

Charanjit Vs. State of Punjab

Charanjit Vs. State of Punjab

SooperKanoon Citation : sooperkanoon.com/627464

Court : Punjab and Haryana

Decided On : Apr-15-2009

Reported in : 2009CriLJ2949

Judge : Sham Sunder, J.

Appellant : Charanjit

Respondent : State of Punjab

Disposition : Appeal dismissed

Judgement :

Sham Sunder, J.

1. This appeal is directed against the judgment of conviction, and the order of sentence dated 4-8-1994, rendered by the Court of Additional Sessions Judge, Kapurthala, vide which it convicted Charanjit son of Amar Nath, accused, (now appellant), as under:

-----Names of the The
offence for Sentence awardedaccused (now which convictionappellant) was
recorded -----Charanjit
Under Section 363. I.P.C. Rigorous imprisonment for twoyears. Fine of Rs. 500/-.
Indefault of payment of fine toundergo rigorous imprisonmentfor one

month.-----Charanjit
Under Section 376. I.P.C. Rigorous imprisonment for four years. Fine of Rs. 500/-.
In default of payment of fine to undergo rigorous imprisonment for 1
month.-----

The substantive sentences of the accused were ordered to run concurrently. However, Surinder Kumar alias Chhinda accused was acquitted of the charge framed against him.

2. The facts, in brief, are that, on the night intervening 4/5-9-1993, there was a religious function (Jagrata) in Mohalla Mehtabgarh, arranged by Chintpurni Mata Sewa Dal Committee, Kapurthala. At about 9.30 p.m. Thakar Dass, along with his wife Gurmit Kaur, son Amarjit Singh and daughter, the prosecutrix, (the name is not being mentioned in view of the pronouncement of the Apex Court), went to attend that function. The prosecutrix, at that time, was aged about 13 years. On the next morning, at about 7.00 a.m. when the religious function (Jagrata) was over, Thakar Dass, along with his other family members, except the prosecutrix, came back to their house. The prosecutrix was found missing. Thakar Dass and his other family members tried to find out the prosecutrix from the neighbourhood, but she was not available. Thakar Dass, entertained a firm belief in his mind, that the prosecutrix was kidnapped by Charanjit, accused, who sometime earlier, was engaged by him, to work at his kabaria shop. It was further stated that Charanjit, accused, earlier to the incident, used to visit his maternal uncle Surinder Kumar alias Chhinda, accused, in New Grain Market, Kapurthala, where he was working as Palledar. Statement Ex. PB on 11-9-1993, narrating the aforesaid facts, was made by Thakar Dass, complainant, before Balbir Singh, Assistant Sub-Inspector, on the basis whereof, the formal FIR Ex. PB/1 was registered.

2-A. During the course of investigation, the prosecutrix and Charanjit Singh were intercepted on 20-9-1993, at Bus Stand Kapurthala, when they were alighting from a bus. They were taken into custody. Later on, the prosecutrix was got medico-legally examined. The prosecutrix disclosed that she was sitting in the congregation of the Jagrata when accused Charanjit and Surinder Singh alias Chhinda, (since acquitted) were standing at some distance. Charanjit made

gestures to her and in response thereto, she went to them. Surinder Singh alias Chhinda (since acquitted) suggested charanjit, accused, to take her for the purpose of performing marriage and by doing so to teach a lesson to her father, who had removed him from his service. It was further stated that Charanjit, accused, took her to a place near new grain market, Kapurthala, where in a grove of Safaida trees, he committed rape with her. On the next day, she was taken to Jalandhar, where they stayed for a night. They came back to Kapurthala, and at a place, near Guru Nanak Stadium, she was again raped by Charanjit, accused. Thereafter, she was taken to Sultanpur Lodhi, Kartarpur, Ropar and other places. It was further stated by her, that at all these places, he (Charanjit) continued committing rape with her. She further stated that thereafter they came back to Kapurthala, where on 20-09-1993, they were intercepted. The statements of the witnesses were recorded. Surinder Kumar alias Chhinda, accused (since acquitted) was also arrested. After the completion of investigation, the accused were challaned.

