State of Haryana Vs Naresh alias Pappi

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Feb. 2, 1996

Acts Referred: Criminal Procedure Code, 1973 (CrPC) â€" Section 161, 164, 177, 179, 184
Penal Code, 1860 (IPC) â€" Section 363, 366, 375, 376, 497

Citation: (1996) 1 CivCC 600 : (1996) 1 CivCC 603 : (1996) CriLJ 3164 : (1996) 2 RCR(Criminal) 165

Hon'ble Judges: V.K. Bali, J; K.S. Kumaran, J

Bench: Division Bench

Advocate: Varinder Singh, Deputy Advocate General, for the Appellant; R.S. Sihota, for the Respondent

Final Decision: Dismissed

Judgement

K.S. Kumaran, J.
Appellant Naresh alias Pappi stood charged u/s 363, 366 and 376 of the Indian Penal Code, before the Additional

Sessions Judge Gurgaon in Sessions Case No. 7/1990 (decided on 17-11 -1990), but after trial was acquitted. Therefore, the State of Haryana

has come forward with the appeal and the complainant has also filed the criminal revision Cr. Rev. 121/1991).

2. The case of the prosecution is as follows. Lila Devi aged about 16/17 years is the daughter of Mawasi Ram, the complainant, and Bimla Devi.

On the morning of 9-4-1990, the complainant and his wife Bimla Devi had gone to the house of uncle of Lila Devi for attending a ceremony and

stayed there. On 10-4-1990, when they returned home at about 1.30 p.m. the complainant-Mawasi Ram''s cousin named Mehar Chand informed

them that Lila Devi was not found in the house in the morning. Bimla Devi informed the complainant that she had seen the accused/respondent

visting their house and talking to Lila Devi on one or two occasions. Mawasi Ram, the complainant enquired the whereabouts of accused Naresh,

and the father of Naresh by name Harwari told him that accused-Naresh was also missing from the house from the previous evening. According to

the complainant Mawasi Ram, Naresh had lured his daughter Lila Devi, enticed her away and illegally kept her with him (at some place which was

not known to Mawasi Ram at the time of lodging the complaint with the police). Lila Devi (PW-2) stated in her evidence that her father Mawasi

Ram had gone to village Bitwana for attending Bhat ceremony, and on that night while her brother Mukesh and sisters were sleeping, accused

Naresh with a revolver in his hand came to her house, threatened to kill her brother if she raised noise, put the pistol on her head and applied some

medicine on her nose. She stated that she became unconscious, and the accused took her into a small room, though she is unable to tell the name

of that place. PW-2 further stated that she regained consciousness, that the accused tried to have sexual intercourse with her that she raised noise,

but still the accused had sexual intercourse with her against her wishes. According to PW-2 Lila Devi, the accused once again applied some

medicine in her nose, that she became unconscious and remained in the room for about two days. She also slated that the accused then took her to

some place, the name of which she did not know; again threatened her with dire consequences and had sexual intercourse with her. She also stated

that the accused threatened her and asked to her to marry him. According to PW-2 the accused then brought her to Gurgaon in a bus and reached

the bus stand on a night, where her father, maternal uncle and police were already there. She stated that the accused tried to slip away on seeing

the police but was apprehended by the police. She stated that she was medically examined in the Civil Hospital Gurgaon.

3. Mawasi Ram (PW-3), the father of Lila Devi, deposed that on 9-4-1990, he and his wife Bimla had gone to Village Bitwana for Bhat

ceremony, that Lila and their other children were at their house on that day, that they returned from Bitwana at about 1.30 p.m. on 10-4-90 when

Mehar Chand informed them that his daughter Lila Devi (PW-2) was missing. Mawasi Ram (PW-3) also stated that his wife Bimla told him that

she had seen Naresh (accused) talking to Lila Devi on one or two earlier occasions, and that he went and asked the father of Naresh Kumar who

told him that Naresh (accused) was also missing from the previous day. Mawasi Ram (PW-3) stated that he then went to the police station on 11-

