

Case of prosecution in brief:

The case of prosecution in brief is that on 21.10.2008 the complainant Surender Acharya came to police station Ashok Vihar and lodged a complaint regarding missing of his daughter 'S'. He has stated that his daughter 'S' used to work in kothis and on 20.10.2008 at 7 AM she had gone to work in a Kothi at Lawrence Road and thereafter did not return home till evening. He further stated that he tried to search for her daughter in the locality but she could not be located. The complainant expressed his suspicion upon Krishan Rai Chaudhary who was residing in the same locality and was also not available at his house. The complainant has stated that Krishan Rai Chaudhary has taken away his daughter 'S' after alluring her. On the basis of this statement made by complainant, FIR was registered and investigations were initiated and after completing the investigations, the charge sheet was filed in the court.

CHARGE:

Charges under Section 363/366 Indian Penal Code were registered against the accused to which he pleaded not guilty and claim trial.

EVIDENCE:

In order to discharge the onus upon it, the prosecution has examined as many as **twelve witnesses**.

Public Witnesses:

PW7 Surender Acharya is the father of the prosecutrix 'S'. According to him, the prosecutrix 'S' used to work in the kothies as domestic maid and she used to go in the morning and came back in the evening. He has deposed that on 20.10.2008, his daughter 'S' did not return in the evening on which he searched for her in the neighbourhood. According to the witness, he came to know from a boy in his neighbourhood that he had seen his daughter going with the accused Kishan Rai Chaudhary who was also residing in the same area. According to the witness, he went to the house of Kishan Rai Chaudhary and found that he was also missing where he met his mother and made inquiries from her and she swore in the name of her children that she did not know about the whereabouts of her son and the prosecutrix. The witness has deposed that he thereafter went to the police station and made his complaint which is **Ex.PW7/A**. The witness has further deposed that on 21.10.2008 the police searched for his daughter and handed her over to him. According to the witness, after 6-7 months of released of his daughter to him, she has now been married to 'D' Jha, S/o 'N' Jha, R/o Village Orahi, District Darbhanga, Bihar. The witness has deposed that his daughter (prosecutrix) has one child from her marriage and now she is on the family way with the second child. The witness has deposed that he has not informed his son in law 'D' Jha about this incident as his

daughter is happy at her matrimonial home. He further requested the court not to summon her or else her matrimonial life would be ruined on account of this case. He has further stated that he does not wish to pursue this litigation against the accused.

In his cross examination by Ld. Amicus Curiae for the accused, the witness has deposed that he has five children, eldest three are daughters, followed by two sons and prosecutrix Savita is his second child. According to the witness, at the time of the incident his eldest daughter was already married for two years. Witness is unable to tell the year of his marriage and has voluntarily added that it must be around 30 years back when he was about 20-22 years old. Witness has deposed that his eldest daughter was born after about five years of his marriage. According to the witness, he has no documentary record regarding the date of birth of his daughter 'S'. He has deposed that his daughter has never been sent to school and therefore there is no record of her age. He admits that his daughter 'S' got married immediately after 6-7 months of the incident and has voluntarily explained that this was to save his honour and reputation. The witness has denied that he forcibly got his daughter 'S' married with 'D' without her consent. He further denied that his daughter was major on the date of the incident and has also admitted that this is the reason why she was married after 6-7 months of the incident. According to the witness, he is not aware if the ossification test of his

daughter was conducted when she was recovered and her estimated age was found to be 18-19 years. Witness has admitted that when his daughter was recovered, she told him that she was married to the accused Kishan Rai Chaudhary and voluntarily added that the accused had forcibly married her without his consent. Witness has denied the suggestion that he has got registered a false case against the accused only because of ego problems since he did not accept the accused as his son in law and has explained that the accused is a Bengali and he himself is a Brahman. The witness is not aware if the accused is also a Brahman and has claimed that he was not accepting him despite his being of the same caste because he was demanding money from him. Witness has admitted that the in laws of his daughter have no knowledge of the present case and he has suppressed this fact at the time of marriage and has voluntarily added that no body would have marry her in case if they came to know about the incident. The witness has admitted that he has no grievances against the accused as on date and has requested that his married daughter may not be called for deposition in the court since her matrimonial life may be ruined as she is presently expecting a child and is pregnant by eight months.

PW8 Mrs Lalita is the mother of the prosecutrix. She has deposed that she was residing at the given address along with her family and is doing the work of domestic work at Kothies.

