

**(2008) 01 P&H CK 0037**

**High Court Of Punjab And Haryana At Chandigarh**

**Case No:** None

Om Parkash and Another

APPELLANT

Vs

State of Haryana

RESPONDENT

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**Date of Decision:** Jan. 15, 2008

**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 164, 313
- Penal Code, 1860 (IPC) - Section 363, 366, 376

**Citation:** (2008) CriLJ 1846 : (2008) 2 RCR(Criminal) 934

**Hon'ble Judges:** Nawab Singh, J

**Bench:** Single Bench

**Final Decision:** Allowed

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**Judgement**

Nawab Singh, J.

This appeal is directed against the judgment of conviction dated September 9, 2003 and order of sentence dated September 12, 2003 passed by learned Additional Sessions Judge, Jind, whereby, accused appellants, were convicted for the offences punishable u/s 366 and 376(2)(g) of Indian Penal Code (for short "IPC") and sentenced to undergo rigorous imprisonment for a period of 3 years and 10 years respectively and to pay fine of Rs. 1000/- in all, with default stipulation.

2. Name of the victim is not being mentioned keeping in view the social object of preventing social stigmatisation or ostracism of the victim, so, she will be hereinafter described as the prosecutrix.

3. Prosecutrix is a married woman. On August 5, 2001 at about 4 a.m., she was on her way to the fields to answer the call of nature from her parents' house situated in village Kharainti, District Jind. Mukesh, accused appellant, her neighbour and his sister's husband Om Parkash accused appellant met her on the way. Mukesh gagged her mouth and both of them took her at the house of Mukesh. Both of them committed sexual intercourse with her one after the other. From the house of

Mukesh, both the accused appellants forcibly took her on scooter to Railway Station, Julana. Mukesh drove the scooter and Om Parkash kept her mouth gagged throughout the way. On reaching Railway Station, Julana, Mukesh took her to Delhi and Om Parkash came back. Mukesh threatened her with dire consequences, in case, she raised an alarm. From Delhi, Mukesh took the prosecutrix to Calcutta in train. She was kept by Mukesh at Calcutta for a week. During their stay at Calcutta, Mukesh continuously raped the prosecutrix. After one week's stay at Calcutta, Mukesh brought the prosecutrix by train to Delhi and took her at the house of his maternal uncle's father-in-law, Ramdia. There prosecutrix was kept for 3 days and during that period, Mukesh had sexual intercourse with her without her consent. Thereafter, Ramdia got them a room on rent in Bhagat Colony, Delhi. She was forced to live in the company of Mukesh. Mukesh's maternal uncle Jagdish came to meet them in their rented room and also gave some money. Prosecutrix was kept in the said room for one month by Mukesh. Om Parkash, accused appellant also visited the duo in the rented room and committed sexual intercourse with the prosecutrix several times. Ramdia and Jagdish relations of Om Parkash got them another room on rent in the area of Begampur in Delhi. Prosecutrix stayed in the said room with Om Parkash for four days. Prosecutrix, on the pretext that she would not lodge any complaint against them, asked them to take her to Julana. Mukesh and Om Parkash brought the prosecutrix to Julana. Om Parkash stayed at Jind. Mukesh was arrested from the Platform, Railway Station, Julana while he was sitting with the prosecutrix on a bench.

4. Prosecution was launched on the statement of Rangi Ram father of prosecutrix. He filed complaint (Exhibit P-1) to the Police of Julana on October 2, 2001 alleging that in the month of June 2001, her daughter prosecutrix was married to Om Parkash resident of village Luhari, District Hisar. On August 4, 2001, he along with his family members slept in the house. At about 4 a.m., prosecutrix went to the fields to ease herself but did not return. Mukesh, who was his neighbour and frequent visitor to his house, was not present at his house. He suspected that the prosecutrix was enticed away by Mukesh. He made search but prosecutrix could not be traced.

5. Case u/s 363, 366 and 376(2)(g), IPC was registered in Police Station Julana against Om Parkash, Mukesh appellants and Jagdish and Ramdia vide First Information Report (Exhibit P-3). Mukesh and the prosecutrix were got medically examined by the Investigator. On October 9, 2001, Naurang produced Om Parkash before Suraj Mai, Assistant Sub-Inspector at Bus Stand, Julana. He was arrested. He was also got medically examined on October 16, 2001. Jagdish and Ramdia were also arrested. On October 12, 2001, statement of prosecutrix u/s 164 of Code of Criminal Procedure (for short the Cr.P.C.)(Exhibit P-6) was recorded by Judicial Magistrate First Class (for short "JMIC"), Jind.