4-90 and lodged the report (Ex. PB). Mawasi Ram PW also testified that on 15-4-90 he, along with his brother-in-law Bal Kishan, was present

along with the police at Jharsa Chowk, and found Lila Devi and accused Naresh there. PW-3 also stated! that the accused who tried to run away,

was apprehended by the police and taken to the police station. According to PW-3 Mawasi Ram, a toy pistol (Ex. P1) was recovered from the

suit-case of the accused under recovery memo Ex. PC. Sub Inspector Gurcharan Singh (PW-5) stated that on 11-4-90, Mawasi Ram PW lodged

the report Ex. PB which was written by him (PW-5), and after registering the case, he went to the village along with Mawasi Ram, searched for

the accused Naresh and found that he was not in the village. PW-5 further stated that on 15-4-90 when he was present at Jharsa Chowk, G. T.

Road, Mawasi Ram PW and Bal Kishan came there, that the accused ran away and was apprehended at the spot, and on a search of the

accused, a toy pistol (Ex.P1) was recovered from him. He stated that he arrested the accused and sent Lila Devi for medical examination.

4. Dr. Rekha Yadav (PW-6) Medical Officer, General Hospital, Gurgaon, stated in her evidence that on 15-4-90 at 8.45 p.m. she examined Lila

Devi and found the following :-

She was an average built female. Secondary sexual character well developed. Breast well developed. Axillary pubic hair well developed."" PW-6

further observed as follows:

There is no external mark of injury on any part of the body including breast, thigh, chest.

Local examination: Pubic hair well developed and not metted. Hymen found ruptured. Old tag of healed tissues present. No fresh bleeding was

present. Vagina admits one finger easily.Two fingers snuggly. Cervix downward forward. Uterus retroverted. Normal size, fornix clear.

The medico-legal report relating to Lila Devi is Ex. PJ. Dr. Rekha (PW-6) also stated that she handed over to the police a sealed bottle containing

swabs from posterior fornix and a sealed parcel containing the underwear of Lila Devi.

5. Gurcharan Singh (PW-5) deposed that the doctor handed over to Kim the swab and the underwear of Lila Devi. Ranbir Singh (PW-1), Senior

Pharmacist, General Hospital Gurgaon, stated that on 15-4-90, in his presence, the police took into possession the swab and the underwear. Dr.

Rekha Yadav PW deposed that after seeing the report of the Forensic Science Laboratory (Ex. PF), she was of opinion that Lila Devi was

subjected to sexual intercourse.

6. Gurcharan Singh (PW-5) deposed that the accused was also sent for medical examination on 16-4-90 and his underwear was also taken into

possession. Dr. S. P. Singh (PW-4), Medical Officer, General Hospital, Gurgaon, stated that on 16-4-90 at 11.45 a.m. he examined the accused

Naresh Kumar and opined that there was nothing to suggest that he could not perform the act of sexual intercourse. He also stated that smegma

was not present.

7. After a consideration of the entire material placed before him, the learned Addl. Sessions Judge Gurgaon found that the Courts at Gurgaon have

no teritorrial jurisdiction to try the accused for the offence punishable u/s 376, Indian Penal Code, and, therefore, the trial for the offence u/s 376

was dropped, and that in other respects, the prosecution had failed to establish the guilt of the accused beyond any shadow of doubt and,

therefore, acquitted him.

8. We have heard the counsel for both the sides and we are clearly of the view that the prosecution has failed to establish that the prosecutrix-Lila

Devi was taken away by accused Naresh without her consent or against her will or that he committed rape on her. It is alleged that on the morning

of 9.4.90, Mawasi Ram (PW-3) and Bimla Devi, the parents of the prosecutrix had gone to village Bitwana to attend a function and stayed there,

that on the night of 9.4.90 accused Naresh came to their house, and while the brother and sisters of the prosecutrix were sleeping, the accused

brandishing a pistol, threatened to kill her brother if she raised alarm, and took her away. During the course of her evidence, the prosecutrix (PW-

