
(2009) 08 P&H CK 0048

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 394-MA of 2003

State of Haryana

APPELLANT

Vs

Shashi Kant alias Bam Bam alias Lambu

RESPONDENT

Date of Decision : 24-08-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 378(3)
Penal Code, 1860 (IPC) — Section 363

Citation : (2010) 1 RCR(Criminal) 338

Hon'ble Judges : Nawab Singh, J;K.S. Garewal, J

Bench : Division Bench

Advocate : Mrs. Navin Malik, Addl. AG, for the Appellant; Harkesh Manuja, for the Respondent

Final Decision : Dismissed

Judgement

Nawab Singh, J.—By this application, u/s 378(3) of Code of Criminal Procedure, the State of Haryana has sought leave to appeal against the judgement dated July 4th, 2003, passed by Additional Sessions Judge, Panipat, whereby, respondent was acquitted in case bearing First Information Report No. 376 dated November 17th, 2001 under Sections 363, 366-A and 376 of Indian Penal Code, Police Station Chandi Bagh, Panipat.

2. Prosecutrix was missing from her house since November 11th, 2001. A search was made but no clue was found about her whereabouts. Her mother Smt. Gogi-complainant suspected that she had been enticed away by the respondent in order to marry her. She reported the matter to the Police on November 17th, 2001. First Information Report was recorded. On November 23rd, 2001 accused was intercepted in the company of prosecutrix at Transport Nagar, Delhi. Both the accused and the prosecutrix were medically examined. On completion of the investigation and other formalities, the accused was sent up for trial.

3. Prosecutrix appeared as PW-1 and deposed that accused-respondent was the tenant of her parents. He was a rickshaw puller at Panipat. On November 11th,

2001 at about 7.30 PM respondent came to her house and asked her to accompany him but she refused to oblige him. Her brother Sunil rebuked him. The respondent went away. At 9.30 AM, respondent again came to her house. She was all alone. He induced her that he would take her out for fun and would serve her snacks. She accompanied him. Both reached HUDA park, Panipat. The respondent committed sexual intercourse with her in the park on a bench without her consent. She resisted but could not succeed. From, HUDA park, Panipat, he took her to his village Siwah. From Siwah he took her to Delhi by bus. From Delhi, he took her to Bihar by train. In Bihar, she was kept by the respondent at his aunt's house. There also, she was raped. From Bihar, respondent brought her to Delhi where she was intercepted with him on November 23rd, 2001.

4. From the evidence adduced three questions arise : (i) what was the age of the prosecutrix on the date of occurrence ? (ii) whether the prosecutrix accompanied the accused on her own on November 11th, 2001 or was enticed away ? (iii) whether during the period November 11th, 2001 to November 23rd, 2001 the prosecutrix had the consensual sexual intercourse with the accused or not ?

5. As regards the age of the prosecutrix on the date of occurrence. The only evidence available on record as to age of the prosecutrix is in the form of radiological examination whereby the bony age of the prosecutrix has been found to be between 14 1/2 to 15 1/2 years as on the date of her examination, that is, November 23rd, 2001.

6. It is well settled that medical evidence in the form of ossification test as to determination of age is not conclusive. Besides, there can be an error of plus/minus of two years on either side. Therefore, on the basis of ossification test, the age of the prosecutrix could be between 16 1/2 and 17 1/2 years on the date of alleged first occurrence.

7. The prosecutrix was known to the accused. He was the tenant of the prosecutrix. He had the guts to ask the prosecutrix to accompany him in the presence of her brother which undoubtedly shows that the respondent had intimate relations. That is why, even after reprimanding by the brother of the prosecutrix, he again came to the prosecutrix's house at 9.30 PM. It is not the case of the prosecutrix that she was forcibly taken away by the respondent from her house nor there is evidence of any threat. Rather, she had gone on her own with the respondent as the sequence of events suggests. It is also not possible for a person to commit sexual intercourse in a park without consent. The story does not rest here. Prosecutrix went to the house of the respondent in village Siwah and from there, she went to Bihar. On the way, she never made any grievance to any one. Both of them moved about freely, in public, by public transport before being intercepted at Delhi. It also appears unbelievable that a young girl is missing from the house and the parents do not lodge the report with the Police for six days particularly when there was suspicion that prosecutrix was allured by the respondent. No explanation worth the name was given by the prosecution. This factor too creates doubt on the veracity of the story of the

prosecution. In this view of the matter, the conduct of the prosecutrix voluminously speaks for itself that she accompanied the respondent on her own and had consensual intercourse with him.

8. Prosecutrix was of an age which made her competent to consent. She was travelling to distance places and remained with accused for twelve days. All this invariably shows that she had eloped with the accused of her own free will and if sexual intercourse took place it was with her consent.

9. The judgement of the trial Court is neither illegal nor perverse. Thus, leave to appeal is declined.