

(2008) 04 P&H CK 0146

High Court Of Punjab And Haryana At Chandigarh**Case No:** Criminal Appeal No. 949-SB of 1997

Sangam Lal

APPELLANT

Vs

State (U.T.) Chandigarh

RESPONDENT

Date of Decision: April 1, 2008**Acts Referred:**

- Penal Code, 1860 (IPC) - Section 120B, 313, 363, 366, 376

Citation: (2008) 3 RCR(Criminal) 513**Hon'ble Judges:** Kanwaljit Singh Ahluwalia, J**Bench:** Single Bench**Advocate:** Ravi Kant Sharma, for the Appellant; Hemant Bassi, Counsel for U.T. Chandigarh, for the Respondent

Judgement

Kanwaljit Singh Ahluwalia, J.

The present appeal has been preferred by Sangam Lal son of Rang Bahadur aged 20 years labourer, resident of House No. 3155, Mauli Jagran, UT Chandigarh. He was tried in case FIR No. 42 dated 14.04.1995 registered at Police Station, Manimajra, UT Chandigarh under Sections 363/366/376 IPC. It was stated in the FIR lodged by Gaya Parsad that he is a resident of House No. 3170, Moli Jagran, UT Chandigarh and he was residing there along with his children and was doing job in the private shop in Sector 8, Chandigarh. He had five children which include two sons and three daughters. Eldest Durgesh Kumari has passed fourth class and was a student of fifth class. It has been stated that in his neighbourhood in house No. 3155, two boys namely Hazari Lal and Sangam reside. Hazari Lal was working as a Painter and Sangam also as a Painter. From the last two months, Sangam used to roam around his house. As on 10th April, 1995, Sangam was spotted roaming number of times around the house of the complainant and a DDR was lodged by the complainant on 10th April, 1995 that his daughter Durgesh Kumari is missing and he has been searching for her. It was further alleged by him from 10th April, 1995, Sangam was also missing. FIR was lodged after four days, on 14th April, 1995.

2. The FIR was investigated. Challan was submitted. Appellant along with one Ram Rattan was charged by the Court of Additional Sessions Judge, Chandigarh for offences u/s 363/366 with the aid of Section 120-B IPC. Appellant Sangam Lal was also charged for offence u/s 376 read with Section 120-B IPC. Accused, including the appellant pleaded not guilty and claimed trial.

3. Prosecution examined PW-1, Mahavir. He stated that on 10th April, 1995 at about 10-11 p.m. he saw appellant Sangam, his co-accused Ram Rattan with the daughter of complainant on the Railway Station, Chandigarh. He stated that he also went to UP and when returned after 2-3 months, he was examined by the police. PW-2, Smt. Promila, teacher of Government Senior Secondary School, Sector, 8, Chandigarh was examined to prove date of birth of Durgesh Kumari which was recorded as 30th April, 1985 in the school record. Gaya Parsad (complainant) appeared as PW-3 and reiterated the version given by him in the FIR. He further stated that he was approached on 9th April, 1995 by co-accused of the appellant, Ram Rattan that marriage of Durgesh Kumari (his daughter) should be solemnized with Sangam Lal (appellant) to which he disclosed that marriage is not possible. He stated that marriage was refused because of caste consideration. He further stated that on 17th June, 1996, he received information from his relative Ram Saran to the effect that Durgesh Kumari (his daughter) was residing with Sangam Lal in village Kanihan. Village Kanihan falls in district Nagpur, Maharashtra. He further stated that on 18th June, 1996, police had recovered Sangam Lal and his daughter Durgesh Kumari in village Kanihan in Maharashtra. He further stated that after 10 days when the girl was recovered and accused was arrested, i.e., on 28th June, 1996 Durgesh Kumari committed suicide. In cross-examination, he admitted that Durgesh Kumari was married in the year 1993, but her Gauna (sending off) ceremony was not yet performed. PW-4, Bindeshwari has stated that a day before Ram Rattan has approached Gaya Parsad (PW-3) and asked him to marry his daughter Durgesh Kumari with present appellant Sangam Lal. PW-5 is Jaswant Singh, Draftsman. PW-6, Sukhwinder was examined to prove DDR which was recorded regarding missing of girl. PW-7 Dr. Manjit Talwar had conducted dental examination of the prosecutrix to determine her age as part of ossification test. According to her, the age of Durgesh Kumari was 13-14 years. PW-8, Dr.(Mrs.) Sarita Behl conducted medico-legal examination of Durgesh Kumari. She had recorded the age as 15 years. PW-9 is the Naik Head Constable Vibhuti Singh Thakur of district Nagpur. He stated regarding the arrest of the appellant and recovery of Durgesh Kumari, who had assumed the name of Sapna. PW-10, Dr. Ajay Goel declared appellant fit to commit sexual intercourse. PW-11, Dr. P.D. Jain conducted ossification test and determined the age of prosecutrix to be between 14-1/2 to 16 years. PW-12 Head Constable Prithipal Singh tendered his affidavit (Ex.PW-12/A) to prove link evidence. PW-13, Gobind Ram belonged to village Kanihan, district Nagpur. He has stated that the accused appellant had taken name of Ajay Kumar and was living with the girl, whose name was told as Sapna and he had taken a room on rent. He further stated that accused