According to the witness, her daughter 'S' was also helping her in the work and used to go to work in the kothies in the morning at 9AM and return by 7PM. The witness has deposed that on 20.10.2008, her daughter 'S' did not return at home on which she got worried and made inquiries from the neighbours and also in the kothies where she used to work, when she (witness) was told by the lady on the first floor where 'S' (prosecutrix) used to work, that she (prosecutrix) was seen talking to Kishan Rai Chaudhary and had gone away with him thereafter. According to the witness, on this she along with her husband went to the house of Kishan Rai Chaudhary where accused was not at his home and when his mother was confronted with this she denied any knowledge and thereafter they made a complaint to the police. The witness has deposed that on next day morning, they were called by the police at the police station where her daughter was already present along with the accused. The witness has identified her thumb impression at point B on arrest memo of accused which is **Ex.PW6/A** and also on his personal search memo **Ex.PW6/B**. The witness has deposed that the recovery memo of her daughter **Ex.PW5/B** is bearing her thumb impressions at point B. According to the witness, her daughter was thereafter taken to the the hospital for her medical examination and thereafter she was produced before the Ld. MM where her statement U/S 164 Cr. P.C. was recorded (the proceedings **EX PX2** are not disputed by the accused) after which

her daughter was handed over to her. According to the witness, after 6-7 months of the incident her daughter had now been married to one 'D' Jha, S/o 'N' Jha, R/o District Darbhanga, Bihar. The witness has deposed that her daughter has one child from her marriage and now she is on the family way with the second child. According to the witness, she has not informed her son in law 'D' Jha about this incident. Witness has deposed that her daughter is happily residing in her matrimonial home and therefore she requests this court not to call her (her daughter) or else her matrimonial life would be ruined on account of this case. The witness has deposed that she does not wish to pursue this litigation against the accused since now both her daughter and the accused are married and it would spoil the life of both her daughter as well as the accused.

With permission of the court, Ld. APP put leading questions to the witness as she was not giving the complete details. The witness has admitted that her daughter was recovered from the bus stand on her pointing out and has voluntarily added that one boy from the neighbourhood gave her this information which she passed on to the police. The witness has explained that she got confused due to which she stated that her daughter was there in the police station and has voluntarily added that her daughter was recovered by the police from the bus stand in her presence after which they came back to the police station.

In her cross examination by the Ld. Amicus Curiae for the accused, the witness has deposed that she has five children, eldest three are daughters, followed by two sons and the prosecutrix 'S' is her second child. According to the witness, at the time of the incident her eldest daughter was already married for two years. The witness has deposed that her marriage took place about 30 years ago when she was about 16-17 years old and has voluntarily added that in the area to whom she belong the marriage takes place in very young age. According to the witness, her eldest daughter was born after about five years of her marriage and she admits that she has no documentary record regarding the date of birth of her daughter (prosecutrix) and she has never been sent to school and therefore there is no record of her age. The witness has further admitted that her daughter 'S' got married immediately after 6-7 months of the incident and has voluntarily added that it was to save the honour and reputation of her family. The witness has denied the suggestion that she forcibly got her daughter married with 'D' without her consent or that her daughter was major on the date of the incident and it is for this reason that she was married by her soon after the incident. Witness has admitted that her daughter was a major above 18 years of age and that is why she was married after 6-7 months of the incident. She has also admitted that in the ossification test of her daughter which was conducted after her recovery, her estimated age

was found to be 18-19 years. Witness has further admitted that when her daughter was recovered, she informed told her that she was married to the accused Kishan Rai Chaudhary and has voluntarily explained that the accused had forcibly married her without her consent. Witness has denied that she has got registered a false case against the accused only because of ego problems since she did not accept the accused as her son in law and has explained that the accused is a Bengali and she herself is a Brahman. She has further admitted that the in laws of her daughter where she is presently married have no knowledge of the present case and she (witness) has suppressed this fact at the time of marriage and has voluntarily added that nobody would have married her in case if they came to know about the incident. The witness has admitted that she has no grievances against the accused as on date and has voluntarily requested that her married daughter may not be called since her matrimonial life may be ruined as she is presently expecting a child and is pregnant by eight months. Witness has denied the suggestion that the accused along with the prosecutrix had surrendered before the police in the police station.

Medical Evidence:

PW11 Dr. Shipra Rampal has deposed that on 06.03.2009 she examined X-ray plates (number 545) of prosecutrix prosecutrix 'S' vide MLC bearing no. 2045 which is **Ex.PW10/B** for

bone age estimation and after examination she opined the estimated bone age as revealed 18-19 years on that day vide her detailed report **Ex.PW10/B** at point X. The witness has not been cross examined on behalf of the accused despite opportunity.

