

**SUPREME COURT OF INDIA**

Sat Parkash

Vs.

State of Haryana & Ors.

CrI.A.No.1163 of 2011

(Jagdish Singh Khehar and Rohinton Fali Nariman, JJ.)

09.12.2015

**JUDGMENT**

**Jagdish Singh Khehar, J**

1. The appellant - Sat Parkash, his uncle - Hari Chand and aunt - Sarla, were charged with the following, by the Additional Sessions Judge, Sonapat on 18.10.1993:

"Firstly:- That you Sat Parkash on 7.6.1992 in the area of Ganaur kidnapped Kumari Sushila alias Punam, a minor girl aged about 15 years from the lawful guardianship of her father Jagdish PW and thereby you Sat Parkash accused committed an offence punishable under Section 363 IPC within the cognizance of this Court.

Secondly:-1 That on the said date, time and place you Sat Parkash accused kidnapped Kumari Sushila alias Punam, a girl aged about 15 year minor daughter of Jagdish PW with intent that said Sushila may be forced to illicit intercourse with you Sat Parkash and thereby you Sat Parkash accused committed an offence punishable under Section 366-A IPC and within the cognizance of this Court.

Thirdly:- That from 7.6.1992 in the area of Ganaur, Murthai and other place, you Sat Parkash accused committed rape upon the person of Sushila alias Punam and thereby you Sat Parkash commit and offence punishable under Section 376 of the IPC and within the cognizance of this Court.

Fourthly:- That you Sarla and Hari Chand accused on 12.6.1992 in the area of Ganaur knowing that Kumari Sushila alias Punam has been kidnapped or has been abducted by Sat Parkash, co-accused and you both wrongfully concealed said Kumari Sushila alias Punam in your house at Ganaur and thereby you all committed an offence punishable under Section 368 IPC and within the cognizance of this Court.

Fifthly:- That you all viz. Hari Chand, Sarla and Sat Parkash accused on 12.6.1992 in the area of Ganaur in furtherance of the common intention, did commit murder by intentionally causing the death of Kumari Sushila alias Punam when she was administered poison and thus you all thereby committed an offence punishable under Section 302 read with 34 of the IPC and within the cognizance of this Court."

2. It is not a matter of dispute, that the uncle-Hari Chand and aunt- Sarla (of Sat Parkash) have since been acquitted. The appellant Sat Parkash has also been acquitted of the offence punishable under Section 302 of the Indian Penal Code.

3. The surviving charges against the appellant are relatable only to Sections 363, 366, 366-A and 376 of the Indian Penal Code. During the course of hearing, learned counsel for the appellant relied on the "suicide note" executed by the deceased Sushila just before she attempted to commit suicide. It is not a matter of dispute, that the appellant - Sat Parkash, had also made a similar attempt to commit along with Sushila. While in the attempt, Sushila had died, but somehow Sat Parkash survived. The "suicide note" of Sushila is available on the record of this case as annexure P-6. The aforesaid "suicide note" was produced as exhibit 'DE' before the trial Court. The same is extracted hereunder:

"Respected Papa and Mummy,

My Last Respect.

I, Sushila D/o Sh. Jagdish Tyagi had gone from my home of my free will and now according to you I cannot show my face to you but it will only be a misnomer that I am not pious as before but I continue to be pious as earlier. Please accept this as true because no person about to die will tell a lie.

Therefore I have decided that I am committing suicide because I only need Satto whom I cannot get while I am alive and will get him after death.

Therefore, I Sushila D/o Jagdish Tyagi declare that I shall be responsible for my own death and after my death no one should be held responsible for my death. Had I wanted so, I could have run away from home after taking money but I did not do so. I have loved Satto, and by dying I am leaving this writing as proof of my true love. After my death, no one should make any allegation against me ^because I am pious as the Ganges. If any one of you remembers me, then remember Satto prior to me. Convey my last respects to all and kindly forgive us if possible, but I have done no wrong.

Yours unfortunate Sushila"

4. In view of the clear and unequivocal statement made by the deceased Sushila to the effect, that she had left her residence by her own free will, it was not possible to record the guilt of

the appellant under Section 363 of the Indian Penal Code. This, on account of the acknowledgment, that no other evidence had been produced by the prosecution, to demonstrate that Sat Parkash had enticed the deceased Sushila, to accomny him. The only evidence available is, that Sushila was found in the residence of the appellant - Sat Parkash. Based on the above factual position, it was presumed that the appellant had kidnapped the deceased. We are of the view, that the above presumption is wholly misconceived and untenable.

5. The charges depicted in the charge sheet, extracted hereinabove, then takes us to Section 366 of the Indian Penal Code. The dying declaration of Sushila indicates, that she had committed suicide, rather than having married the appellant - Sat Parkash, by disregarding the wishes of the family. There is therefore substantial material on the record of this case to establish, that the deceased Sushila had not been persuaded or compelled to marry the appellant - Sat Parkash, before she committed suicide. In fact, the culpability of the appellant under Section 366 of the Indian Penal Code has been considered by us at our own, even though there was no express charge against the appellant under the above provision. We are satisfied, that even on the basis of the allegations levelled against the appellant, based on the evidence produced before the trial Court, it would not have been possible to convict the appellant even under Section 366 of the Indian Penal Code. The charge with reference to Section 366A of the Indian Penal Code needs a closer examination. Section 366A of the Indian Penal Code is extracted hereunder:

"366A Procurement of minor girl - Whoever, by any means whatsoever, induces any minor girl under the age of eighteen years to go from any place or to do any act with intent that such girl may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall be punishable with imprisonment which may extend to ten years, and shall also be liable to fine."

6. A perusal of the aforesaid section reveals, that the inducing of the minor to constitute an offence under Section 366A, should have been with reference to an intent to force or seduce her "... to illicit intercourse with another person...". In fact, there is no mention of any other person in the sequence of allegations levelled against the appellant. In the above view of the matter, we are satisfied, that the charge under Section 366A was also not sustainable against the appellant. For the reasons recorded hereinabove, we are of the view, that the impugned order passed by the High Court convicting the appellant under Section 366A of the Indian Penal Code is also liable to the set aside. The same is accordingly hereby set aside.

7. The question which arises hereinafter is, whether rape was committed by the appellant on the deceased Sushila. A mere act of sexual intercourse would have established rape at the hands of the appellant against Sushila, on account of the fact, that she was a minor on the date of incident (on 7.6.1992), on account of the fact, that her date of birth was admittedly 5.11.1976. The High Court arrived at the finding, that there was no material on the record of this case, on the basis of which it could be concluded that sexual intercourse was committed on the deceased Sushila. Thus viewed, we are satisfied, that the charge of Section 376 of the

Indian Penal Code would not have survived against the appellant, and that he was rightly acquitted thereof.

8. In view of the conclusion recorded hereinabove, the conviction of the appellant - Sat Parkash, on the charges framed by the Additional Sessions Judge, Sonapat on 18.10.1993, is clearly not sustainable. The conviction of the appellant upheld by the impugned order passed by the High Court is liable to be set aside, and is accordingly set aside.

9. By this Court's motion Bench order dated 15.04.2011, the appellant was enlarged on bail. His bail bonds shall stand discharged. The instant appeal is accordingly allowed.