

Chhotu Harijan Vs. State

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Court : Rajasthan

Decided On : Aug-02-2005

Reported in : 2005CriLJ3926

Judge : Satya Prakash Pathak, J.

Acts : Code of Criminal Procedure (CrPC) - Sections 313, 383 and 428; [Indian Penal Code \(IPC\), 1860](#) - Sections 363, 365, 366 and 376

Appeal No. : Criminal Jail Appeal No. 571 of 2002

Appellant : Chhotu Harijan

Respondent : State

Advocate for Def. : O.P. Rathi, Public Prosecutor

Advocate for Pet/Ap. : Shambhoo Singh, Adv.

Disposition : Appeal dismissed

Judgement :

Satya Prakash Pathak, J.

1. This jail appeal under Section 383, Cr.P.C. has been directed against the judgment of conviction and order of sentence dated 7-6-2002 passed by Addl. Sessions Judge No. 1, Udaipur in Sessions Case No. 32/2001 -- State v. Chhotu

Harijan, whereby accused-appellant Chhotu Harijan has been convicted under Sections 376, 363 and 366, IPC and sentenced to undergo rigorous imprisonment for five years and a fine of Rs. 500/-, in default of payment of fine to further undergo 15 days simple imprisonment under Section 376, IPC; two years' rigorous imprisonment and a fine of Rs. 500/-, in default thereof to suffer further 15 days simple imprisonment under Section 363, IPC; and three years' rigorous imprisonment and a fine of Rs. 500/-, in default further simple imprisonment of 15 days under Section 366, IPC. All the substantive sentences were ordered to run concurrently and set off under Section 428, Cr.P.C. was granted to the accused.

2. Briefly stated, the facts of the case are that on 23-6-2001 at 8.30 p.m., complainant Gopal Singh (PW1) lodged a verbal report at Police Station, Pratap Nagar to the effect that his daughter Varsha, aged 14 years, who had gone to answer the call of nature towards the river at about 5.30 p.m. had not returned for quite some time and she could not be traced even after efforts being made to find out her. On that report, a report about the missing girl was reduced into writing. Thereafter, on 27-6-2001 at 11 a.m. said Gopal Singh (PW1) presented a First Information Report (Ex.P/2) stating inter alia therein that his daughter Varsha, who on 23-6-2001 had gone towards the river to answer the call of nature, did not return. He and his neighbours searched for her but could not know about her whereabouts so report was lodged on that very day at the police station. He further stated that on inquiries being made, Noorie (a girl from the vicinity) told that Chhotu Harijan and his companion had induced Varsha to go with them. It was also stated in the report that Chhotu took away his minor daughter in order to marry with her and kept her somewhere in captivity. He stated that the date of birth of Varsha in the school certificate records as 15-2-1986 and prayed that by taking legal action the custody of the girl be given to him.

3. On the basis of above report (Ex.P/2), case No. 168/2001 was registered under Sections 363, 365, IPC and FIR (Ex. P/14) was chalked out.

4. After usual investigation, challan was submitted in the Court of Addl. Chief Judicial Magistrate No. 1, Udaipur, and on committal it came before the learned Addl. Sessions Judge No. 1, Udaipur, who framed charge under Sections, 363,

366, 376, IPC and read over to the accused. Accused denied the charge and claimed trial.

During the course of trial, the prosecution has examined as many as 14 witnesses and tendered 19 documents in evidence. Thereafter, statement of accused under Section 313, Cr.P.C. was recorded. In defence, no witness was examined.

The learned trial Court, after hearing both sides, vide its judgment and order dated 7-6-2002 convicted and sentenced the accused-appellant as indicated hereinabove. Aggrieved, the accused-appellant, has preferred the present appeal.

I have heard learned Counsel for the parties and have also carefully examined the material available on record.

