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**(2007) 07 P&H CK 0166**

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

**Case No:** Criminal Appeal No. 44-SB of 1998

Nirmal Singh And Another

APPELLANT

Vs

State of Haryana

RESPONDENT

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**Date of Decision:** July 30, 2007

**Acts Referred:**

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

**Citation:** (2007) 4 RCR(Criminal) 271

**Hon'ble Judges:** A.N. Jindal, J

**Bench:** Single Bench

**Advocate:** Raman Gaur, for the Appellant; S.S. Pattar, D.A.G., Haryana, for the Respondent

**Final Decision:** Dismissed

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**Judgement**

A.N. Jindal, J.

Nirmal Singh and Daler Singh accused Appellants (hereinafter referred to as the "accused") have called in question the judgment dated 11.11.1997 passed by Addl. Sessions Judge (II), Kurukshetra whereby they were convicted u/s 376(g) and were sentenced to undergo RI for 10 years and to pay fine of Rs. 10,000/- and in default of payment of fine to further undergo RI for one year.

2. Ram Pal complainant had two daughters and three sons. Lakshmi, his daughter was 13 years old and was younger to his son Sanjeev Kumar. The marriage of his eldest daughter, Bala Devi was to take place on 24.02.1995, whereas on 20.02.1995, there was a ladies sangeet in his house. In that connection, Shanti Devi, mother of Ram Pal directed prosecutrix (name not disclosed) to bring gur from the nearby shop. Despite a long wait, she did not turn up, therefore, the complainant and other family members got suspicious and started searching her. When they were passing by the shop of Nirmal Singh accused, they heard the cries of prosecutrix from inside the shop. On raising the noise, some people of the mohalla also gathered. On

hearing the voices of the crowd, both the accused after opening the shutter of the shop fled away. The prosecutrix, who was in the shop, disclosed that both the accused raped her.

3. On the basis of the aforesaid statement made on 21.02.1995, before Rajesh Kumar, Sub Inspector, Police Station Ismailabad, FIR was registered against the accused. The investigating officer visited the place of occurrence, lifted the broken bangles, took two bangles of the prosecutrix from her hand. Bed sheet lying on the wooden platform was also taken into possession; recorded the statements of the witnesses; got the prosecutrix and the accused Nirmal Singh medically examined whereas the accused Daler Singh had run away, who was arrested on 24.02.1995.

4. The statement of the prosecutrix u/s 164 Cr.P.C was also got recorded in the Court on completion of investigation, the challan against the accused was presented. Consequently, both the accused were charged for committing rape which they contested and claimed trial.

5. During trial the prosecution examined Bant Ram, ASI (PW1), who recorded the formal FIR on 21.02.1995 Sushil Madan (PW2) Head Mistress who deposed that prosecutrix was born on 10.08.1980, Rajinder Kumar (PW3) a close relative of the prosecutrix who had admitted her (the prosecutrix) in the school at Khanpur, Kadam Singh (PW4) had delivered the special report to the Illaqua Magistrate. Y.S. Rathore, JMJC, Kurukshetra, (PW5) had recorded the statement of the prosecutrix u/s 164 Cr.P.C, Shiv Charan (PW6) had partly investigated the case, Constable Balraj (PW7), is a formal witness, Dr. Madhu Sharma (PW8) medico legally examined Nirmal Singh, Dr. K.K. Sharma (PW9) had medically examined Daler Singh on 24.02.1995, Bashir Ahmed HC (PW10), is a former witness, Badlu Ram ASI (PW11), a witness to the taking into possession of the parcel containing clothes by the investigating officer, Hakim Singh (PW12) proved the birth entry of the prosecutrix in the official record, Mukesh Kumar, Draftsman (PW13) prepared the scaled site plan of the place of occurrence, prosecutrix is (PW14), Ram Pal (PW15) is the father of the prosecutrix, Rajesh Kumar, SHO (PW16) is the investigating officer of the case.

6. When examined u/s 313 Cr.P.C both the accused denied all the incriminating circumstances appearing against them. The accused Daler Singh further stated as under:

"Infact, Lakshmi Devi was in love with me and she used to write letters in that respect. One such letter is mark "B". She also wrote letters mark A to C but intentionally refused to recognize, the handwriting on the same. She in fact, left her house on the pretext of seeing me but on interception, her parents started searching for her. I had advised her time and again not to come to me on odd hours but she had been forcing me one way or the other. Nirmal Singh was not in the knowledge of my love affair with Lakshmi Devi. On the alleged night of occurrence I was not present on my shop. Nirmal Singh used to sleep in his shop. The private

parts of Lakshmi Devi might have been tempered by some old lady in the house or the medical certificates may have been obtained in connivance with the doctors in P.H.C Ismailabad. I never had any intercourse with Lakshmi. There was a rumour in the entire village about eloping of Lakshmi. Her parents to save the honour and ego of the family from the society, got this false case registered."