3. On their appearance, in the Committing Court, the accused were supplied the copies of all the documents, relied upon by the prosecution. After the case was received by commitment, in the Court of Sessions, charge under Sections 120-B, 363 and 376 of the Indian Penal Code, was framed against the accused, to which they pleaded not guilty, and claimed judicial trial.

4. The prosecution, in support of its case, examined Dr. Anoop Kumar, Medical Officer, Civil Hospital, (P.W. 1), Thakar Dass, complainant, (P.W. 2), the prosecutrix, (P.W. 3), Sukhdev Chand, (P.W. 4), Prem Kumar, Assistant Sub-Inspector, (P.W. 5), Balbir Singh, Assistant Sub-Inspector, (P.W. 6), Dr. Mrs. Barinder Gill, Gynecologist, Civil Hospital, Kapurthala, (P.W. 7), and Pritam Kaur, Punjabi Teacher, Senior Secondary School Kapurthala, (P.W. 8). Thereafter, the Additional Public Prosecutor for the State, closed the prosecution evidence.

5. The statements of the accused, under Section 313, Cr. P.C. were recorded, and they were put all the incriminating circumstances, appearing against them, in the prosecution evidence. They pleaded false implication.

6. Charanjit, accused, in his statement under Section 313 of the Code of Criminal Procedure, stated that he was to get his salary, for the period, he worked with the father of the prosecutrix, which he was demanding, but he (Thakar Dass) refused to pay the same. He further stated that, on account of that grudge, father of the prosecutrix falsely involved him, in the instant case. The accused, however, did not produce any evidence, in their defence.

7. After hearing the Additional Public Prosecutor for the State, the Counsel for the accused, and, on going through the evidence, on record, the trial Court, convicted and sentenced Charanjit, accused (now appellant), as stated hereinbefore, but acquitted Surinder Kumar alias Chhinda, accused.

8. Feeling aggrieved, against the Judgment of conviction, and the order of sentence, rendered by the trial Court, the instant appeal, was filed by Charanjit, appellant.

9. I have heard the counsel for the parties, and have gone through the evidence and record of the case, carefully.

10. The counsel for the appellant, at the very outset, submitted that, the prosecution miserably failed to prove that the prosecutrix was below 16 years of age, at the time of the alleged occurrence. He further submitted that the trial Court was wrong, in placing reliance, on the statement of Pritam Kaur, Punjabi Teacher of Senior Secondary School, Kapurthala, (P.W. 8). wherein the prosecutrix studied, to come to the conclusion, that her date of birth was 20-1-1979. He further submitted that the school leaving certificate, could not be said to be a conclusive document, to determine the age of a person. The submission of the Counsel for the appellant, in this regard, does not appear to be correct. Pritam Kaur, Punjabi Teacher of Senior Secondary School, Kapurthala, (P.W. 8), stated that the prosecutrix daughter of Thakar Dass, resident of Kapurthala was admitted in the Government School on 10-4-1990 in 6th Class. It was further stated by her that she remained admitted in the school upto 20-4-1993 when she was studying in class 7th and her section was D. She further stated that, as per the record, the age of the prosecutrix was 20-1-1979. She proved the school leaving certificate Ex. PF, which was prepared by her, from the record, maintained by the school. During

the course of cross-examination, it was stated by her that 5th class certificate was produced, at the time of her admission in 6th Class, in their school. The statement of Pritam Kaur, Punjabi Teacher of Senior Secondary School, Kapurthala, (P.W. 8), was duly corroborated by the prosecutrix, who appeared as P.W. 3. Not only this, Thakar Dass, father of the prosecutrix, (P.W. 2), when appeared as his own witness on 3-3-1994, stated that the age of her daughter was 13 1/2 years. The school leaving certificate Ex. PF, wherein the date of birth of the prosecutrix was recorded as 20-1-1979 was duly corroborated from the statement of Thakar Dass, complainant, (P.W. 2). Since the date of birth, in the school leaving certificate, was recorded on the basis of 5th class certificate, which was produced by the guardian of the prosecutrix, it could not be said that there was no documentary proof for recording the said date of birth of the prosecutrix, in the school record. No challenge to the age of the prosecutrix, was made during the course of cross-examination of Thakar Dass, complainant, (P.W. 2). Under these circumstances, the prosecution was successful, in proving beyond a reasonable doubt, that the date of birth of the prosecutrix was 20-1 -1979. The occurrence in this case, took place, on the night intervening 4/5-9-1993. It means that the prosecutrix was 14 1/2 years at the time of occurrence. She was, thus, below 16 years of age, at the time of occurrence. The submission of the Counsel for the appellant, being without merit, must fail, and the same stands rejected.