Learned counsel for the accused-appellant contended that the learned trial Judge has not properly examined the evidence in proper perspective as the prosecutrix herself was a consenting party and the complainant, who already knew that she had gone with Chhotu, had not disclosed the name of accused in the earlier report to the police which fact has been admitted by the complainant in his statement clearly. He also contended that the age of the prosecutrix as per medical reports was 16 to 17 years which is more reliable than the age recorded in the school certificate etc. He also stated that had the main witnesses were examined in the case, the true story would have come but the prosecution has failed to interrogate many important witnesses in this case and prayed for acquittal of the accused. He relied on two decisions of this Court rendered in Balu Singh v. State of Rajasthan, (Cri LR (Raj) 2002 (2)) (sic) and Shankar Singh v. State of Rajasthan (2002 (2) Cri LR (Raj) 1141).

4. On the other hand, the learned Public Prosecutor supported the judgment and order passed by the learned trial Judge. It was contended by the learned Public Prosecutor that the age of prosecutrix at the time of incident was less than 16 years as per the school record and it has come on record that on the point of knife the accused had forcefully taken away the prosecutrix and as such offence against him under Sections 366 and 376, IPC stands proved beyond doubt.

6. I have considered the rival submissions made before me and carefully perused the impugned judgment and order passed by the learned trial Court.
7. It has come on record that during the course of investigation, Varsha was recovered from the house of Kailash at Dhebar Colony, Khempura on 29-6-2001 and a memo Ex. P/3 in respect thereof was prepared. Site-plan of the place of recovery Ex. P/4 and the place of incident Ex.P/5 were also prepared. Varsha was got medically examined for her age and copulation, the report in respect thereof is Ex.P/7. The MLC reports are Exs.P/16 and P/17 and the x-ray plate is Ex.P/18. The Salwar of Varsha was taken into custody through Memo Ex.P/8 and she was given in custody of her father through Ex.P/6. Chhotu Harijan was arrested vide Memo Ex.P/15 and he was medically examined for his age and copulation. The report in that regard is Ex.P/19. The documents in respect of age of Varsha i.e. copy of Scholar Register, Certificate issued by Government Secondary School, Kanpur and Transfer Certificate are respectively Exs. P/9A, P/10 and P/11. The copy of Malkhana Register of Police Station, Pratapnagar is Ex. P/12. The recovered Salwar, Vaginal Smear and Swab were sent to the Forensic Science Laboratory, Jaipur for chemical examination through the forwarding letter Ex.P/16 issued from the office of Superintendent of Police, Udaipur and the receipt thereof is Ex.P/13.
8. In the present case it is to be seen as to whether at the time of incident PW2 Kumari Varsha was minor and below 16 years of age? In this connection, the relevant evidence may be discussed here.
9. PW1 Gopal Singh, the father of the prosecutrix, has stated that the age of his daughter Varsha was 15 years. He has also stated that she was studying in the school and his date of birth is 15-2-1986. In his cross-examination on this point, it has been stated by him that at the time of admission of her daughter her date of birth was got entered as per Ankora (horoscope).
10. PW2 is the prosecutrix. She has stated her age to be 15 years. She has further stated that she is studying in the school and her date of birth is 15-2-1986. She has not been cross-examined on the point of age. The suggestion which has been put to this witness is that in fact she had gone with the accused on her own will as

she was in love with the accused.

11. PW4 is the mother of prosecutrix. She has also stated the age of the prosecutrix as 16 years.

12. PW7 Bhanwarlal Menariya, who was Headmaster of the school where the prosecutrix was studying, has stated that the prosecutrix had taken her admission in the school in Class VI in the year 1996. He has further stated that she studied in the school up to Class X. The witness has produced Ex.P/9 Scholar Register and Ex.P/10 the certificate of age. He has also proved the Transfer Certificate Ex.P/11 on the basis of which admission was given to her in the school in the year 1996. The witness states that the age of the prosecutrix as per school record was 15-2-1986.

13. PW13 Dr. Sunita Maheshwari who has examined the prosecutrix, in her reply to a question put by Court regarding the age of prosecutrix, has stated that in her opinion the prosecutrix could be more than 13 years of age but what could be the exact of her birth, she could not say.