has told him that the girl was his legally wedded wife. PW-14, Head Constable Jaldan Singh had brought the DDR register and PW-15, Surinder Pal was the investigating officer. Accused, when examined u/s 313 statement, has denied each and every allegation and pleaded false implication. His statement recorded is reproduced as under:

"I am innocent and have been falsely implicated by the complainant as he had long standing enmity with my father and myself and a dispute regarding our house was pending between the parties. Complainant, was intending to grab our property as such I and my relative Ram Rattan were made the victim of false accusation. I never kidnapped Durgesh Kumari and she was not recovered from me as alleged infact, she was kept by the complainant in his native village and lateron he tried to persuade Durgesh Kumari to depose against me to which she did not oblige. She was tortured by the complainant to support the false case. She was also pressurized by complainant to make false statement and she committed suicide at the instance and instigation of complainant."

4. In defence, he examined DW-1 Devta Din, who stated that appellant has been involved in a false case. The trial Court acquitted coaccused Ram Rattan. Appellant was also acquitted of the offence u/s 376 IPC as Durgesh Kumari had not appeared. The learned Additional Sessions Judge, Chandigarh sentenced Sangam Lal u/s 363 to undergo two years RI and to pay a fine of Rs. 500/- and u/s 366 to five years RI and a fine of Rs. 500/-. In default of payment of fine, it was ordered that he will undergo RI for two months.

5. Mr. Ravi Kant Sharma appearing for the appellant has stated that from the prosecution evidence, he will not be able to convince this Court that the age of Durgesh Kumari was more than 18 years. He has stated that from the evidence, even if all leeway was granted, the age of the prosecutrix (Durgesh Kumari) cannot be inferred more than 16 years.

6. I have heard Mr. Ravi Kant Sharma and Mr. Hemant Bassi, appearing for the appellant and for the State respectively. It is not disputed that the appellant and Durgesh Kumari, daughter of complainant, Gaya Parsad (PW-3), were living in the same locality and in the close vicinity. It is also admitted that on 10th April, 1995, both were missing. It has also come in evidence that both have reached in village Kanihan in District Nagpur and there they started living as husband and wife. It has also come in evidence that both were spotted at Railway Station and they had traveled together to District Nagpur. It has also come in evidence and has been admitted by the witnesses that a day before, complainant Gaya Parsad (PW-3) was approached in the presence of PW-4 (Bindeshwari) that marriage of Durgesh Kumari should be performed with the present appellant, Sangam Lal. Due to the caste consideration, the marriage was refused. It has also come in evidence that after 10 days when the prosecutrix was recovered from Nagpur, she committed suicide. It has been urged that lovelorn lady has committed suicide as she could not accept

her separation.

7. As per ossification test, age of Durgesh Kumari was determined to be between 14-1/2 to 16 years. The age of the appellant was determined to be around 20 years. Both were youth and had immature mind. It cannot be ruled out that cupid's arrow had struck them and they had eloped and started living at Nagpur as husband and wife. But technically since the prosecutrix was aged less than 18 years, offence u/s 363 and 366 IPC stands committed.

8. That the appellant was granted bail by this Court on 26.02.1998 as it was notice that the appellant has already undergone 20 months" imprisonment.

9. In [S. Varadarajan Vs. State of Madras](#), it was held that there is essential distinction between the words "taking" and "enticing". It is no doubt that the mental attitude of the minor is not of relevance in the case of "taking" and the word "take" means to cause to go, to escort or to get into possession. Furthermore, in a case of rape in State of Himachal Pradesh v. Mango Ram, 2000 (3) RCR (Crl.) 752 (SC), immaturity of the accused and their youth were also taken into consideration. In the present case, no conviction under rape has been recorded as per the findings of the learned trial Court.

10. Relying upon these judgments, it has been stated that when the young persons below the prescribed age, commit offence, they being of immature mind, though have technically committed the offence but should not be visited with the rigor of law and the Court, in sentencing, should act sympathetically.

11. Due to peculiar facts that appellant and Durgesh Kumari had eloped, started living as husband and wife along with the fact that occurrence took place in the year 1995, a period of 13 years has elapsed, I deem it appropriate to reduce the sentence of appellant to already undergone.

With these observations, present appeal is disposed off.