11. It was next submitted by the counsel for the appellant, that the prosecutrix was never kidnapped by the accused, from the lawful guardianship of her parents. He further submitted that she accompanied the accused of her own, without any inducement or compulsion. He further submitted that since she left her house, of her own, without any inducement, or compulsion, on the part of the accused, she could not be said to have been taken out of the lawful guardianship of her parents, by the accused (now appellant). The submission of the Counsel for the appellant, in this regard, does not appear to be correct. The prosecutrix, when appeared as P.W. 3, in clear-cut terms, stated that when she was present, in the religious function (Jagrata) on the night intervening 4/5-9-1993, Charanjit accused along with Surinder Singh alias Chhinda, (since acquitted) called her to the place where they were standing. She further stated that she went there at 10.30 p.m. She further stated that Chhinda (since acquitted) suggested to Charanjit, accused, to

take her away for performing marriage. He also told Charanjit, accused, (now appellant) that in this way, that he would be able to take revenge, from her father, for removing him from service. She further stated that Charanjit, accused, took her to New Grain Market, Kapurthala, and to other places, where he committed rape with her. From the statement of the prosecutrix, who appeared, as P.W. 3, it was proved that, on the asking of the accused, she went to the place, where he (Charanjit) along with his co-accused (Chhinda, since acquitted) was standing. This clearly goes to show that Charanjit, accused, induced the prosecutrix to accompany him on the pretext of performing the marriage with her. It was not that she left the place of Jagrata, of her own, and accompanied the accused. Inducement may be of any type. She was below 18 years of age at the time of occurrence. Since she was taken by the accused, out of the lawful guardianship of her parents by giving her inducement, it could not be said that he did not commit any offence, punishable under Section 363 of the Indian Penal Code. The trial Court. was right, in coming to the conclusion that Charanjit, accused, committed the offence, punishable under Section 363 of the Indian Penal Code. The submission of the Counsel for the appellant, being without merit, must fail and the same stands rejected.

12. It was next submitted by the counsel for the appellant, that the prosecutrix was a consenting party. He further submitted that the prosecutrix admitted, in her statement, that she accompanied the accused, to a number of places, and he committed sexual intercourse with her. He further submitted that she did not raise alarm, at any place, so as to attract the attention of the people that she had been kidnapped and the accused committed rape with her. He further submitted that the mere fact that the prosecutrix remained with the accused for a number of days, when ultimately, she was recovered, it could be very well said that she was a consenting party. The submission of the counsel for the appellant, in this regard, does not appear to be correct. As stated above, the prosecutrix was below 16 years of age, at the time of occurrence. Her consent or no consent, was hardly of any consequence. The prosecutrix while appearing in the witness box, as P.W. 3, in clear cut terms stated that the sexual intercourse was committed with her by the accused (now appellant) without her consent. In this view of the matter, the submission of the counsel for the appellant, being without merit, must fail and the

same stands rejected.

13. No other point, was urged, by the counsel for the parties.

14. In view of the above discussion, it is held that the judgment of conviction and the order of sentence, rendered by the trial Court, are based on the correct appreciation of evidence, and law, on the point. The same do not warrant any interference. The same are liable to be upheld.

15. For the reasons recorded, hereinbefore, the appeal is dismissed. The Judgment of conviction and the order of sentence, are upheld. If the appellant is on bail, his bail bonds shall stand cancelled.

16. The Chief Judicial Magistrate, shall take necessary steps, in accordance with the provisions of law, to comply with the judgment, keeping in view the applicability of the provisions of Section 428 of the Code of Criminal Procedure, and submit the compliance report within two months.

17. The District and Sessions Judge, is also directed to ensure that the directions, referred to above, are complied with, and the compliance report is sent, within the time frame, to this Court.

18. The Registry shall keep track of the matter, and put up the action taken report, if received, within the time frame. Even if, the same is not received, within the time frame, the matter shall be put up, within 10 days, after the expiry of the same.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com