

SUPREME COURT OF INDIA

Fateh Chand

Vs.

State of Haryana

Crl.A.No.1096 of 2004

(Dr. Mukundakam Sharma and Dr. B.S. Chauhan JJ.)

29.05.2009

JUDGEMENT

Dr.B.S.Chauhan, J.

1. This appeal has been preferred against the judgment and order dated 21.8.2003 of the High Court of Punjab and Haryana at Chandigarh passed in Criminal Appeal No.341-SB of 1988 by which the High Court has dismissed the appeal against the judgment and order of Additional Sessions Judge, Faridabad dated 12.8.1988 and 16.8.1988 convicting and sentencing the appellant to undergo R.I. for seven years and to pay a fine of Rs.500/-, or else to further undergo R.I. for six months, under Section 376 IPC and R.I. for five years and a fine of Rs.500/-, or in default to further undergo R.I. for six months under Section 366 IPC. However, it was directed that both the substantive sentences of imprisonment shall run concurrently.

2. The facts and circumstances giving rise to this appeal are that the prosecutrix Geeta was present at her house in village Dayalpur, on the morning of 5.6.1986 when Krishna, wife of Fateh Chand (appellant herein), came there and asked her to visit Ballabgarh as her mother had met with an accident. The prosecutrix boarded a tempo from her village and came to Ballabgarh. When she got down from the tempo at Ballabgarh, Fateh Chand - appellant who had also traveled in the same very vehicle from Dayalpur to that place, told Geeta that her mother was lying in the hospital at Ballabgarh and that he could assist her in taking her to the hospital. Appellant arranged for a car and made Geeta to sit in the car. Geeta was given an intoxicant by the appellant in lemon water before sitting in the car. Prosecutrix - Geeta was taken to the house of Shanti Devi, mother-in-law of the appellant at Jaipur where she was forcibly subjected to sexual intercourse by the appellant. Geeta was left at the house of Shanti Devi by the appellant where she was sexually abused and coerced to indulge in flesh trade. Appellant and his wife Krishna again visited the house of Shanti Devi at Jaipur after few weeks and advised the prosecutrix not to return to her house. She was informed that a dead body of some young girl was recovered and it was identified as that of Geeta. Thus, if she returned home, her parents would be in difficulty. The case which was registered by the parents of Geeta under Section 364 IPC was filed as untraced in the month of October, 1987.

On 13.11.1987, Geeta returned to her house. She was produced before the police and investigation again started. Geeta was medically examined by Dr. Savita Ranjan on 14.11.1987. She was also put to radiological test on 17.11.1987 to determine her age. Fateh Chand - appellant was arrested on 17.11.1987. After completion of investigation, challan was filed against the appellant and he was charged under Sections 366/376 IPC to which he pleaded not guilty and claimed trial.

3. Before the trial court basically the question arose as to what was the age of the prosecutrix and whether the appellant was guilty of the aforesaid offences.

4. On the issue of the age of the prosecutrix, the prosecution examined, the prosecutrix Geeta PW.3, her mother Satya PW.4, her father Jagdish PW.6 and Dr. Rajesh Gupta PW2, who examined the prosecutrix radiologically on 17.11.1987. All of them deposed and given cogent explanation to the effect that the prosecutrix was below 16 years of age at the time of incident. Dr. Savita Ranjan PW1, who examined the prosecutrix on 17.11.1987 opined that the prosecutrix was habitual to sexual intercourse. After considering the evidence, the trial court came to the conclusion that it was a case of having peculiar features as the prosecutrix remained under constant threat for a long time and she had been subjected not only to sexual harassment by the appellant but had been forced to indulge in flesh trade. She had been taken away by the appellant fraudulently. The trial court found the charge against the appellant proved. Thus, he was convicted and awarded sentences as aforesaid.

5. Before the High Court, in appeal, same issues were raised and the High Court came to the conclusion that at the time of incident prosecutrix was below 16 years of age. Appellant committed rape on her. She had been coerced to indulge in flesh trade and, therefore, the conviction as well as the sentence was maintained.

Hence this appeal.

6. In spite of the knowledge that the matter would be heard by this Court in Vacation and notice for that purpose had been given long back, none appeared for the appellant. Thus, the Court had no option but to go through the entire record and examine the evidence on record minutely with the help of the learned counsel for the respondent-State, Shri T.V. George.

7. There could be no doubt regarding the age of the prosecutrix in view of the depositions of the aforesaid witnesses on this issue and we do not see any cogent reason to interfere with the said findings of fact recorded by the courts below. As per the evidence given by her mother Satya(PW 3) and father Jagdish (PW 6), it is clear that her parents got married only 20 years prior to the date of incident. The prosecutrix had two elder sisters. Eldest sister Mithlesh was born one and a half years after the marriage of her parents and Sunita was 1= years younger to Mithlesh. Prosecutrix Geeta is younger to Sunita by about one and a half years. So on the date of incident, the age of the prosecutrix was less than 16 years. There could be no reason to disbelieve the said witnesses.

Being parents of the prosecutrix, they could be the most natural and reliable witnesses on this point. Dr. Rajesh Gupta (PW2) examined the prosecutrix radiologically and opined that her age could be between 14 and 17= years as on 17.11.1987. Thus, on this issue, we have no reason to interfere with the concurrent finding of fact by the Courts below.

8. It was a case of taking the prosecutrix away fraudulently and subjecting her to rape by the appellant and forcing her to indulge in flesh trade by coercion. Deposition of the prosecutrix herself unfolds the facts. Prosecutrix remained for about one and a half years in Jaipur and reasons for which she could not come back or inform her parents, stand well explained by the prosecutrix that she had been given threat by the appellant that the dead body of some other girl had been identified by her parents to be of the prosecutrix and thus if she went back, her parents would be in difficulty. She had been living under a constant threat and could not muster the courage to inform any person.

9. Grounds taken in the appeal are not worth acceptance. It has been urged that there was inordinate delay in lodging the FIR. The delay was bound to occur as the FIR was filed after return of the prosecutrix from Jaipur after one and a half years remaining under the ordain of the accused/appellant. An FIR had been lodged just after disappearance of the prosecutrix on 5.6.1986 but the said case stood closed.

10. The issue of not having physical injury marks of any nature on the body of the prosecutrix is irrelevant and not worth taking into consideration for the simple reason that the accused had raped the prosecutrix immediately after taking her away to Jaipur. She was examined after one and a half years from the date of abduction and rape. She had been forced to indulge in prostitution during this period. Therefore, the prosecutrix had become habitual to sexual intercourse. In such a fact-situation, question of having any physical injury marks would not arise.

11. Undoubtedly, the prosecutrix had been taken away from the lawful custody of her parents by the appellant Fateh Chand to the place of his mother-in-law at Jaipur and she had been subjected to rape by him and was coerced to indulge in prostitution. Thus, the case certainly boarded on trafficking of women. There had been intervening factors specially the recovery of the dead body identified to be that of the prosecutrix had stalled the immediate search of the prosecutrix and thus, no attempt was made to trace her out. She had been taken deceitfully. As she had remained under the constant threat and coercion, she could not share her agony to any person who could help her. Thus, there is nothing on record to show that prosecution could not prove the case against the appellant beyond reasonable doubt for the offences punishable under Section 366/376 IPC.

12. In view of the above, we do not see any merit in this appeal and the same is, accordingly, dismissed. Appellant is on bail. His bail bonds and surety bonds stand cancelled. He be taken into custody forthwith to undergo the remaining part of the sentence.