2) stated that the accused had applied some medicine on her nose and, therefore, she became unconscious. But when the prosecutrix was

examined by the magistrate u/s 164, Cr. P. C. she had not stated that the accused applied some medicine over her nose or that she became

unconscious. Further, though the prosecutrix stated that the accuscd applied some medicine which made her unconscious, the prosecution has not

stated as to how she was taken from her house to the bus stand. She stated in her evidence merely that she became unconscious and that the

accused took her in a small room, though, she stated that she cannot tell the name of the place. It is not stated that the accused carried her up to

the bus stand. In her evidence, during the course of cross-examination, she admitted that the bus stand at Manesar is at a distance, of one

Kilometre from her house. Though, she feigned ignorance of the places to which she was taken by the accused, she had stated before the

magistrate (Ex. DA) that the accused took her by bus from Manesar to Jaipur and then to Kota Bundi. In her statement u/s 161 Cr. P. C, she had

stated that she was taken from her house through the fields to Bus Stand, Manesar. Therefore, when the accused took her from her house, through

the fields, to Bus Stand, Manesar and from there to Jaipur by bus the prosecutrix should have either been carried by the accused or she should

have herself walked along the fields till she boarded the bus. If really she was unconscious and was being carried then it would have attracted the

attention of people at the bus stand. Even the prosecutrix does not say that she was being carried by the accused. If the accused had threatened to

kill her brother by pointing the pistol towards her head and, therefore, the prosecutrix was afraid of the same and therefore, had gone along with

the accused from the house, there was apparently no reason for her to board the bus at Manesar without protest because there must have been at

least the driver and the conductor of the bus apart from a few passengers from whom she could have sought help. As pointed out already, she had

stated in her statement u/s 164 Cr. P. C. that she was taken to Jaipur, that she stayed there in a hotel for three days, that the accused had sexual

intercourse with her. that the accused then took her to Kota Bundi by bus where also they stayed in a hotel for two days. They came to Gurgaon

also by bus on 15-4-1990. So. from the night of 9-4-90 to 15-4-90, the prosecutrix was all along with the accused going from one place to

another by bus, staying in hotels, but yet, not making any protest whatsoever and not seeking the help of anybody in spite of the fact that she had

alleged before the magistrate that she was raped. If all this had happened against her consent then she would certainly have protested and

complained to somebody whereas the prosecutrix had not raised her little finger either iri protest or by way of seeking protection from others. It

has to be remembered that for nearly six days she had been with the accused. The accused stated in his statement u/s 313 Code of Criminal

Procedure, that the prosecutrix, of her own accord, took him to Gurgaon, Faridabad and Jaipur, that they had seen a movie in a theatre, that when

they were at Kota Bundi, they were brought back from there. The prosecutrix had even stated in her evidence that the accused wanted her to

marry him. Therefore, if we take all these aspects into consideration then it will be clear that the prosecutrix and the accused should have run away

from their houses with the idea of marrying each other, gone to several places, stayed in hotels and must have satisfied their lust. It is quite evident

that the prosecutrix was not taken away against her wish or consent and that they had fled away from the village with the intent to commit

matrimony. Therefore, the contention thai the accused had enticed her away from her house against her will and that she had sexual intercourse

with her against her will and consent cannot be accepted.

9. But, the question that still remains to be considered is whether the fact that the prosecutrix had of her own accord gone away from her house

with the accused and also willingly had sexual intercourse with him will still absolve the accused from the liability to be punished, because, the

contention of the prosecution is that the prosecutrix-Lila Devi was only 151/2 years old at that time. The charge against the accused is that he

kidnapped the prosecutrix from her lawful guardianship and that he committed rape. Section 366 I.P.C. provides that a person who kidnaps any

woman with the intent that she may be compelled to marry against her will or in order that she may be forced or seduced to illicit intercourse shall

be punished with imprisonment and fine. Kidnapping has been defined in Section 361 I.P.C. as taking or enticing any minor under 16 years of age

if a male, or under 18 years of age if a female. Section 375, I. P. C. enumerates the circumstances under which a man can be said to commit rape

when he has sexual intercourse with a woman. According to Clause (vi) of Section 375 I. P. C. a man who has sexual intercourse is said to

commit rape on a woman with or without her consent when she is under 16 years of age. If the prosecution is able to show that Lila Devi was

under 16 years of age when the accused had sexual intercourse with her then it is wholly immaterial whether the prosecutrix was a consenting

party. In such a case the accused will be liable for punishment as provided for u/s 376. I. P. C. But. so far as kidnapping is concerned, the

prosecution will be entitled to seek the conviction of the accused if the girl was under 18 years of age. Therefore, we will have to find out whether

the prosecution has established any of these two things.

