

Satbir Vs State of Haryana

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: May 7, 2007

Acts Referred: Criminal Procedure Code, 1973 (CrPC) â€” Section 173(5)

Evidence Act, 1872 â€” Section 25

Penal Code, 1860 (IPC) â€” Section 34, 342, 363, 366, 375(6)

Citation: (2007) 4 RCR(Criminal) 169

Hon'ble Judges: M.M.S. Bedi, J

Bench: Single Bench

Advocate: K.S. Dhaliwal, for the Appellant; S.S. Yadav, AAG, Haryana, for the Respondent

Judgement

M.M.S. Bedi, J.

This order will dispose of two appeals bearing CrI. Appeal Nos. 388-SB and 305-SB of 1993 as these appeals arise

from the same order of conviction dated August 5, 1993. The Appellants were convicted for the following charges:

Name U/s Sentence

To undergo RI for a period of 3

years and to pay a fine of Rs. 50/-

Satbir 363 IPC and in default of payment of fine to

further undergo RI for a period of

one month.

To undergo RI for a period of 4

years and to pay a fine of Rs. 50/-

366 IPC and in default of payment of fine to

further undergo RI for a period of

two months.

To undergo RI for a period of 5

years and to pay a fine of Rs. 100/-

376-G and in default of payment of fine to

further undergo RI for a period of six

months.

342/34 IPC To undergo RI for six months.

506/34 IPC To undergo RI for six months.

To undergo RI for a period of 5

years and to pay a fine of Rs. 100/-

Ram Kishan 376-G IPC and in default of payment of fine to

further undergo RI for a period of six

months.

342/34 IPC To undergo RI for six months.

506/34 IPC To undergo RI for six months.

All the

sentence were

ordered to

run

concurrently.

The machinery of the prosecution in this case was set into motion on the statement of PW6 Ram Kumar, who vide his written complainant

Ex.W6/A addressed to S.H.O. Police Station Sadar, Jind, on September 6, 1992 stated that he had five children, two male and three females.

Males were aged 17 and 15 years. Indro was aged 11 years, Santro 9 years and Geeta 6 years. On August 27, 1992 at about 4.00 p.m. his

daughter Indro alongwith her younger sister Geeta had gone for a hair cut on Bhiwani Road, Railway crossing but did not return. He had made

search for the missing girls with his relations but was unsuccessful. On making enquiries from people of mohalla, he came to learn that Satbir-

Appellant who was his neighbourer was also missing from his house. He suspected Satbir-Appellant to have kidnapped the girls. As such, case

under Sections 363, 366, 376, 506/34 IPC was registered. PW 10 SI Harish Kumar Dutta on September 8, 1992 went to the house of Satbir but

he was not found present. Ram Kumar, complainant suggested that friend of Satbir could tell about whereabouts of the missing persons. Brother-

in-law of Ram Kumar met the police party near Safaido Gate, Jind and informed that he had seen accused Satbir roaming at Railway station

platform. The police party found Satbir sitting at the platform. He was detained and joined in investigation. On interrogation, Satbir made a

disclosure statement Ex.PW 10/A admitting to have enticed Indro and Geeta and having taken them to his friend Ram Kishan in Panipat. The said

statement was thumb marked by Satbir and attested by Ram Kumar and Ram Karan. Sequel to the said statement, he got recovered Indro and

Geeta from the house of Ram Kishan accused at Panipat. Girls alongwith Satbir were brought to Jind where Indro was sent to Civil Hospital for

medico-legal examination. After examination, doctor handed over two sealed parcels containing vaginal swabs and clothes of prosecutrix. Satbir

was also got medico-legally examined. A sealed parcel containing underwear of the accused was handed by doctor to the Investigating Officer.

2. Ram Krishan was produced by Ram Lal and his wife. He was also got medico- legally examined. Sealed packets were sent to F.S.L.

Madhuban for chemical examination. After completion of investigation, charge-sheet was produced in the Court for trial of the accused. Vide

commitment order dated November 16, 1992, case against the Appellants was sent to Sessions Judge, Jind for trial. After supplying him the report

u/s 173(5) Code of Criminal Procedure alongwith all documents and providing them separate legal aid, the Appellant Satbir was charged under

Sections 363, 366, 376-G, 342, 506 read with Section 34 IPC, whereas Appellant Ram Kishan was charged under Sections 376(g), 342, 506

read with Section 34 IPC. Both the accused pleaded not guilty and claimed trial.

3. Prosecution, in order to substantiate the charges levelled against the accused examined the following witnesses:

Dr. G.P. Gupta, Radiologist and

PW1 established the radiological age of Indro

15-16 years.

Kuldip Kumar, draftsman to prove the

site plan Ex.PB prepared by him on

PW2 September 16, 1992 of the house of

Ram Kishan near Railway Colony,

Panipat.

Dr. Dhan Kumar, to prove the medico

legal report of Satbir to establish his

PW3 capability of sexual inter-course. He also

proved the medical report of Ram

Kishan.

ASI Varinder Singh, who proved FIR

PW4

Ex.PW6/B.

PW5 Dhanpati, wife of Ram Kumar.

