

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 940 OF 2003

PARSHOTAM LAL & ANOTHER

....APPELLANTS

VERSUS

STATE OF PUNJAB

....RESPONDENT

J U D G E M E N TV.S. SIRPURKAR J.

1. The present appeal has been filed challenging the conviction for the offence under Section 366 of Indian Penal Code.

2. The prosecution case, in brief, is that Tripta, who is the daughter of Puran Chand, was studying in 8th Class and was born on 13.6.1972. On 21.10.1987, Puran Chand along with his wife had gone for their respective jobs and children had left for school. When they returned in the evening, they found that Tripta had not returned to the house. Search was made but Tripta could not be traced. Appellants-accused were also found absent from their house. It seems that no report came to be made for five days and it was only on 26.10.1987, Puran Chand lodged a report to the police about the kidnapping of his daughter. The police then carried out search. On 4.11.1987, Tripta was found in the company of

Parshotam Lal and Ved Parkash at Nakodar and they were arrested. It is alleged that during the elopement, the accused kept Tripta at Hoshiarpur where both of them committed rape on her. For some mysterious reasons which are beyond our comprehension, the accused were not charged with the offence under Section 376 I.P.C. All that we see in the judgment of the learned Sessions Judge is that the charge for the offence under Section 376 I.P.C. was dropped for want of territorial jurisdiction. We are completely at a loss to understand as to how the learned Sessions Judge lacked the territorial jurisdiction if the kidnapping of Tripta and her subsequent rape were part of one and the same transaction.

3. Be that as it may, the long and short of it is that the accused persons were never tried for the offence under Section 376 I.P.C. Here was the perfect scenario for conviction of the appellants for the offence under Section 376 I.P.C. because Tripta had not even attained the age of consent i.e. 16 years. She was medically examined after she was retrieved and it was found that she had been subjected to sexual inter-course and it was doctor's opinion that her age was more than 15 years and

less than 17 years. The prosecution in support of its case led the evidence of Tripta, her father Puran Chand,

two doctors and the witnesses from the investigating agency. Accused Parshotam Lal examined Balwant Rai (DW1) in his defence who deposed that Parshotam Lal got married to Tripta. Photographs Ex. D6 & D7 relating to this marriage were also produced.

4. Learned Sessions Judge in his judgment held that Tripta was neither confronted with any plea of marriage nor with the photographs relating to the marriage. It was also held that Tripta had not attained the consenting age and from the evidence of Doctor, it was clear that she had been subjected to sexual inter course after she was kidnapped from the custody of her parents. On that account, learned Sessions Judge proceeded to convict both the accused persons and sentenced them to undergo rigorous imprisonment for four years and to pay a fine of Rs. 500/- each and in default of the payment of fine, further rigorous imprisonment for six months.

5. Aggrieved by the judgment of learned Sessions Judge, the appellants filed an appeal before the High Court. Before the High Court, it was tried to be suggested that Tripta was of the consenting age and

accused No. 1 Parshotam Lal was married to her. No serious effort was made before the appellate court to get out of the conviction for the offence under Section 366 I.P.C. and it was tried to be suggested that accused Parshotam Lal had got married to Tripta and, therefore,

Parshotam Lal had good intention on Tripta.

6. The High Court came to the conclusion that consent on the part of Tripta would be of no consequence and Tripta had not been confronted with the photographs D1 to D5 nor was any suggestion put to her that she got married to accused Parshotam Lal and that it was thereafter that the marriage was consummated. Since, there was no real challenge to the conviction, the High Court proceeded to dismiss the appeal. However, under the circumstances, the High Court reduced the sentence from four years to rigorous imprisonment of one year and six months. That is how, the appellants are before us.

7. We have heard learned counsel appearing for the parties and gone through the record.

8. During the pendency of appeal, three affidavits came to be filed one being that of Tripta who sworn that she had affair with Parshotam Lal and wanted to get married with him but her parents were not agreeable and,

therefore, got her married to one Rajinder Kumar r/o Quarter No. 329, Sector II, Naya Nangal. She further stated in her affidavit that she was blessed with two issues and was happily enjoying her life with her husband and that she had no grudge or ill will against Parshotam Lal or his family members and did not want any kind of action against the appellants and the matter had

been patched up with the intervention of the respectables.

9. Two other affidavits, which are on record, are sworn by one Harish Kumar s/o late Puran Chand r/o Mohd. Rishi Nagar, Nakodar and other by Kewal Singh Thakar, President M.C. Nakodar. Both of them have given a certificate of good character to Parshotam Lal and have certified that Parshotam Lal is a law abiding citizen and has committed no offence. It is only on this basis that the learned counsel appearing for the appellants has prayed for acquittal or alternatively some consideration in the sentence apprehending that if the accused are sent back to jail, it would affect the married life not only of their own but also of Tripta who is now living happily with her husband and children.

10. We are afraid we cannot accept such argument about the acquittal of the accused on the basis of the affidavits which we have referred to earlier. Section 366 I.P.C. is a non-compoundable offence and, therefore, the argument of learned counsel for the appellants cannot be accepted. This apart from the fact that inspite of her so called marriage with Parshotam Lal, Tripta ultimately married somebody else while Parshotam Lal and other accused Ved Parkash married somebody else. Under the circumstances, we do not feel that it will be worthwhile to allow this appeal on the question of sentence also as

the sentence is already on the lenient side. We do not find any reason to interfere with the impugned order. In fact we have genuine doubts about the three affidavits. Barring Tripta's affidavit, there does not appear any permission to file the other two affidavits. There does not appear any contrition on the part of the accused for their crime. We, therefore, reject the plea regarding the sentence.

11. The appeal is dismissed. The bail bonds of the appellants are cancelled. They be taken into custody as early as possible to serve out the remaining sentence.

.....J.
[V.S. SIRPURKAR]

.....J.
[DEEPAK VERMA]

NEW DELHI
OCTOBER 6, 2009.