10. As pointed out already, the contention of the prosecution is that the prosecutrix-Lila was l51/2 years old at the time of occurence. In the FIR,

the age of the prosecutrix has been given as 16/17 years. The FIR was registered on the statement of the father of the prosecutrix, namely Mawasi

Ram (PW-3). In her evidence, the prosecutrix gave her age as 151/2 years (She was examined before the Sessions Court on 7-9-90, i.e., within

about five months of the occurrence). Her father Mawasi Ram (PW-3) stated that the prosecutrix was aged about 151/2 years. When he was

confronted with the FIR, he admitted that he had stated therein that the prosecutrix was aged 16/17 years. It was suggested to both PWs 2 and 3

that the prosecutrix was more than 18 years old but both of them denied this suggestion made on behalf of the accused. The prosecution has

brought into evidence Ex. PK purporting to be the birth register extract relating to the prosecutrix. This document was tendered into evidence by

the prosecution without examining any witness to connect it with the prosecutrix. Even PW-3, the father of the prosecutrix was not asked any

question with reference to this document to connect it with the prosecutrix. This assumes importance in view of the fact that the name of the child

mentioned in Ex. PK is Sumitara and while the father''s name is given as Mawasi. the mother''s name has not been given. The date of birth given is

2.9.1974. If this document relates to the prosecutrix, then her age would have been 15 years 7 months and a few days on the date of occurrence.

But, by merely producing this document and without examining any person to connect this document with the prosecutrix, especially in view of the

fact that the name of the child has been given as Sumitara and not as Lila, and the absence of the name of the mother of the child, the prosecution

cannot contend that this document relates to the prosecutrix and that she was below 16 years of age at the time of the occurrence. Of course, the

prosecution wanted to get over this difficulty by stating that the prosecutrix Lila Devi is also known by the name of Sumitara. Such a contention put

forward by the prosecution cannot also be accepted because in the earliest document, namely, the FIR, Mawasi Ram, the father of the prosecutrix

has not stated that Lila Devi, the prosecutrix, is also known as Sumitara. She denied the suggestion that her name is only Lila and not Sumitara.

PW-3 Mawasi Ram stated that Lila Devi has an alias Sumitara but as pointed out already, he admitted that he did not tell the police that his

daughter Lila is also known as Sumitara. The prosecution, of course, relied upon the medico-legal report and the evidence of Dr. Rekha Yadav

(PW-6) to show that Lila is also known as Sumitara and that her age was 151/2 years. In the medico-legal report in the descriptive portion (Ex.

PJ), we find the name Lila Devi as well as the name Sumitara, and the age is also given as 151/2 years. We also find two signatures in Hindi, one

as Sumitara and the other as Lila, on this medico-legal report. Dr. Rekha Yadav stated in herevidence that Lila, the prosecutrix, had signed on the

medico-legal report at two places, but it was suggested to her that the word ""Sumitara"" has been added by her later on at the instance of the police

and she denied the same. But we find from Ex. PJ that the word ""Sumitara"" has been inter-lineated and written above the printed words. As

pointed out already, when the FIR itself does not give an alias to the prosecutrix as Sumitara and when we find that the alias Sumitara has been

interlineated above printed words, it creates a doubt. Further, while the doctor said that the prosecutrix had signed at two places in the medico-

legal report, the prosecutrix stated in her evidence that she cannot sign her name in Hindi, that she did not sign name in the medico-legal report at

two places (at mark "A") and that the words ""Sumitara and Lila"" found at that place are not in her hand. This makes the contention of. the defence

probable that these words are later insertions to suit ihe prosecution case. Mawasi Ram (PW-3) has three daughters, including the prosecutrix, and

a son, Though Ex. PK has been produced by the prosecution which purportedly relates to the prosecutrix, the birth register extracts in respect of

the other children of Mawasi Ram have not been produced. If at least that had been done, we would have been able to check whether Ex. PK

really relates to the prosecutri x. In these circumstances, we are of the opinion that the prosecution has not established the correct age of the

prosecutrix at the time of the occurrence.