PW12 Dr. Seema has proved the MLC No. 1125 prepared by Dr. Shally who has left the hospital. The witness has identified the handwriting and signature of Dr. Shally having worked with her. The witness has seen the **Ex.PW10/A** MLC No. 1125 dated 22.10.2008 of the prosecutrix and states that portion X to X-1 in the MLC **Ex.PW10/A** is in the handwriting of Dr. Shally and bears her signature at point Y. According to the MLC as per vagina examination, the hymen was found ruptured (old) and after examination the vaginal smears and hair clips were taken and handed over to lady police official.

In her cross examination by Amicus Curiae for accused, the witness admits that the prosecutrix was not examined in her presence nor the MLC was prepared in her presence. She has denied that she is not familiar with the handwriting and signature of Dr. Shally.

Police / Official Witnesses:

PW1 Ct. Dashrath has been examined-in-chief by way of affidavit which is **Ex.PW1/1**. He has proved the seizure memo of

exhibits of accused which memo is **Ex.PW1/A**. He has not been cross examined on behalf of the accused and his testimony has gone unrebutted.

PW2 HC Satbir Singh has been examined-in-chief by way of affidavit which is **Ex.PW2/1**. He has not been cross examined on behalf of the accused and his testimony has gone unrebutted.

PW3 W/HC Prafulla has been examined-in-chief by way of affidavit which is **Ex.PW3/1**. He has proved the documents i.e. copy of FIR which is **Ex.PW3/A** and endorsement on rukka which is **Ex.PW3/B**. He has not been cross examined on behalf of the accused and his testimony has gone unrebutted.

PW4 Lady Ct. Nirmal has been examined-in-chief by way of affidavit which is **Ex.PW4/1**. He has not been cross examined on behalf of the accused and his testimony has gone unrebutted.

PW5 L/Ct. Archana Sharma has been examined-in-chief by way of affidavit which is **Ex.PW5/1**. She has proved the seizure memo of exhibits of prosecutrix which vide memo **Ex.PW5/A**, the recovery memo of the prosecutrix which is **Ex.PW5/B**.

In her cross-examination by Ld. Amicus Curiae the witness has deposed that she left the police station at about 2 PM and reached the spot i.e. DTC bus stand WPIA where one or two public

persons were present. The witness has deposed that the prosecutrix was having a sindoor on her forehead and was looking like a newly married girl and from her appearance she was looking aged about 16-17 years. Witness has admitted that at the time when the prosecutrix was recovered, she claimed that she was married to the boy who was with her, whose name later on disclosed as Kishan Rai Chaudhary. The witness has further admitted that the prosecutrix also informed that her parents were aware of her marriage but were not accepting the same and therefore she had eloped with her husband Kishan Rai Chaudhary and was residing with him. Witness has further admitted that the prosecutrix had told to the investigating officer U/s 161 Cr. P.C. that she had married to the accused voluntarily with her own consent and was residing with him.

PW6 Ct. Suresh Kumar has deposed that on 21.10.2008 he had joined the investigations of this case along with ASI Bhagat Singh. According to the witness, the investigating officer interrogated the parents of the prosecutrix in his presence namely Surender Acharya and Lalita, both residents of Wazirpur Industrial area and thereafter they went in search of the accused and the prosecutrix to Shalimar Bagh and Lal Bagh area but could not find them and thereafter the IO relieved the parents of the prosecutrix. According to the witness, after some time they again went to the house of the prosecutrix where they met her mother who informed

them that as per her information her daughter and Kishan Rai Chaudhary was standing near the bus stand, near the Wazirpur Industrial area. The witness has further deposed that she accompanied them and they all went to the bus stand Wazirpur Industrial area where the mother of the prosecutrix pointed out towards a young girl standing at the bus stand along with a boy as her daughter Savita and the boys as Kishan Rai Chaudhary. The witness has deposed that both of them were stopped at the bus stop and L/Ct. Archana was called from the police station and they were both interrogated and Kishan Rai Chaudhary was duly arrested vide **Ex.PW6/A** and his personal search was conducted vide memo **Ex.PW6/B**. The witness has correctly identified the accused Kishan Rai Chaudhary in the court.