14. PW14 Dr. Tanveer Rizvi has stated that on the basis of x-ray of wrist, elbow joint etc. he found the age of prosecutrix more than 16 but below 17 years.

15. In view of above evidence brought on record, when the statements of father and mother particularly Ex.P/10 i.e. the certificate issued by the school regarding age and Ex.P/11 the Transfer Certificate clearly indicate that the date of which of the prosecutrix was 15-2-1986, the contention of the learned Counsel that the age of prosecutrix at the time of incident was more than 18 years is not liable to be accepted. The school documents maintained in normal course of official rules and duty have been proved by the Headmaster of the school and therefore, the date of birth mentioned in these documents needs to be accepted in the facts and circumstances of the case. Even the medical evidence, which has come on record in this case, does not support the contention of the learned Counsel.

16. The authorities cited by learned Counsel are also of no help in relation to assessing the age of the prosecutrix in view of oral evidence of the parents of

prosecutrix and the documentary evidence discussed hereinabove. The medical evidence is only experts opinion and on that basis the record of the school and the school certificate regarding age read with oral evidence cannot be disbelieved. In my humble opinion, the learned trial Court has correctly appreciated the evidence as well as the age.

17. Now the second question for consideration as to whether the prosecutrix was taken forcibly from the custody of her parents without her will is concerned, it is suffice to say that she being below 16 years of age was a minor and as such the consent aspect, as raised, is of no substance. From the statement of prosecutrix and the suggestion put to her in the cross-examination that accused was in love with her and she had accompanied the accused at her own will, amply proves that she was taken by the accused and she was minor at that time, therefore it is not necessary to discuss any further the evidence of the prosecution which has been discussed in detail by the learned trial Court and it stands proved on the basis of the statement of prosecutrix. The medical evidence led in this case in view of oral testimony of the prosecutrix proves the case of the prosecution to the extent that accused had committed rape with her. If that is so then it cannot be said that the trial has committed error while appreciating the evidence or the evidence has been misread by the trial Court.

18. The another contention of the learned Counsel was that since for last more than 4 years the accused is in jail therefore a lenient view regarding the sentence will meet the ends of justice.

19. I have considered the submissions made by the learned Counsel.

20. It is correct that the accused is in jail since 30-6-2001 and now four years have passed but that in itself is no ground particularly in such type of cases where rape has been committed with a minor girl of the age less than 16 years. In such matters, leniency in awarded sentence to the accused while the offence is proved is not required to be given. It is a crime against society and he should be dealt with sternly.

21. I have also carefully gone through the principles laid down in the authorities cited before me by the learned Counsel. The authorities are not of any help to the accused-appellant in the present case as those cases are clearly distinguishable from the present one.

22. In the case of Balu Singh and Ors. (supra), the prosecutrix was about 18 years of age and was a married lady. She was a consenting party and had put her signature on the application for marriage. Her all the activities, as has been observed, right from beginning were going on with her tacit consent and she was found in the company of accused in a market which gave an impression that she was roaming with the accused on her own accord. Her testimony was also not found to be trustworthy and worth inspiring confidence. In those circumstances, the accused in that case were found to be entitled to acquittal.

23. In the other case cited by learned Counsel, namely, Shankar Singh (2002 (2) Cri LR (Raj) 1141) (supra) the age of prosecutrix was above 16 years of age on the date of incident and in addition to delay of 12 days in lodging the First Information Report, the main eye-witness and other prosecution witnesses had not supported the prosecution case. The statement of prosecutrix too had not inspired confidence on the point that the accused had sex with her against her will. All those circumstances led to the setting aside of conviction and acquittal of accused.

24. Having considered the evidence of the prosecution witnesses and the entire material on record, I am of the considered view that the trial Court justifiably reached to the conclusion that prosecution has been successful in establishing the guilt of the accused-appellant.

25. In this view of the matter, taking into consideration all the facts and circumstances discussed hereinabove, I do not find any merit in this appeal. Hence, the appeal fails and is hereby dismissed.