram has neither been named in the FIR, nor has been identified by Seena Begum. Moreover, Akbar Ali (P.W. 9) states that Seena Begum had gone with Sukhvinder Singh. However, he does not state that Gopi Ram was driving the car. Since the learned Judge has given cogent reasons for acquitting Gopi Ram for the aforementioned offences, this Court does not find any illegality or perversity in this particular part of the judgment.

16. However, as the learned Judge has failed to appreciate in proper perspective as far as Sukhvinder Singh is concerned and has convicted him for offence u/s 363 IPC, this court quashes and sets aside his conviction u/s 363 IPC.

17. In the result, the criminal leave to appeal filed by the State and the revision petition filed by Smt. Nazira are devoid of any merit; the same are, hereby, dismissed. The appeal filed by Sukhvinder Singh @ Sukha is, hereby, allowed. Since he is on bail, his bail bonds need not be forfeited.