In his cross examination by Ld. Amicus Curiae for the accused, the witness has deposed that he does not recollect if he had told to the investigating officer that in his presence IO interrogated parents of the prosecutrix at police station. He also does not recollect if he had told the IO that they went to the house of prosecutrix and her mother told that she had an information regarding the presence of prosecutrix and the accused at DTC Bus Stand. Witness has admitted that he had not stated to the investigating officer about the place from where the accused was apprehended and later on arrested. According to the witness, he left the police station at about 11:15 AM

along with the investigating officer and reached Lal Bagh in a bus. Witness has also deposed that at the time of apprehension of accused many public persons were present there and the IO had asked 2-3 public persons to join the investigations. He does not remember whether any legal notice was served upon them. According to him the accused was arrested at about 2:30 PM and the information of the arrest of accused was given to his mother. Witness has admitted that the name of the person to whom the information was conveyed was mentioned in the arrest memo **Ex.PW6/A**. Witness is unable to tell for how much time they remained at the spot. Witness has denied the suggestion that the accused and the prosecutrix had surrendered before DCP and was taken in custody after seeking permission from the DCP.

PW9 HC Satpal has deposed that on 22.10.2008 he was posted as MHC (M) at police station Ashok Vihar and on that day ASI Bhagat Singh had deposited two sealed pullandas duly sealed with the seal of BJRM hospital and two sample seals with him. He deposited the same vide entry No. 4108/08 in register No. 19 copy of the same is **Ex.PW9/A**.

In his cross examination by Ld. Amicus curiae for the accused, the witness has admitted that IO had not signed the entry at the time of depositing the same in the malkhana and that said exhibits have never been taken out at any point of time or sent to FSL.

PW10 SI Bhagat Singh has deposed that on 21.10.2008 investigations of this case was handed over to him. According to the witness, on that day the complainant Surender Acharya came to the police station and had given his statement to HC Satbir on the basis of which the FIR had been registered. The witness has deposed that he interrogated Surender Acharya and his wife Mrs Lalita and took them to various places i.e. WPIA jhuggies, Lal Bagh Jhuggies where they were expecting to find their daughter and the accused but could not locate the prosecutrix. He has further deposed that thereafter Mrs Lalita informed him that she had information that her daughter and the accused were standing at Wazirpur Bus stand on which he along with HC Suresh and Lalita went to Wazirpur depot bus stand where Lalita pointed out towards a girl standing with a young boy as her daughter 'S' (prosecutrix) after which they were both apprehended and L/Ct. Archana was called after which the accused was interrogated. According to the witness the accused was interrogated and arrested vide memo **Ex.PW6/A** his personal search was conducted vide memo **Ex.PW6/B** after which the recovery memo of the girl was prepared in the presence of her mother which is **Ex.PW5/A** after which the statement of girl U/S 161 Cr. P.C. was recorded in the presence of her mother wherein she had disclosed that she had already got married to the accused. The witness has deposed that at the time of the arrest of the accused, the prosecutrix

was wearing a churra and had sindoor on her forehead which fact was mentioned by him in the memo. According to the witness, the prosecutrix refused to get her medical examination conducted on the said day and she was thereafter handed over to her mother. The witness has further deposed that on the next day the mother of the prosecutrix produced her and the medical was conducted by L/Ct. Archana which MLC is **Ex.PW10/A** and was handed over to him by L/Ct. Archana. The witness has further deposed that on the same day the prosecutrix was produced before the Ld. Magistrate where her statement U/S 164 Cr. P.C. was recorded, which proceedings are **Ex.PX3** (not disputed by the accused). According to the witness, initially the parents of the prosecutrix kept telling that they would hand over the date of birth proof to him but since they did not do so hence he got her bone age / ossification test conducted on 06.03.2009 which report is **Ex.PW10/B** showing the age of the prosecutrix to be between 18-19 years. Witness has identified the accused in the court.

In his cross examination by Ld. Amicus Curiae for the accused, the witness has admitted that at the time of recovery the girl appeared to be married and told him that she had already married the accused and has voluntarily added that she told him that they had not marry in any temple but he had put the sindoor on her forehead after he had taken her to another jhuggi. Witness has further admitted that the girl did not appear to be under any pressure nor the accused

appeared to be exercising any pressure on her. Witness has also admitted that the girl had informed them that she had voluntarily gone with the accused and married him because her parents were opposing the alliance. Witness has denied that the girl did not want to go with her parents. He has admits that the mother of the girl had spoken to her alone in the police station after which the girl agreed to go with her but he is unable to tell if the mother had promised the girl that she would marry her with the accused. Witness has admitted that the girl was with her parents before her statement U/S 164 Cr. P.C. was recorded and her mother had also accompanied her to the court when her statement was recorded by the Ld. MM. He further admits that the girl had refused to her medical examination conducted stating that she had voluntarily married the accused. According to the witness at the time when the ossification test of the prosecutrix was conducted, she was not married to any other person. Witness has admitted that the prosecutrix is now married to some other person in Bihar since last four years ago and has voluntarily added that this her parents told him in the court and throughout they had concealed this fact from him by simply assuring that they will be producing the prosecutrix in the court. The witness has admitted that by her physical appearance the prosecutrix appeared to be around 18 years of age. Witness has denied that he has falsely implicated the accused on the asking of the parents of the prosecutrix and has

voluntarily added that the case was registered because the parents of the prosecutrix claims that the prosecutrix was minor.