6. On completion of investigation, the accused appellants and Jagdish and Ramdia were arraigned for trial.
7. Charge, in respect of commission of offences punishable u/s 366, 376(2)(g), IPC, was framed against the accused. Accused pleaded not guilty.
8. Prosecution in support of its case examined fourteen witnesses, viz. Jaswant Singh, Head Constable (PW1), Jai Parkash. Draftsman (PW2), Ms. Bhawna Jain, JMIC, Jind (PW3), Rajinder Singh, Constable (PW4). Dr. Ramphal Calonia (PW5), Smt. Nirmal Kaur, Computer Clerk (PW6), Ms. Suman (PW7), Rangi Ram (PW8), Ram Kumar, Sub-Inspector (PW-9), Om Parkash, Head Constable (PW10), Dr. Malkiat Singh (PW11), Dr. Malti Gupta (PW12), Ishwar Chand, Constable (PW13), Suraj Mai, Assistant Sub-Inspector (PW14).
9. When examined u/s 313, Cr.P.C. accused denied the allegations and pleaded that they were innocent and have been falsely implicated.
10. Out of the four accused, Ramdia and Jagdish were acquitted and Om Parkash and Mukesh accused appellants were convicted and sentenced as spelled out in paragraph No. 1 of the judgment.
11. The evidence, material circumstances of the case and the arguments addressed by learned Counsel for the appellants and Assistant Advocate General, Haryana have been appraised.
12. The most important witness in this case is prosecutrix (PW-7). The only point which has to be seen is whether the story propounded by the prosecution was true or not?
13. Per the prosecutrix, she was forcibly taken by the accused appellants at the house of Mukesh on August 5, 2001 at 4 a.m. when she was going to the fields to answer the call of nature. Mukesh's house adjoins the house of the prosecutrix. After committing rape upon her, she was taken on scooter to Railway Station, Julana. She did not raise any alarm. She even did not try to flee from the clutches of the accused. She tried to give an explanation that she did not raise alarm as she was under threat. The explanation offered is not acceptable. According to her, she was forcibly taken from the fields to the house of accused which adjoins her house where she was raped for the first time. From there, she was taken to Railway Station, Julana, from Railway Station Julana to Delhi and from Delhi to Calcutta. She stayed at Calcutta with Mukesh for about 7 days. She was again brought by Mukesh to Delhi from Calcutta. Both of them resided in two rented rooms situated in different localities in Delhi. She had ample opportunities to lodge her protest.
14. The sequence of events suggests that she remained in the company of the petitioner on her own. During stay of prosecutrix with Mukesh, she got herself photographed with him in a Photo Studio at Delhi. The photographs are Exhibits D-2 and D-3. The prosecutrix has admitted her photographs with the accused. A perusal

of these photographs shows that the photographs are that of this couple.

15. Prosecutrix remained in the company of "Mukesh from August 5, 2001 to October 3, 2001, that is, 1 month and 28 days. Surprisingly, no report was lodged by father of the prosecutrix that she disappeared on August 5, 2001 upto October 2, 2001 when Rangi Ram father of the prosecutrix gave written complaint (Exhibit P-1) to the Police. No explanation worth the name was given by the prosecution for lodging the report to the Police after such a long period of 1 month and 28 days which of course, creates doubt on the veracity of the story of the prosecution.

16. There is one another aspect which belies the case (sic) arrested at the Platform, Railway Station, Julana while sitting with the prosecutrix on a bench on October 3, 2001 but prosecutrix has stated that on September 29, 2001, Mukesh brought her to Hisar from Delhi and from Hisar, both of them went to Julana in a bus. On reaching Julana, they went to Police Station, Julana at 4 p.m. and her statement was recorded by the Police. From the statement, it appears that Mukesh and the prosecutrix went to the Police Station themselves which appears improbable:

17. From the evidence culled, it is proved /that the accused and the prosecutrix left their village Khafainti for Delhi on August 5, 2001. The prosecutrix accompanied Mukesh on her own. From Delhi they went to Calcutta. From Calcutta they came back to Delhi, stayed there for more than one month. They moved about freely, in public, by public transport and stayed at Delhi, Calcutta, Hisar before being intercepted at Julana on October 3, 2001. The conduct of the prosecutrix voluminously speaks for itself that she had been a consenting party throughout. She had a consensual intercourse with the accused. When once, it has been proved that she was a consenting party, question to bring home the guilt against the accused u/s 376(2)(g), IPC does not arise.

18. Indisputably, prosecutrix was more than years of age on the day of alleged occurrence, that is, October. 5, 2001 so, no offence u/s 366, IPC is made out against the accused.

19. Thus, the appeal is accepted, the impugned judgment of conviction and the order of sentence are set aside and the accused appellants (Om Parkash and Mukesh) are acquitted of the charges u/s 366 and 376(2)(g), IPC. They be set at liberty forthwith, if not required in any other case.