

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

CRA-S-639-SB-2009(O&M)

Date of Order:29.09.2018

Amar

..Appellant

Versus

State of Punjab

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Ms. Shweta Nahata, Advocate,  
for the appellant (Legal Aid Counsel)

Mr. S.P.S.Tina, Addl.A.G.,Punjab.

**ANIL KSHETARPAL, J (Oral)**

The appellant-accused is in the appeal against the judgment of conviction and order of sentence passed under Section 366A and 376 of the Indian Penal Code, sentenced to undergo rigorous imprisonment for a period of 7 years and to pay a fine of Rs.500/- and in default of payment of fine, accused shall further undergo rigorous imprisonment for a period of 1½ months.

The facts as noticed by the learned Additional Sessions Judge (Adhoc), Jalandhar, are extracted as under:-

*“2. In brief, the prosecution case is that present case FIR has been registered on the statement of Abdul Hamid, Complainant, in which he has stated that he is resident of Kapil Vastu Polcie Station Tolime, District Tomima Nepal and at presently residing as tenant near Kukki Dhabha, Park Avenue, District Jalandhar. He is having seven children out of which four are daughters and three are sons. They are working as labourer. His daughter namely Mutki is aged 16 years and is working as domestic helper in the house of one Ajay Arora, House No.15, Park Avenue, Jalandhar. Accused Amar is also living in their neighbour. On 4.11.2005, at about 8 A.M. his daughter went to the house of Ajay*

*Arora for work but did not return back. Then around 12 noon he reached the siad house and on inquiry about his daughter, he came to know that his daughter Mutki has left from there at 10.00 AM. He kept searching for his daughter. Complainant has further stated that Amar had enticed his daughter and after kidnapping her. He has kept her in some undisclosed place. His friend Mohit has seen accused Amar taking his daughter in a rickshaw towards the side of Bus Stand. Till date he is searching for his daughter but could not find her.*

*3. After that polcie came into action and after registration of the FIR, the raids were conducted on 13.01.2006. Amar and said girl Mutki were arrested. Both were medically examined. Statements of witnesses were recorded. On the completion of the investigation, the challan was presented in the court.”*

In order to prove its case, prosecution examined the following witnesses:-

“PW1 C. Amarjit Singh,

PW2 C. Sukhbir Singh,

PW3 Complainant Abdul Hamid,

PW4 Mutki, prosecutrix

PW5 Dr. Damanjit Kaur,

PW6 H.C. Kamaljit Singh.

As the prosecution failed to conclude its evidence, it was closed by order.”

Accused was examined under Section 313 Cr.P.C., wherein accused-appellant pleaded that he has been falsely implicated. Accused has taken a plea that prosecutrix is his legally wedded wife and due to non-payment of balance amount of “Mehtar”, father of the prosecutrix has falsely implicated him in this case.

In defence, Shiv Ram was examined as DW1.

Learned trial court convicted the appellant and passed an order of sentence.

This court has heard learned counsel for the parties at length and with their

able assistance gone through the judgment passed by the learned Additional Sessions Judge, Jalandhar as well as the record.

There are certain factors, which need to be highlighted.

- (i) The prosecutrix alleges that she knew the accused for 2 months. She was offered by the accused to accompany him as he had sufficient money to enjoy. Thereafter she went with the accused in a rickshaw which was being pulled by the appellant-accused. Both went to bus stand from where they boarded a bus and travelled upto Sirhind, which is between 80 Kms to 100 Kms. From Sirhind, both travelled by train to State of Bihar and went to the village from where the accused belong. It is also noticeable that she stayed in the village for a period of 1½ months and brother and sisters of the appellant-accused were also staying in that very house.
- (ii) Still further, both the accused as well as prosecutrix thereafter travelled back from Bihar to Jalandhar and apprehended by the police on 13.01.2006. She did not make any complaint to any co-passenger either while going from Jalandhar to Sirhind or Sirhind to Bihar or while coming back from Bihar to Jalandhar. They travelled in a public transport.
- (iii) Statement of the prosecutrix was sought to be recorded before the learned Judicial Magistrate by the prosecution on 13.01.2006 but she refused to give any statement.
- (iv) No substantive evidence has been produced on record to prove that the prosecutrix was less than 16 years of age but for oral statement of father and prosecutrix.
- (v) As per medical report, Dr. Damanjit Kaur, who has appeared at PW5 has stated that no external mark of injury on her body was present. No bleeding or discharge was noticed at the time of examination. Carvix was normal. Uterus and adenexa was normal.

Her L.M.P. was 21.1.2005.

(vi) There is a delay of 10 days in lodging the FIR.

Learned trial court has convicted the appellant-accused only on the ground that counsel representing the accused did not in cross-examination or give suggestion to the prosecutrix or her father that the age of the prosecutrix was more than 16 years.

It is well settled that the prosecution has to prove its case beyond any reasonable doubt. Facts as noticed clearly prove that the accused and prosecutrix know each other well and had gone on their own to village situated in Bihar. Therefore, there is no evidence to prove that she was forcibly taken away. Rather her statement proves that once the accused-appellant told her that he has enough money and they can enjoy, she went along with the accused voluntarily.

Now the only ground on which the appellant could be convicted is when prosecution is able to prove that the age of the prosecutrix was less than 16 years. As noticed above, apart from oral evidence of the father and prosecutrix while appearing in the court, no documentary or medical evidence has been produced. Neither any ossification test was done nor any other effort was made by the prosecution to prove the age of the prosecutrix below 16 years at the time of incident.

Further it is the case of the defence that in fact prosecutrix had married with the appellant and out of total "Mehar" of Rs.20,000/-, Rs.12,000/- had been paid but the remaining amount of Rs.8,000/- as demanded by the father of the prosecutrix could not be paid which resulted into dispute between the parties. Father of the appellant has appeared and deposed about this fact. Judicial Magistrate before whom police had moved an application for recording the statement of the prosecutrix has specifically recorded that she has refused to make statement on the ground that the police is pressurizing her.

After critical examination of the entire evidence available on the file, this court is of the opinion that the prosecution has failed to prove its case beyond reasonable doubt, and reason for conviction by learned Additional Sessions Judge that no suggestion has been given to the prosecutrix or her father with regard to the age is erroneous. No doubt, this is one of the circumstance to be kept in mind while evaluating the evidence.

However, in the considered opinion of this court, failure of the counsel to cross-examine

a particular witness cannot be made solitary basis to record judgment of conviction.

In view of the aforesaid, the appeal is allowed. The judgment passed by the learned trial court is set aside.

Accused is already on bail. Bail bonds shall stand discharged.

September 29, 2018  
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(ANIL KSHETARPAL)  
(JUDGE)

Whether speaking/reasoned	YES/NO
Whether Reportable	YES/NO