

Before Harnaresh Singh Gill, J.

KULJEET @ BABLU—Appellant

versus

STATE OF HARYANA—Respondent

CRA-S No.1713-SB of 2013

May 18, 2019

Indian Penal Code, 1860—Ss. 363 and 366—Appellant alleged to have enticed complainant's minor daughter with an intention to marry her—Appellant arrested and prosecutrix recovered—Appellant tried and convicted under sections 363 and 366 IPC—Appeal filed—Allowed—Held, refusal of prosecutrix from getting herself medico-legally examined casts doubt on the veracity of her version—School leaving certificate not got verified from school authorities—Authorised person from school not examined—Appellant acquitted.

Held that, a perusal of the statement of the prosecutrix under Section 164 Cr.P.C. recorded before the Judicial Magistrate 1st Class, Panipat on 8.7.2011 (Ex.P.7), would show that the prosecutrix had stated that the accused-appellant had not done any bad act with her. Yet further in the said statement, she stated that she had been enticed by the accused on the pretext of marrying her. Nothing more that these two things had been stated by her in the said statement. However, while stepping into the witness box as PW2, this witness stated that the accused had tried to outrage her modesty. Thus, the later version being totally contradictory to the one recorded before the Magistrate under Section 164 Cr.P.C., it can safely be said that while making her deposition in her examination-in-chief, the prosecutrix had made improvements in her statement.....thus, even the refusal of the prosecutrix from getting herself medico legally examined, casts a doubt on the veracity of her version.

(Para 14)

Further held that, so far as the school leaving certificate is concerned, the prosecution had not verified the same from the school authorities at any stage nor any authorized person from the school had stepped into the witness box to prove authenticity of the said certificate.

(Para 15)

Mohan Lal Singla, Advocate
for the appellant.

R.K. Singla, A.A.G., Haryana.

HARNARESH SINGH GILL, J.

(1) This appeal is directed against the judgment dated 28.7.2012 passed by the learned Additional Sessions Judge, Panipat, whereby the appellant was convicted under Sections 363 and 366 IPC and the order of sentence dated 31.7.2012, vide which the accused-appellant was sentenced to undergo RI for seven years under Section 366 IPC and to pay a fine of Rs.10,000/- and, in default of payment of fine, to further undergo RI for one year; and to undergo RI for three years under Section 363 IPC and to pay a fine of Rs.5,000/- and, in default of payment of fine, to further undergo RI for six months.

(2) As per the case set up by the prosecution, complainant Madan Lal made an application on 6.7.2011 to the Police Post Qilla, Panipat to the effect that he was having two sons and four daughters. Out of them, the prosecutrix aged 15 years, was his fourth number child. She was employed in a pickle factory at Sector 29, where accused-appellant Bablu was also employed. On 2.7.2011, the prosecutrix had gone to a flour mill in Ward No. 10 for getting floured the wheat, but she did not return. It was alleged that his daughter had been enticed by said Bablu @ Balu, with an intention to marry her. As the complainant could not locate his daughter, he had requested the police to recover her.

(3) Upon registration of the case, investigation was conducted. Accused was arrested and prosecutrix was recovered, who was later on handed over to her family members. Accused-appellant was produced before the Court. After completion of necessary formalities, final report under Section 173 Cr.P.C. was filed before the Court.

(4) Finding a prima-facie case, accused-petitioner was charged under Sections 363 and 366 IPC to which he pleaded not guilty and claimed trial.

(5) In order to prove its case, the prosecution had examined as many as 8 witnesses, including complainant Madan Lal as PW1 and Prosecutrix as PW2, besides tendering documentary evidence in the form of Exhibits P1 to P15.

(6) There are two material witnesses in this case i.e. PW1-

Mohan Lal and PW2-Prosectrix. In his testimony, PW1 stated that the accused had enticed his daughter on the pretext of marrying her and she was recovered from the possession of accused from village Sisana (Baghpat).

(7) PW2-Prosectrix in her testimony deposed that on 2.7.2011, she had gone to flour mill situated in their colony, for flouring the wheat. Accused-appellant, who was known to her put a cloth on her mouth, as a result whereof she became unconscious. When she regained consciousness, she had found herself in Baghpat (U.P.), where the accused had tried to outrage her modesty. When she raised hue and cry, while putting cloth on her mouth, the accused took her to the fields, whereafter she was taken to the Courts at Baghpat. However, some Advocates present there had told him that the prosecutrix was a minor. Thereafter, she was taken to Panipat. Police had taken her to Civil Hospital, Panipat, but the prosecutrix refused from getting herself medico legally examined. She proved on record her statement under Section 164 Cr.P.C. (Ex.P7) recorded before the Illaqa Magistrate.