Similarly the accused Nirmal Singh explained as under:

"I am innocent. In fact, Lakshmi had left the house without informing her family members. In this process they came to me also and wanted to know the whereabouts of Lakshmi. I showed my helplessness. They were suspicious about her character and involvement with Daler Singh. When I showed ignorance about her whereabouts, her brothers and uncle gave me thrashing and threatened me with dire consequences. They gave me certain injuries and looted the articles from my shop, I was taken to police Station in the night where also I was given beatings. In fact, I am unfit to perform sexual intercourse on account of abnormality in my penis. The family members of Lakshmi prepared a false report about my potency. Out of frustration on account of losing the reputation of the family the family members of Lakshmi concocted a false story of abduction."

7. In defence, the accused examined Dr. P.K. Gupta (DW1), the trial ended in conviction. Hence this appeal.

8. Sufficient evidence has been led by the prosecution to establish that prosecutrix was below 16 years of age at the time of occurrence. The prosecutrix while appearing in the witness box gave her age as 16 years on 18.04.1996. As per school record she is shown to have been born on 10.08.1980. Rajinder Kumar (PW3) who got the prosecutrix admitted in the school has lent support to the factual age of the prosecutrix. Dr. P.K. Gupta examined by the accused also states that the prosecutrix was 15-16 years of age at the time of occurrence. No cogent evidence has been led to challenge the aforesaid evidence. The voter list has been pressed into service to rebut the evidence but the same have been prepared on 01.01.1995 that too, on the basis of no authentic evidence could be of no consequence and taken as a document to prove the age in the absence of the evidence of author who got recorded the age.

9. I have no such material as to disbelieve the prosecutrix regarding the offence committed by the accused. No doubt the accused Daler Singh has presented letters Ex.DG, Ex.DH, Ex.DJ and Ex.DK written by the prosecutrix in order to prove that she had love affairs with him. Since we have already observed that the prosecutrix was below 16 years of age, therefore, her consent if any is of no consequence and the letters if gone through do not indicate if the prosecutrix had any sexual relations with the accused Daler Singh. The crux of the matter is that on the day of Ladies Sangeet, when she had gone to purchase gur from the market she was caught by surprise by the accused and was raped.

10. Faced with the situation counsel for the Appellants while giving up the other arguments have sought indulgence of this Court to take some lenient view on the ground that they have already undergone more than 5 years of sentence; they have already suffered a lot due to the longevity of the trial and that the prosecutrix was consenting party.

11. Having pondered over the aforesaid arguments some substance is found in the same. The accused were in 20s when they indulged in this vicious activity probably due to their immature age. The prosecutrix though was minor was writing love letters to the accused Daler Singh and was friendly with him. No previous antecedents have been brought to surface so as to condemn them as habitual offenders.

12. Prosecutrix has been admittedly married in the year 1998 and has 3 children so as Daler Singh and Nirmal Singh are now having families consisting of wife and children. No injury was found on the private parts of the prosecutrix though she was immediately taken to the hospital for medical examination after rape.

13. Under these circumstances, if the lenient view is not taken then 3 families and their relations would further be strached shall be disturbed particularly when they have already undergone 5 years and 6 months of the substantive sentence. In the similar circumstances of the case, the Apex Court in case Ram Kumar v. State of Haryana, 2007(2) RCR(Crl.) 305 (SC): 2007 R.A.J 16 (SC): (2006) 4 SCC 347 observed as under:

We have carefully analysed the evidence tendered by the prosecution. In our opinion, sufficient evidence was tendered by the prosecution to prove the guilt of the accused. However, at the time of hearing it is brought to our notice that the girl has now got married and living with her husband. The said statement is also ratified by the evidence of the father of the girl. Having regard to the peculiar facts and circumstances of the case, we are of the view that the sentence imposed by the Sessions Court and as affirmed by the High Court under Sections 366 and 376 of the Penal Code is on the highside. In our opinion, ends of justice would be amply met if we reduce the sentence to three years. We do so accordingly.

14. Keeping parity with the aforesaid observations of the apex court and while examining the facts of the present case on the touchstone of aforesaid observations made in Ram Kumar's case supra the accused deserve some leniency in this case.

15. In the wake of the aforesaid discussions the appeal preferred by the Appellants is dismissed with the modification in the sentence so as to reduce the same to 6 years without any alteration in the sentence of fine.

16. Chief Judicial Magistrate, Kurukshetra is directed to take the accused in custody for serving remaining part of the sentence.