PW6 Ram Kumar, complainant.

PW7 Kartar Singh

PW8 Indro, the prosecutrix.

Geeta, was produced in the Court but

was not examined by Additional Sessions

PW9 Judge, after being satisfied that she was

not capable of undergoing cross-

examination.

Harish Kumar Dutta, SI. The

PW10 investigating officer who proved the

investigation.

Dr. AbheyKulshershtha, to prove the

PW11

medical report of Indro.

4. Entire incriminating material appearing against the accused were put to them. Satbir Singh stated that a few days before the alleged occurrence,

he had a quarrel with Ram Kumar, father of the prosecutrix. As a sequel of same, he had been falsely implicated in the case. Ram Kishan stated

that he was innocent having no connection with Satbir and pleaded false implication. The trial Court after appreciation of evidence in considering

the prosecution held the Appellants liable for conviction and sentenced the Appellants as mentioned hereinabove.

5. Counsel for the Appellant Satbir vehemently urged that the prosecution has not been able to establish the charges beyond the shadow of doubt.

There has been an inordinate delay in lodging the FIR which was not explained by the prosecution. The finding of the trial Court regarding the age

of prosecutrix is not sustainable as the radiologist has given the age of prosecutrix between 15-16 years. The variation of 2 years of either side

could be possible, as such offence of kidnapping is not made out. Counsel placed reliance on Vinay Krishna Ghatak v. State of Rajasthan, 2004

(1) RCR (Cri.) 565 (Raj) wherein it was observed that while determining the age of prosecutrix by radiological examination, margin of error in age

ascertained by the radiological examination is of two years on either side. As the age has been suggested to be 15-16 years by PW1 Dr. G.P.

Gupta, the case would fall within the exception u/s 375(6) IPC. The defence of consent would be available to Appellant Satbir. Counsel further

contended that no injury was detected on any private part of the body of the prosecutrix or any other part of the body. It would indicate that she

did not put up any resistance. The hymen was ruptured. No fresh scars or tenderness was found. The doctor had admitted in his cross-examination

that prosecutrix was habitual of sexual inter-course. In view of the said circumstances, the benefit of doubt should have been granted to accused

Satbir.

6. So far as Ram Kishan is concerned, counsel for the Appellant submitted that the Appellant is a married man and has been falsely implicated. He

is not named in the FIR and was subsequently, on the basis of the disclosure statement of co-accused Satbir, was implicated in the case. The

statement of Satbir made before the police is not admissible u/s 25 of the Evidence Act as such the benefit of doubt deserves to be granted to Ram

Kishan.

7. On the other hand, State counsel opposed the contentions of counsel for the Appellants and urged that in view of heinous crime committed by

both the Appellants, the sentence has to be upheld.

8. I have heard counsel for the Appellants as well as counsel for the Respondent State and carefully gone through the entire evidence. So far as

Appellant Satbir is concerned, the prosecutrix while appearing as PW8 stated that Satbir was her neighbourer. Satbir gave Samosa to her and her

sister and took them to Panipat. She came to know that she was in Panipat having reached there. After taking Samosa, she and her sister had lost

senses. At Panipat, Satbir took them at the house of Ram Kishan and they were shut inside the house. Satbir had taken of his pajama and untied

the cord of her salwar and committed rape on her. She stated that thereafter Ram Kishan had committed rape upon her. Her younger sister was

present there but she was not sexually assaulted. The accused held out a threat that in case she talked to anybody, about the occurrence, she

would be done away with death. After 8-10 days, police alongwith her father, Mama Ram Karan and accused Satbir came to the house of Ram

Kishan and we recovered from there. She stated that accused used to commit sexual intercourse with her during all the days they remained there.

Satbir had left them there four days before. They were brought from Panipat to Jind where she was medico-legally examined. In her cross-

examination, she had stated that in the absence of Satbir, Ram Kishan accused used to sexually assaulted her. So far as the medical evidence is

concerned, statement of Dr. Abhey Kulsheraatha PW11 is to the effect that there were no external marks of violence seen over any part of the

body. Local examination showed that there was no injury over perineum, labia, lower abdomen, thighs and fibs. Hymen was ruptured old healed

type. Tags were present. Vagina was loose admitting two fingers easily. Pubic hair are scanty and shaved. Uterus was of normal size. In his cross-

examination he admitted that girl was habitual to sexual inter- course and that she had achieved poverty when he medically examined her.

