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SAT PARKASH

v.

STATE OF HARYANA AND ANOTHER

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(Criminal Appeal No. 1163 of 2011)

DECEMBER 09, 2015

[JAGDISH SINGH KHEHAR AND R. F. NARIMAN, JJ.]

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Penal Code, 1860: ss.363, 366, 366-A, 376, 368 – Crime against minor girl – Prosecution case was that appellant kidnapped a minor girl and raped her – His uncle and aunt knowing about the kidnapping helped him in concealing the girl in their house and they all in furtherance of common intention committed murder by administering poison to her – Trial court acquitted uncle and aunt of all offences – Appellant was acquitted of offence of murder and convicted u/ss.363, 366, 366-A, 368, 376 – High Court upheld the order of conviction – In the instant appeal, appellant is challenging the conviction order by placing reliance on the “suicide note” stated to have been written by the deceased – HELD: It is not in dispute that appellant had also made a similar attempt to commit suicide along with the deceased – In the suicide note, deceased had made unequivocal statement to the effect that she had left her residence by her own free will – It was, therefore, not possible to record the guilt of appellant u/s.363 – The only evidence available was that deceased was found at the residence of the appellant based on which it was presumed that the appellant had kidnapped the deceased – The said presumption was wholly misconceived – As regards s.366, the note of the deceased indicated that she had committed suicide, rather than having married the appellant by disregarding the wishes of the family – There was, therefore, substantial material to

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*establish, that the deceased had not been persuaded or A
compelled to marry the appellant before her death –
Therefore, offence u/s.366 was also not made out – The
inducing of the minor to constitute an offence u/s.366A, should
have been with reference to an intent to force or seduce her
“.. to illicit intercourse with another person...” – There was no B
mention of any other person in the sequence of allegations
levelled against the appellant – In view of the matter, the
charge u/s.366A was also not sustainable against the
appellant – As regards the allegation of rape, a mere act of C
sexual intercourse would have established rape at the hands
of the appellant against the deceased on account of the fact,
that she was a minor on the date of incident – There was no
evidence to conclude that sexual intercourse was committed D
on the deceased – Thus, the charge of s.376 also did not
survive against the appellant – Conviction of appellant is
liable to be set aside.*

CRIMINAL APPELLATE JURISDICTION : CRIMINAL
APPEAL NO. 1163 of 2011.

From the Judgment and Order dated 05.01.2011 of the E
High Court of Punjab and Haryana at Chandigarh, in Criminal
Appeal No. 105-SB of 1995.

Anoop G. Chaudhary, Sr. Adv., Suresh C. Gupta, Birendra
K. Mishra, Ms. Poonam Atey, (For Praneet Ranjan), Advs., for F
the Appellant.

Deepak Thukral, Dy. AG., Arun Tewatia, Asstt. AG, (For
Dr. Monika Gusain), R. C. Kaushik, Advs., for the Respondents.

The Judgment of the Court was delivered by G

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:

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A “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
B 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
C 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
D 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
E punishable under Section 376 of the IPC and within the
cognizance of this Court.

 Fourthly: - That you Sarla and Hari Chand accused on
F 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
G 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

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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.

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.

A 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.

B 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.

C 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.

D Convey my last respects to all and kindly forgive us if possible, but I have done no wrong.

Yours unfortunate
Sushila”

E 3. 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.

H 4. 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.

5. 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 Procuration 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.”

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

A 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 be set aside. The same is accordingly hereby set aside.

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6. 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.

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7. 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.

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8. By this Court's motion Bench order dated 15.04.2011, the appellant was enlarged on bail. His bail bonds shall stand discharged.

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9. The instant appeal is accordingly allowed.