



2026:AHJ:04713

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 3648 of 2002

Hari Singh And Another

.....Appellant(s)

Versus

State of U.P.

.....Respondent(s)

Counsel for Appellant(s)	: A.K. Jain, Ajay Dubey, Rajesh Kumar
Counsel for Respondent(s)	: Govt. Advocate

Court No. - 93

HON'BLE MRS. VANI RANJAN AGRAWAL, J.

1. This appeal has been filed by the appellants against the judgment and order dated 04.09.2002 passed by Fast Tract Court, No.4, Agra in S.T. No. 249 of 2000, arising out of Case Crime No.130 of 1998, Police Station- Bha, District Agra, by which convict the appellants under Section 363 I.P.C. for imprisonment of 5 years and Rs.2000/- as fine respectively.
2. Heard Sri Rajesh Kumar, learned counsel for the appellants and Sri Rahul Asthana, learned A.G.A. for the State.
3. The prosecution case, in brief, is that on 21.06.1998 at about 13.30, the informant Pramod Kumar lodged an FIR to the effect that he is residing in a rented house in Chitragupt Nagar with his family. His minor sister Raj Kishori, who was minor according to her date of birth 16.04.1981, was enticed away by the accused person namely, Hari Singh, Manoj Kumar, Smt. Shanti Devi and Smt. Sunita Devi on 13.06.1998. It is alleged that on the date of incident, the victim was taken away by the accused person on the pretext of procuring medicine and thereafter she did not return. On the said date, the complainant was not present at home and had gone to his native village. On his return, He was informed by his wife about the incident.
4. On the basis of written report, an F.I.R. was registered and a G.D. entry was drawn. The matter was investigated and charge-sheet was submitted for offence under Section 363 and 366 read with Section 34 I.P.C.
5. Charges were framed and read over the accused person. They pleaded not guilty and claimed trial.
6. In order to prove its case, the prosecution has examined as many as 6 witnesses, namely P.W.-1 Smt. Shanti Devi, complainant's wife, P.W.-2 Pramod Kumar, the complainant, P.W.-3 Raj Kishor Sharma, P.W.-4 Bahori Lal, P.W.-5 Head Constable Udal Singh and Investigating Officer Sauraj Singh, P.W.-6.

7. Documentary evidences, written report, FIR, carbon copy of G.D., site plan and charge-sheet are available on record, which are duly proved in evidence by the prosecution witnesses.

8. The accused persons, in their statement recorded under Section 313 Cr.P.C., denied the allegations levelled against them and stated that they were falsely implicated in the case. No oral or documentary evidence was produced in defence.

9. The learned trial court, after hearing the arguments advanced by both the parties, and considering the oral and documentary evidences on record, returned the findings against the Hari Singh and Manoj Kumar and convicted them for offence under Section 363 I.P.C. and sentenced to undergo five years of imprisonment and fine to the tune of Rs.2000/-. In default of payment of fine, they shall undergo six months of additional simple imprisonment. However, the trial court acquitted the accused Smt. Shanti Devi and Smt. Sunita Devi for offences under Section 363 and 366 I.P.C. Convicted accused persons Hari Singh and Manoj were also acquitted of the charges under Section 366 I.P.C.,

10. Aggrieved with the judgment of conviction and sentence, this appeal has been filed.

11. It is submitted that the judgment and order of trial court is illegal and against the evidence on record. It is further submitted that judgment of the trial court is based on only presumption. In the same evidence, two persons were acquitted by the learned trial court. The prosecution has failed to prove his case beyond reasonable doubt, therefore, it is prayed that the judgment of conviction and sentence be set aside and the accused persons be acquitted of all charges.

12. Learned A.G.A. for the State supports the judgment of conviction and sentence.

13. In this appeal, the main question for consideration is whether the prosecution has proved the offence under Section 363 I.P.C. against the appellants beyond reasonable doubt and the judgment of conviction and sentence is sustainable in law.

14. The informant P.W.-2 Pramod Kumar, has categorically admitted that he was not present at the time of occurrence and whatever he stated was based upon the information given by his wife. The prosecution case heavily relies upon the testimony of informant's wife P.W.-1 Smt. Shanti Devi who stated that the victim complained the stomach pain and went to accused Hari Singh, who is a doctor by profession and his dispensary was situated near the house of the complainant. The accused stated her that the medicine was not available in his shop and took her to the market. However, the witness was

not accompanying the victim, therefore, how she came to know about conversation between the accused and the victim, has not been explained. Her statement regarding such conversation is clearly an improvement in nature, which creates serious doubt about the veracity of her testimony.