11. Further, Dr. Rekha Yadav (PW-6) stated in herevidence in cross-examination that the prosecutrix Lila Devi Was referred to radiologist for

determination of her age, but, the prosecution failed to produce the report of the radiologist in evidence. But, the defence marked the report of the

radiologist Ex. DC through the InvestigatingOfficer PW-5. PW-5 stated that he obtained this report Ex. DC. of course, in Ex. DC, the radiologist

has drawn the inference from the ossification test that the prosecutrix was between 151/2 and 17 years of age, but, he also stated that the final

report regarding her age will be given by the doctor who prepared the medico-legal report after considering the physical status and secondary

sexual characters. Though Dr. Rekha Yadav (PW-6) had observed that the secondary sexual characters were well developed, breasts well

developed, axillary and pubic hair well developed and that the prosecutrix was an average built female no final opinion appears to have been given

by her even though she admitted in cross-examination that she had referred the prosecutrix to the radiologist for determination of her age. If we

take intoconsideration the variations, inconsistencies and attempts to prop up the case and also the non-examination of the radiologist and the

absence of final opinion of the doctor (PW-6) with regard to the age, and also the fact that the opinion of the radiologist on the basis of the

ossification test is to be given an error of margin of three years either way, we are compelled to hold that the prosecution has failed to establish that

the prosecutrix was even below 18 years of age on the date of the occurrence. The learned Dy. Advocate General appearing for the State of

Haryana very fairly conceded that no case is made out against the accused u/s 376 I. P. C. We are of the view that no case is made out against the

accused beyond reasonable doubt under Sections 363 and 366 I.P.C. either. Therefore, we are of the view that the accused has been rightly given

the benefit of doubt and acquitted of the charges by the learned Sessions Judge.

12. On the question of jurisdiction of the Court at Gurgaon to try the offence of alleged rape, of course, the learned Addl. Sessions Judge Gurgaon

was of the opinion that as the offence of rape is alleged to have been committed outside the territorial jurisdiction of his Court, the Court at

Gurgaon had no jurisdiction to try that offence and, therefore, held that the trial of the accused for the offence u/s 376 I.P.C. is dropped. In doing

so, the learned Addl. Sessions Judge relied upon the decision of this Court in Jagan Nath v. State of Haryana, 1983 CCC 408 : 1983 Cri.LJ

1574. That was also a case where a girl was" kidnapped from Ambala and was taken to Delhi and raped by two persons, Jagan Nath and Baij

Nath. It was contended that the offence of rape having been allegedly committed at Delhi, it was the Court at Delhi alone that was competent to try

that offence. The trial Court relied on the decision of the Rajasthan High Court in Rampratap Vs. State, , wherein it was held that the act of rape

and kidnapping, although committed at two different places and within the jurisdiction of two different Courts, is a part of the same transaction

within the meaning of Section 235, Cr. P. C. 1989 which is equivalent to Section 220 of the Code of Cr. Procedure, 1973. Therefore, the trial

judge held that both the appellants could also be tried at Ambala for the rape alleged to have been committed by them at Delhi. But on appeal, the

learned Judge of this High Court did not agree with the proposition laid down in Ram Pratap''s case (supra) and held that the provisions of Section

220, Cr. P. C. 1973, would not be applicable to that case, because they will be applicable to offences which are committed in a series of acts so

connected together as to form the same transaction. The learned judge held that the offence of rape is an independent act and a separate offence

with different ingredients altogether. The learned judge also held that the offence of kidnapping is complete as soon as the person is kidnapped with

the requisite guilty intention or knowledge, and the consequence of kidnapping or abduction does not form an essential part of the offence of

kidnapping or abduction u/s 363 or 366, I. P. C. and this being so, u/s 179 (Cr. P. C.) the offence of rape committed at Delhi cannot be enquired

into or tried by Courts at Ambala and only the offence of kidnapping can be tried by the Courts at Ambala and the offence of rape had to be tried

by the Courts at Delhi. The learned judge also relied upon the decision in the The State Vs. Sri Lal and Others, , wherein it was held that the cones

quence of kidnapping was not an essential part of the offence of kidnapping and the offence of rape can be enquired into and tried only by the