Regarding her age, statement of PW1 Dr. G.P. Gupta, that he had radiologically examined Indro on September 9, 1992 and had done X-ray of

her both hands and wrist joint, both elbows, both knees and pelvis and ultimately arrived at a conclusion that radiologically her age was 15 years to

16 years. The prosecutrix has not placed on record any birth certificate to establish her age. She has stated to be her age as 12 years before

deposition but did not state her date of birth in the statement. Dhanpati, mother of prosecutrix, while appearing as witness had stated in her

statement dated July 8, 1993 that she was herself 30 years of age and her eldest son Bansi Lal 18 years of age, meaning thereby, that she was

married when she was only 11-12 years of age. She stated that other son Inder was 15 years of age whereas Indro prosecutrix was 12 years of

age. In her cross-examination she stated that she married at the age of 12/13 years and the first issue was born after three years of marriage. Ram

Kumar appeared on July 8, 1993 and had given the age of Bansi, eldest son as 17 years and age of next son as 15 years. Regarding Indro, he

stated that her age was 11 year. There is a contradiction regarding the age of prosecutrix Indro even in the statement of her mother and father,

meaning thereby, an attempt has been made to conceal her actual date of birth. No birth certificate was either taken into possession by the police

nor any attempt was made to procure the same. The Radiological report regarding her age contradicts the deposition of PW5 and PW6 falsifying

their testimonies regarding age. Whenever, the age is determined on the basis of radiological reports, the margin of error in the age ascertained by

the radiological examination is 2 years on either side. In this context a judgment of Hon"ble Supreme Court in Jaya Mala Vs. Home Secretary,

Government of Jammu and Kashmir and Others, and that of Rajasthan High Court in Vinay Krishna Ghatak's case (supra) can be referred to. The

age determined by radiological examination is not a conclusive proof, it could be plus and minus by 2 years. Keeping in view the said circumstance

and other secondary sex characters which were fully developed, it is held that the prosecutrix in the present case was more than 16 years of age.

From the medical evidence produced, it is established that prosecutrix was habitual to inter-course and there was no injury found on her body

indicating that she had not put up any resistance but at the same time, it cannot be ignored that the manner in which a consent has been obtained.

She was made to eat a samosa which made her unconscious and unaware of the happenings. When the prosecutrix is unable to understand the

nature and consequences of an action before giving her consent, the Appellant Satbir has committed sexual inter-course with the prosecutrix Indro

with her consent but the consent was obtained by administration of intoxication to her as a result of which she was unable to understand the nature

and consequences of his act of sexual inter-course. The conviction of Satbir u/s 376 IPC is thus sustainable. Merely because the prosecutrix is

major and habitual of inter-course will not entitle anyone to take the benefit of her. So far as the Appellant-Ram Kishan is concerned, his name

was not mentioned in the original complaint filed by Ram Kumar, PW6 but his name cropped up for the first time on the basis of the statement of

accused Satbir when he was arrested. The statement of Satbir Ex.PW4/A recorded by police on September 8, 1992 admitted that he had taken

both the girls to the house of Ram Kishan at Panipat. The said statement was made by him to the police and bears his thumb mark. Any statement

made to the police in custody is not admissible as per Section 25 of the Evidence Act. Pursuant to his statement, the girls were recovered by the

police in presence of Ram Kumar, complainant and his brother-in-law Ram Karan vide memo. Ex.PW6/B. The said memo is not signed by any

independent witness of the locality but bears the signatures of only interested witnesses. Ex.PW6/C is the recovery memo regarding the girls made

in presence of investigating officer and their father and Ram Karan. The police file indicates that statement of Indro was recorded on September 8,

1992. She had indicted Ram Kishan. Although the statement of accomplice Satbir made before the police is not admissible but the statement of

prosecutrix that she was also raped by Ram Kishan cannot be ignored. As no injury was detected on the person of Ram Kishan or prosecutrix it

appears that no resistance was offered but the prosecutrix has explained that she was threatened by Ram Kishan as well as Satbir that in case the

matter is disclosed to any one she would be done to death. Thus, the consent, if any, of the prosecutrix was obtained by force and coercion but the

part attributed to Appellant Satbir of having abducted Indro and having kept her in the house of Ram Kishan warrants the upholding of his

conviction but so far as Ram Kishan is concerned he had facilitated the commission of crime by permitting the accused Satbir to illegally detain

prosecutrix and her sister in his house. He also cannot be absolved of his act of having committed sexual inter-course with prosecutrix. But his

offence is lesser as compared to the one committed by Satbir. Conviction of Satbir u/s 363 IPC for having kidnapped the minor sister of

prosecutrix and detaining her in the house of Ram Kishan attracts Section 342 IPC but he cannot be convicted for having kidnapped prosecutrix

who has been held to be more than 16 years of age. Conviction order of Satbir and Ram Kishan are upheld.

9. I have heard counsel for the Appellant regarding sentence. They have submitted that the offence pertains to the year 1992 and the Appellants

have faced the agony of trial for the period of 14 years. Sentence of imprisonment and fine of Satbir under Sections 363, 366, 342 and 506 IPC is

upheld but so far as the sentence u/s 376 IPC is concerned his sentence is reduced to three years and he is ordered to undergo RI for 3 years and

to pay a fine of Rs. 100/- and in default of payment of fine to further undergo R.I. for six months. Sentence of imprisonment and fine of Ram

Kishan under Sections 342 and 506/34 IPC is upheld but so far as the sentence u/s 376 IPC is concerned his sentence is reduced to two years

and he is ordered to undergo RI for two years and to pay a fine of Rs. 100/- and in default of payment of fine to further undergo R.I. for six

months. Sentence of all the counts to run concurrently. Period of sentence of imprisonment already undergone will be set off.

Disposed of in the aforesaid terms.