15. The alleged incident occurred on 13.06.1998 and the F.I.R. was lodged on 21.06.1998. No satisfactory explanation has been given for such delay. It is settled law that the unexplained delay in lodging F.I.R. in cases of alleged kidnapping/abduction creates suspicion about the prosecution story.

16. The conduct of the complainant's wife is also unnatural, as she neither informed the police immediately nor made from efforts to report the matter. The F.I.R. itself mentions that one Anand Dubey had seen the victim going with the accused persons, but the said witness has not been examined. Non-examination of such a material witness gives rise to an adverse inference against the prosecution case.

17. The prosecution examined P.W.-3 Raj Kishor Sharma and P.W.-4 Bahori Lal as independent witnesses who claimed to have seen the victim with accused persons in a tempo in Agra. However, in his cross-examination, P.W. – 3 Raj Kishor Sharma stated that the tempo was large one and had other passengers also. While P.W.-4 Bahori Lal stated that the tempo was small and had no other passengers. This material contradiction goes to the root of prosecution case. Further, both the witnesses admitted that they have seen the tempo from a distance about 100 meters. They also admitted that they had no concern with complainant and his family raising serious doubt as to how they could identify the victim form a distance of about 100 meters. When they did not know about family members of the complainant even the trial court did not rely upon the testimony of P.W.-3 Raj Kishor Sharm and P.W.-4 Bahori Lal.

18. The principle issue for consideration is whether the essential ingredients of Section 363 I.P.C. is proved beyond reasonable doubt. Section 363 I.P.C. provides punishment for kidnapping form lawful guardianship. The offence is defined under Section 361 I.P.C. Section 361 I.P.C. reads as under :-

"Kidnapping from lawful guardianship

Whoever takes or entices any minor under sixteen years of age if a male, or under eighteen years of age if a female, or any person of unsound mind, out of the keeping of the lawful guardian of such minor or person of unsound mind, without the consent of such guardian, is said to kidnap such minor or person from lawful guardianship."

19. This section requires proof of the following essential ingredients :-

- Taking away or enticing away of a minor under 18 years of age.
- The taking must be out of the keeping of the lawful guardianship.
- Such taking or enticing must be without the consent of her /his lawful guardian.

20. The Hon'ble Supreme Court in case of **S. Varadarajan Vs. State of Madras, Air 1965 SC 942**, has held that mere accompanying of a minor, without any active role of inducement or taking by the accused, does not amount to kidnapping.

21. There is no dispute that the victim was a minor at the time of the incident, however, mere minority is not sufficient to establish the offence under Section 363 I.P.C. unless the element of taking or enticement is proved.

22. In the prosecution case, the complainant Pramod Kumar, P.W.-2, is not an eye witness and his testimony is based on what was told to him by his wife. The testimony of informant's wife Smt. Shanti Devi is also not reliable as she was not present with the victim at all the relevant time and has failed to explain how she knew about the alleged inducement by the accused persons. Thus there is no direct or reliable evidence to prove that the accused person actively took or enticed the victim.

23. The testimony of P.W.-3 Raj Kishor Sharma and P.W.-4 Bahori Lal, who allegedly, saw the victim with accused persons, suffers from material contradictions regarding the type of vehicle, presence of other passengers and their ability to identify the victim, despite having no prior acquaintance. Even the trial court did not rely upon their testimony.

24. The F.I.R. was lodged after delay of several days without any satisfactory explanation. The essential ingredients of taking or enticing away the victim has not been proved by the prosecution against the appellants. There is no evidence that the accused persons used force, inducement, or active participation in removing the victim from her lawful guardianship.

25. In view of the above, this Court finds that the prosecution has failed to prove the necessary ingredients of Section 363 I.P.C. The learned trial court, primarily relying upon the testimony of the informant Pramod Kumar and his wife, convicted the accused under Section 363 I.P.C. the conviction is based on weak hearsay and unreliable evidence. It is a settled principle of law that suspicion, however, strong cannot take the place of proof. This court is of the considered opinion that the prosecution case suffers from unexplained delay in lodging F.I.R., non-examination of material witness, contradictions in testimony of witnesses and absence of reliable corroboration.

26. The prosecution has failed to prove necessary ingredients of Section 363

I.P.C. beyond reasonable doubt therefore, the conviction and sentence recorded by the learned trial court is liable to be set aside.

27. Appeal is allowed. The impugned judgment of conviction and sentence dated 04.09.2002, is hereby set aside. Accused persons are acquitted of the charges under Section 363 I.P.C.

28. Appellants are on bail. Their bail bonds are cancelled and sureties are discharged.

29. Let a copy of this judgment be transmitted to the court concerned along with the trial court record of necessary compliance.

March 18, 2026

P. Pandey

(Mrs. Vani Ranjan Agrawal,J.)