

Prem Chand and Another

Vs

State of Haryana

Criminal Appeals Nos. 544-545 of 1986

(B. C. Ray, S. R. Pandian JJ)

31.01.1989

JUDGMENT

RATNAVEL PANDIAN, J. –

1. These two appeals by special leave under Article 136 of the Constitution of India were directed against the judgment dated November 28, 1985 by the Punjab and Haryana High Court at Chandigarh challenging the correctness of the judgment made in Criminal Appeal Nos. 709-SB of 1985 of the said High Court.
2. The appellants herein along with one Ravi Shankar (since acquitted by the High Court) took their trial on the accusations that Ravi Shankar committed rape on the prosecutrix Suman Rani (examined as PW 17 before the trial court) in the field at Bhawani Khera on two occasions i. e. firstly on March 15, 1984 and thereafter on March 18, 1984 and that later on on May 31, 1984 Ravi Shankar abducted Suman Rani from Bhawani Khera and took her to Jammu via Bhiwani, that the two appellants (who were arrayed as accused 2 and 3 along with Ravi Shankar and who were police officials posted in Police Post Patram Gate, Bhiwani) took Ravi Shankar and Suman Rani when they arrived at the bus stand of Bhiwani on their way to Jammu to the said police post and put Ravi Shankar and Suman Rani in different rooms and committed rape on Suman Rani one after another and thereafter the appellant Prem Chand took Ravi Shankar and the victim girl to the railway station and left them there. On the said accusations Ravi Shankar took his trial under Section 366 and 376 IPC and the two appellants herein under Section 376 IPC. It may be stated that there was a joint trial against all the three accused. The trial court for the discussions made in the judgment and the reasons assigned therein found all the three accused guilty under the respective charges and convicted thereunder and sentenced Ravi Shankar to undergo rigorous imprisonment for 7 years under each of the charges with the direction that all the sentences were to run concurrently. These two appellants were convicted under Section 376 IPC and each of them was sentenced to undergo rigorous imprisonment for a period of 10 years as provided under sub-section (2) of Section 376 with an observation that "there is no reason for awarding less than the minimum sentence prescribed." All the three convicted accused preferred separate and independent appeals before the High Court which disposed all the three appeals by a common judgment. The appellate court acquitted Ravi Shankar of all the charges and set aside the sentences imposed on him on the ground that the prosecution had not successfully proved that the prosecutrix Suman Rani was below 18 years of age and that "she was a willing party and had been going around with Ravi Shankar appellant and had been having sex with him of her free will" but dismissed the appeals preferred by these two appellants observing "that the case against these two appellants certainly stands proved beyond a shadow of doubt". Coming to the question of sentence, the appellate court held that there was no scope for reducing the minimum sentence awarded to each of the appellants who are now

before us.

3. Mr. Mukhoty, senior counsel appearing on behalf of the appellants took us through the recorded evidence of the prosecution witnesses very meticulously for a considerable length of time particularly of PW 17 the victim girl, the Medical Officer (PW 4) who on examination of the victim girl gave his opinion that the victim girl was used to have frequent sexual intercourse and parturition and there was no mark of violence of sexual assault on any part of her body, as well of other Medical Officers, the father of the girl and the Investigation Officers and urged that the victim Suman Rani was a woman of questionable character and easy virtue with lewd and lascivious behaviour of and that the very fact that this girl had not complained of the alleged rape said to have been committed at police station by these two appellants to anyone till she was interrogated by PW (sic) on March 28, 1984 shows that the present version is not worthy of acceptance.

4. Mr. D. S. Tewatia, Senior counsel appearing on behalf of the respondent forcibly argued that the prosecution has established its case against both the appellants satisfactorily and as such the judgment of the High Court has to be upheld.

5. After considerable debate on the merits of the case, the argument was confined only with regard to the quantum of sentence.

6. Before adverting to the submission with regard to the question of sentence we would like to point out that there is misjoinder of charges on account of a joint trial of these two appellants with Ravi Shankar. As rightly pointed out by Mr. Tewatia, no objection to the joint trial had been raised by these two appellants either at the trial stage or at the appellate stage or even before this Court, nor the appellants had shown any prejudice having been caused to them by such a trial. However, as contemplated under Section 464 CrPC in absence of proof that failure of justice had occasioned by the joint trial, the finding and the sentence recorded by the competent court cannot be said to be invalid.

7. Be that as it may, both courts below as pointed supra thought it fit to impose the minimum rigorous imprisonment of 10 years. No doubt an offence of this nature has to be viewed very seriously and has to be dealt with condign punishment. But the peculiar facts and circumstances of this case coupled with the conduct of the victim girl, in our view, do not call for the minimum sentence as prescribed under Section 376 sub-section (2). On the other hand, we hold that the proviso to that section can be invoked in the present case and a sub-minimum sentence will meet the ends of justice. Accordingly, while affirming the conviction of both these appellants as confirmed by the High Court, we reduce the sentence of imprisonment in respect of each of the appellants from 10 years to 5 years. Both the appeals are accordingly disposed of subject to the modification of sentence, as indicated above.

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