Courts within the local limits of whose jurisdiction it has been committed. Therefore, the learned judge of this High Court held that the appellants

before the High Court could not be tried at Ambala for the offence of rape alleged to have been committed by them at Delhi. With very great

respect to the learned judge who decided Jagan Nath''s case (supra), we are not in agreement with the view taken by learned judge.

The reasons for our view are as follows:-

Lila Devi, the prosecutrix in this case, was kidnapped from a village known as Naharpur Kasan in the State of Haryana (within the jurisdiction of

the Sessions Court at Gurgaon) and taken away to Rajasthan and Delhi where she was raped by accused Naresh. Section 177 of the Code of Cr.

P. C. of course, provides that every offence shall ordinarily be enquired into and tried by a Court within whose local jurisdiction it was committed.

But Section 184, Cr. P. C, provides as follows:-

Where-

(a) the offence committed by any person are such that he may be charged with, and tried at one trial for, each such offence by virtue of the

provisions of Section 219, Section 220 or Section 221, or

(b) the offence or offences committed by several persons are such that they may be charged with and tried together by virtue of the provisions of

Section 223, the offences may be inquired into or tried by any Court competent to inquire into or try any of the offences.

Sub-sections (1), (3) and (4) of Section 220, Cr. P. C, which are relevant for our purpose are to the following effect:-

(1) If, in one series of acts so connected together as to form the same transaction, more offences than one are committed by the same person, he

may be charged with, and tried at one trial, for every such offence.

(2) X X X X

(3) If the acts alleged constitute an offence falling within two or more separate definitions of any law in force for the time being by which offences

are defined or punished, the person accused of them may be charged with, and tried at one trial for, each, of such offences.

(4) If several acts, of which one or more than one would by itself or themselves constitute an offence, constitute when combined a different

offence, the person accused of them may be charged with, and tried at one trial for the offence constituted by such acts when combined, and for

any offence constituted by any one, or more, of such acts.

Illustration (c) to Sub-section (1) which is enlightening is to the following effect:-

A entices B, the wife of C, away from C, with the intent to commit adultery with B and then commits adultery with her. A may be separately

charged with, and convicted of, offences under Sections 498 and 497 of the Indian Penal Code.

Under Section 497 of the I. P. C, a man having sexual intercourse with a person, who is the wife of another man, without the consent or

connivance of the latter, is guilty of the offence of adultery and can be punished as provided for thereunder. Section 498. I.P.C. provides that a

person who takes or entices away a married woman from her husband or from any person having the care of her on behalf of her husband with the

intent that she may have illicit intercourse with any person shall be punished as provided for thereunder. It cannot be stated that the offence of

enticing, constituting an offence u/s 498 is complete the moment the woman is taken away from her husband and, therefore, disconnected from the

act of adultery, constituting an offence u/s 497. They form an integral part of the same transaction. Unless there is the intention to have sexual

intercourse, the act of taking the married woman will not constitute an offence u/s 498. Such intention can be gathered from the previous or

subsequent conduct or action of the accused. The subsequent conduct or action of the accused in having sexual intercourse with her discloses his

intention. It may be that in a given case, he may not succeed in having sexual intercourse with the married woman because of her resistance. In

such a case, his attempt to have sexual intercourse with the woman will also establish his intention. Therefore, the action of enticing the married

woman with the intent to have sexual intercourse with her and the act of having sexual intercourse with her are so connected with each other that

we may call them integral parts of the same transaction. Similar is the case of kidnapping a girl with the intent to force her to have sexual

intercourse and then committing rape pn her. So, it is clear from Sub-section (1) of Section 220 Cr. P. C, that the offence of kidnapping with the

intent to force a girl for sexual intercourse and the offence of rape can be tried at one trial for every such I offence.