Statement of Accused:

I have gone through the evidence which has come on record and found that nothing incriminating has come against the accused and therefore the statement of accused under Section 313 Cr.PC was dispensed with.

FINDINGS:

I have gone through the evidence on record. I have also perused the material placed on the judicial record and considered the oral submissions made before me. My findings are as under:

Firstly, in so far as the identity of accused is concerned, he has been specifically named in the FIR. He was known to the complainant prior to the incident being the resident of the same locality and has also been identified in the court by the complainant.

Secondly, in so far as the age of the prosecutrix is concerned, according to her parents she was 16 years of age at the time of incident but the ossification report establishes that the prosecutrix at the time of incident she was around 18-19 years of age and even PW5 L/Ct. Archana and PW10 IO/SI Bhagat Singh have admitted that when the prosecutrix was recovered along with the

accused she appeared to be a major around 18 years of age. The prosecutrix is totally illiterate and there is no school record whatsoever. Further, soon after the incident she was married and presently she is a mother of one child and expecting another. This being the background, I hold that on the basis of circumstances reflected from the oral evidence on record and the ossification test report, it stands established that the prosecutrix was aged around 18 years at the time of incident and in any case above 16 years of age.

Thirdly, as per the medical record and also it is admitted by the PW10 IO/SI Bhagat Singh, after the recovery of the prosecutrix, she did not submit for her medical examination and it was on the next day, that she submitted for her medical examination. The MLC of the prosecutrix (not disputed by the accused) reveals that she had informed the doctor that she had eloped with the accused and during the period she remained with him, she did not make any sexual contact with him. The record further reveals that hymen was ruptured and has been shown to be old. Further, no report from the FSL has been obtained.

Lastly, the parents of the prosecutrix i.e. PW7 Surender Acharya (father) and PW8 Lalita (mother) have both stated that the prosecutrix has been got married after 7-8 months of her recovery and at that time she was a major and now is residing happily with her husband and one child. They have also stated she is now expecting

her second child and is eight months pregnant. They have admitted that the in-laws of the prosecutrix be not informed about the incident and in case she is called to the court her matrimonial life would be ruined.

FINAL CONCLUSION:

The age of consent also known as age of protection refers to an age at which young person can legally consent to a sexual activity i.e. an age when the young person is capable of legally giving informed consent to sexual acts. Many jurisdictions, world over have made allowances regarding age of consent in cases where there is not much difference between the age of older partner and that of the minor engaged in the sexual act. The enforcement of this practice of the age of consent law varies at different places depending upon culture, social sensibilities and changing societal attitudes.

The case in hand pertains to youngsters both aged around 18 to 20 years. Being in love and there being an opposition to their affair by their families; they both eloped. On the complaint of the parents of the prosecutrix the boy/ accused Krishan Rai Chaudhay was arrested. However, as destiny would have it, the affair did not mature and now both the prosecutrix and the accused have parted ways. The girl/ prosecutrix who is married in Bihar for the last four

years is a mother of one child and expecting her second child being eight months pregnant and the accused has also got married and settled. It is time for the legislators to have a rethink regarding the existing law by creating certain exceptions and of making allowances regarding the age of the consent / protection keeping in view the changing social attitudes and social sensibilities. The Legal System in our country cannot be used to punish youngsters in love who are at the verge of attending majority and this Court cannot ruin their lives by taking a hyper-technical view specially so when the age gap between these youngsters is within acceptable limits and does not reflect an exploitative coercive situation. In the present case, both the girl and the boy being happily married, the matter is now required to be finally rested and under no circumstances, the future of these youngsters can be destroyed by exposing them to their past.

In view of the above, I hereby acquit the accused Krishan Rai Chaudhary for the charges under **Section 363/366** Indian Penal Code. Surety of the accused stands discharged, as per rules.

File be consigned to Record room.

Announced in the open court
Dated: 09.04.2012

(Dr. KAMINI LAU)
ASJ (NW)-II: ROHINI