

## Krishan Kumar Vs State of Haryana

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

**Date of Decision:** May 14, 1996

**Citation:** (1997) 1 RCR(Criminal) 355

**Hon'ble Judges:** H.S.Bedi, J

**Advocate:** Aparna Mahajan, Advocates for appearing Parties

### Judgement

H.S. Bedi, J. (Oral)

1. The prosecutron story in brief as given out by Ram Chander the father of the prosecutrix Goga PW 7 was that he was a Banjara by caste and

was originally a resident of village Nagaur (Rajasthan). As this vocation was to keep goats etc. he used to move about in different villages from day

to day. On 7th June, 1985, he had pitched his tents in the area of village Dobh, where he and his family consisting of six children and his wife

including the prosecutrix Goga aged about 12 years also stayed with him. The accused Krishan and the son of Ram Chander were friends and

accordingly, they both became Dharam Bhai and the accused often used to visit the dera of Ram Chander. On 7th June, 1985, while Ram

Chander had gone to village Dinod to attend a marriage in the family and PW6 Kela his wife, had gone to a brick kiln in Dobh, to sell milk and

Goga who had gone to purchase sugar and tea from the village shop and was returning therefrom, the accused met her on the way and asked to

accompany him to Rohtak, where they would see a movie and thereafter would return from there. Goga and the accused Krishan then went to

Rohtak, but though no movie was shown to Goga, the accused asked to her to accompany to some other place. The accused, accordingly, took

her to village Sunarian and stayed in the house of his brother Ram Chander, where they slept on the roof of the house and during the night the

accused committed rape upon her. On the next day, both the accused and Goga the prosecutrix went to Jhajjar, where some clothes were got

stitched for Goga by the accused. They then went from place to place, during the course of which the accused committed rape on Goga frequently.

Earlier on 7th June, 1985, when Goga did not return to the dera, her uncle Nahnu, went to village Dinod to inform Ram Chander that his daughter

had disappeared. Ram Chander, accordingly, came to the dera and started searching for Goga, but when he could not trace her went to the Police

Station and lodged the report Ex. PE on 11th June, 1985. The investigation was accordingly, taken up by S.I. Jai Narain (PW 10), who went to

the spot and recorded the statements of Nahnu and Kela the uncle and mother of Goga. He also made an effort to search for the accused and

Goga, though without success. On 18th June, 1985, Ram Chander along circumstances with Goga came to the Police Station and produced

Salwar, Jumper and brassier that Goga had worn and the same were taken into possession. She was taken to the Civil Hospital, Rohtak, where

she was medicolegally examined by Dr. Indu Lalit, who found that there was no external mark of injury of any part of the body and that she had

been subjected to sexual intercourse. On 19th June, 1986, Goga was taken to Civil Hospital once again for her xray examination so as to

determine her age, but the xray was ultimately taken on 21st June, 1985, by Dr. V.K. Sharma PW 12 and Dr. Arun Garg PW 11, who also

conducted an ossification test on her and opined that she was between 9 years and 12 years of age. The accused was arrested on 7th September,

1985 when he was produced before ASI Pratap Singh PW 9 by his brother Chander. He too was got medicolegally examined from Dr. K.K.

Chawla PW 3, who in his report Ex. PC opined that the accused was capable of performing sexual intercourse. After completion of the

investigation, the accused was challaned for offences punishable under Sections 366/376 of the Indian Penal Code and as he pleaded not guilty to

the charge, he was brought to trial.

2. In support of its case, the prosecution examined PW 1 Dr. Indu Lalit, PW 2 Dr. S.S. Sriwastava, PW 3 Dr. K.K. Chawla, the three injured

witnesses that is PW 5 Ram Chander, PW 6 Kela and PW 7 Goga the prosecutrix, PW 11 Dr. Arun Garg, and PW 12 Dr. V.K. Sharma and

also produced the other formal evidence in Court.

3. The accused when examined under Section 313 of the Code of Criminal Procedure, denied all the prosecution allegations and pleaded

innocence and stated that in fact, he and the prosecutrix Goga had been married at the instance of Ram Chander, her father and a dispute had

taken place between him and Ram Chander aforesaid as the latter had refused to return some goats belonging to him and it was on account of that

incident that a false report had been lodged against him. He also admitted that he had committed sexual intercourse with Goga with her consent as

she had been married to him. In defence, the accused examined Chander as DW 1 and Sis Ram as DW 2.

4. The Trial Court come to the conclusion that the evidence of the three witnesses that is Ram Chander PW 5, Kela PW 6 and Goga the

prosecutrix PW 7 inspired confidence and though, it appeared that Goga PW 7 had gone from place to place with the accused of her own, yet as

she was between 9 years and 12 years of age, a case was clearly spelt out against the accused as he had admitted that he had committed sexual

intercourse with Goga as she was his wife. The trial court, however, rejected the defence that a marriage had taken place or that a false report had

been lodged by Ram Chander PW 5 on account of the dispute with regard to the return of goats. The trial Court, accordingly, convicted the

accused and sentenced him to undergo R.I. for five years under Section 366 of the IPC and a fine of Rs. 500/ and in default thereof to further

undergo R.I. for two months and further to undergo R.I. for seven years and to pay a fine of Rs. 1,000/ under Section 376 of the IPC and in

default thereof to further undergo R.I. for four months and both the sentences were ordered to run concurrently. Hence, this appeal.

5. I have gone through the judgment of the trial Court as also the evidence on record and find that the prosecutrix story is liable to be believed for

the reasons given by the trial Court. The accused in his statement recorded under Section 313 of the Code of Criminal Procedure, had clearly

admitted that he had sexual relations with Goga the prosecutrix as she was his wife. It is clear from a reading of Section 376 of the IPC and

especially/Clause sixthly that if a man has sexual intercourse with its a woman with without her consent when she was under 16 years of age, that

would constitute rape and the exception provides that sexual intercourse by man with his own wife, would not, however, constitute rape. The

factum of marriage has to my find, been rightly disbelieved by the trial Court. Further, from a reading of the aforesaid section, it is clear that in case,

an accused claimed that the person alleged to have been raped was his wife, then it was further to be shown by him that the wife was not less than

15 years of age. It is the prosecution case and not controverted by other side that Goga prosecutrix at the time of the incident was between nine

years or 12 years of age. It is, therefore, apparent that the offences alleged against the accused were clearly spelt out.

6. I have, however, gone into the quantum of sentence and find that in the admitted facts, some reduction is called for. Although, the trial Court has

given finding that the accused and Goga the prosecutrix were not married but there is evidence to show that as a matter of fact, she had gone with

the accused from place to place and that too very happily. It is, therefore, apparent that the offence against the accused stands proved on a

technicality.

7. This appeal is, accordingly, dismissed but it is directed that the sentence imposed upon the appellant under both the Sections is reduced to three

years R.I., to run concurrently, the sentence of fine being maintained as it is.