13. Further, as pointed out already, Sub-section (3) of Section 220 provides that if the acts alleged constitute an offence falling within two or more

definitions of any law by which the offences are defined are punished then the accused may be charged and tried at one trial for each of such

offences. Therefore, if the acts committed by the accused, namely Naresh in this case, constitute an offence falling within the definition of Sections

363, 366 and 376, I. P. C. the accused can be charged with and convicted separately of offences under Sections 363, 366 and 376, I. P. C.

Therefore, in view of the provisions of Sub-section (3) of Section 220, Cr. P. C. also, the accused in this case could be tried and convicted by any

of the Courts having jurisdiction over the place from where the girl was kidnapped or over the place where she was raped.

14. If several acts are committed by a person, each of such act may be an offence by itself. A combination of two or more such acts may

constitute a different offence. In view of Sub-section (4) of Section 220, Cr. P. C, a person accused of these acts can be charged with and tried at

one trial not only for the offence made out by each individual act but also for the offence constituted by a combination of one or more such acts.

Viewed in that light, the accused committing rape can be charged with and tried for an offence u/s 376 I. P. C. and if for the purpose of committing

the rape, he entices a girl or a woman then the combination of the two acts, namely kidnapping and committing rape, constitute a different offence

punishable u/s 366 I. P. C. Both these offences can be tried at one trial by framing different charges namely u/s 376 and also u/s 366. If the

accused could be charged with for these two different offences and tried in one trial, then, in view of the provisions of Section 184, Cr. P. C, any

one of the Courts within whose jurisdiction any one of these offences is committed will have the jurisdiction to try both the offences.

15. The case before us is not merely one of mere kidnapping but is one of kidnapping for the purpose of having sexual intercourse forcibly, and

also having sexual intercourse without consent. The acts or the series of acts are so connected with each other that they form part of one and the

same transaction. If it is merely kidnapping, the offence falls u/s 363 I. P. C. and the offence will be complete when the person is removed from

lawful custody. If it is kidnapping for the purpose of having forcible sexual intercourse then the offence falls u/s 366 and if ultimately, the accused

has sexual intercourse without consent then the offence u/s 376 I. P. C. is also made out.

16. In such a case, the offence u/s 366 I. P. C. will not be complete when the girl or woman is merely taken away from her lawful guardianship.

May be, having sexual intercourse is not the consequence of kidnapping as defined u/s 363 and Section 366. Therefore, Section 179 of the Code

of Cr. Procedure, will have no application to the facts of such a case where kidnapping is for the purpose of forcibly having sexual intercourse and

then committing rape on a girl or a woman. But on that basis, we are of the view, that the learned judge who decided Jagan Nath''s case (supra)

was not right in holding that the Court at Ambala will have no jurisdiction to try the offence of rape, in view of the provisions of Section 184, read

with Section 220, Cr. P. C. of course, the attention of the learned judge does not appear to have been drawn to Section 184 Cr. P. C, even

though the learned judge has referred to Section 220.

17. One other factor is that Section 184 Cr. P. C. was for the first time introduced in the Code of Cr. Procedure, 1973. That section was not

there in the Code of Cr. Procedure, 1898, when the decision in The State Vs. Sri Lal and Others, , was rendered. So, in our view, the view of the

Allahabad High Court in Sri Lal''s case (supra) rendered prior to the introduction of Section 184 in the new Criminal Procedure Code of 1973 will

no longer be good law, since it was rendered only on the basis whether Section 179 was attracted to the facts of the case or not.

18. For all these reasons, with great respect to the learnedjudge who decided Jagan Nath'' s case 1983 CCC 408, we are not in agreement with

the view taken therein by the learnedjudge, and we hold that the Court at Gurgaon will have the jurisdiction to try not only the offences under

Sections 363, 366 but also the offence u/s 376 I. P.C.

19. But in view of our finding that the prosecution has not been able to prove its case against the accused beyond reasonable doubt, we hold that

the accused was rightly acquitted.

20. Therefore, the appeal as well as the revision are dismissed.