(8) PW3-Retired Assistant Sub Inspector Dharam Singh, is the Investigating Officer. PW4, PW6 and PW7 are the formal witnesses. PW5-Dr. Vikas Moudgil, Medical Officer, General Hospital, Panipat, proved on record carbon copy of the medico legal report of the accused (Ex.P.10). PW8-Sunil Jindal, Judicial Magistrate, Ist Class, Panipat had proved on record the statement of the prosecutrix under Section 164 Cr.P.C. (Ex.P.7).

(9) Statement of applicant-accused under Section 313 was recorded. Accused denied the entire allegations of the prosecution and pleaded false implication. He, however, did not lead any evidence in defence.

(10) The learned trial Court, on the basis of evidence led, found that even if the prosecutrix had given her consent to go with the accused, yet she being less than 16 years of age, her consent was immaterial. It was further found that though the prosecutrix had made improvements in her statements, yet the factum of her being taken away by the accused for the purposes of marrying her, stood proved on record. Thus, as stated above, vide the impugned judgment and order, the appellant was convicted under Section 363 and 366 IPC and sentenced accordingly, as noticed above.

(11) Learned counsel appearing for the appellant, while referring to the testimonies of PW1-Madan Lal and PW2- prosecutrix, contends

that there are material contradictions in the statements of the witnesses. Apart from contradicting their own statements, the said witnesses had contradicted each other as regards the manner of occurrence, the place of recovery of the prosecutrix as also her age. Whereas PW1-Madan Lal stated that his daughter had been enticed by the accused and taken to village Sisana, Baghpat, PW2 (prosecutrix) in her statement stated that she had been taken by the accused to the District Courts Baghpat and from there she was taken to Panipat. Yet further, the prosecutrix in her testimony had stated that no bad acts were done with her by the accused-appellant. Still further, the prosecutrix refused from getting herself medico legally examined when taken to Civil Hospital, Sonapat.

(12) It is further argued that there is delay of 4 days in registration of the FIR and such delay had been used for deliberation and consultations so as to falsely implicate the accused-appellant in the present case. It is totally unfathomable as to why Haryana Police while effecting the alleged recovery of the prosecutrix from outside its jurisdiction, would not inform the Baghpat (U.P.) Police and/or inform them about the factum of her being in the illegal custody of the accused-appellant and further effecting her recovery from Baghpat. It is further argued that it could not be proved on record that the prosecutrix had been abducted in an intoxicated condition.

(13) After hearing learned counsel for the appellant and going through the evidence on record, I find that there is merit in the present appeal and the same deserves to be allowed.

(14) A perusal of the statement of the prosecutrix under Section 164 Cr.P.C. recorded before the Judicial Magistrate Ist Class, Panipat on 8.7.2011 (Ex.P.7), would show that the prosecutrix had stated that the accused-appellant had not done any bad act with her. Yet further in the said statement, she stated that she had been enticed by the accused on the pretext of marrying her. Nothing more that these two things had been stated by her in the said statement. However, while stepping into the witness box as PW2, this witness stated that the accused had tried to outrage her modesty. Thus, the later version being totally contradictory to the one recorded before the Magistrate under Section 164 Cr.P.C., it can safely be said that while making her deposition in her examination-in-chief, the prosecutrix had made improvements in her statement. Still further, the prosecutrix refused from getting herself medico legally examined, when taken by the police to the Civil Hospital, Sonapat. Had there been any medico legal

examination of the prosecutrix, the same would have ascertained any kind of injury caused by way of the alleged force used by the accused, while allegedly outraging her modesty. Thus, even the refusal of the prosecutrix from getting herself medico legally examined, casts a doubt on the veracity of her version.

(15) So far as the school leaving certificate is concerned, the prosecution had not verified the same from the school authorities at any stage nor any authorized person from the school had stepped into the witness box to prove authenticity of the said certificate.

(16) Apart from the above, this Court finds that there are material contradictions in the statements of PW1 –Madan Lal and PW2-prosecutrix, as regards the exact place of recovery of the prosecutrix. Madan Lal, complainant, while appearing as PW1 stated in his cross-examination that his daughter was recovered from the house of the appellant-accused. However, this witness did not state anything about as to who had informed him about the abduction of his daughter. As per the statement of the complainant, on the basis of which the FIR had been registered, he had learnt on the same very day i.e. 2.7.2011 that the accused had also been missing from the factory where he used to work and thus, he stated that the accused had enticed his daughter. But the FIR had been got lodged after delay of 5 days i.e. on 6.7.2011.

(17) Possibility of the said period being utilized for deliberations and consultations purposes, cannot be ruled out, especially when in her statement under Section 164 Cr.P.C., the prosecutrix clearly stated that the accused had not done any bad act with her.

(18) Thus, in my opinion, it cannot be said that the prosecution had been able to prove its case against the accused beyond the shadow of reasonable doubt. The prosecution version being highly doubtful, the benefit thereof, must be given to the accused.

(19) In view of the above, the impugned judgment of conviction and order of sentence passed by the learned trial Court, are set aside. The appellant is acquitted of the charges framed against him under Sections 366 and 363 IPC.

(20) Appeal is allowed in the above terms.
