

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

Crl. Appeal-S-No.535-SB of 2003

Date of Decision: 30.1.2015

Jyoti Appellant

Versus

State of Punjab Respondent

Coram: Hon'ble Mr. Justice Ashutosh Mohunta

1.To be referred to the Reporters or not?

2. Whether the judgment should be reported in the Digest?

Present: Mr. Veneet Sharma, Advocate and
Ms. Aditi Girdhar, Amicus Curiae
for the Appellant.

Ms. Munisha Gandhi, Addl. A.G. Punjab.

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ASHUTOSH MOHUNTA, J.

The accused/appellant-Jyoti has filed this appeal against the judgment of conviction and order of sentence dated 2.12.2002 passed by the Additional Sessions Judge (Adhoc), Amritsar vide which he has been convicted under Section 365 IPC and sentenced to undergo rigorous imprisonment for a period of five years along with fine of ₹1,000/- and in default of payment of fine, to further undergo

rigorous imprisonment for a period of one month.

Briefly the facts of the case are that Karan, a child of four years of age, was a student of Nursery Class studying in New Modern High School, Amritsar. On 1.2.2000 while he had gone to attend his classes in the school, a telephone call was received by Satnam Kaur, Head Mistress of the School whereby the caller told her that there has been a death in the family and therefore Karan be sent back home. He further stated that it was not possible for the grandfather of the child to come to the school as he was busy condoling the death of the relative who has expired. The Head Mistress agreed to the request made by the caller. Soon thereafter, a person came to the school and asked the Head Mistress to handover the child. The Head Mistress saw the person through the chinks of the gate and inquired from him as to who he was. He replied that he had come to take Karan. She asked the child whether he knew the person who had come to take him and the child replied in the affirmative. Thereafter, she allowed the man to take the child with him. The man who had come was of wheatish complexion and was of the age of 30 years and clean shaven. After about half an hour, Mohinder Masih, grandfather of the child-Karan came to the school to take the child. He was told that the child has already been taken away by the person who had stated that there has been a tragedy in the family. The

grandfather of the child exhibited his ignorance and stated that he had never deputed any person to take away the child. The police was informed and Inspector Gurdip Singh recorded the statement of the Head Mistress-Satnam Kaur Ex.PW2/A and on the basis of the statement of the Head Mistress, a FIR was registered. Statements of the relatives of the child were recorded and raids were conducted and after 13 days when a raid was conducted on the house of Sonu in the area of Dalip Enclave, Amritsar, the child was recovered from the custody of Sonu and Jiwan. Recovery Memo Ex.PW/2A was prepared and the child was handed over to Mohinder Masih. On 16.2.2000, the accused Jyoti and Sajjan were also arrested by the Inspector while they were present in the area of Mahna Singh Road. On interrogation, Jyoti-accused disclosed that he had kept concealed the school bag of Karan in a double bed of his house and he could get the same recovered. His statement Ex.PW4/A was recorded which was thumb marked by him. Thereafter, the police officials went to the place as disclosed by the accused-Jyoti and recovered the school bag which contained a Diary of Modern School, one tiffin and one pencil. Bag Ex.P1 and Diary Ex.P2 were taken into possession vide Memo Ex.PW4/B.

After completion of the investigation, challan was presented in the Court of Illaqa Magistrate who charged the

four accused namely, Sonu, Jiwan, Jyoti and Sajjan under Sections 365 and 364-A IPC to which the accused pleaded not guilty.

To prove the charges against the accused, the prosecution relied on the testimony of Dharam Pal PW1, Satnam Kaur PW2, Mohinder Masih PW3, ASI Kidar Nath PW4 and Gurdip Singh, Inspector (Retd.) PW5. Dharam Pal PW1 stated that on 1.2.2000 while he was going towards Dhab on the way near Niki Sabji Mandi, Jyoti was seen taking a small child and his co-accused Sonu, Jiwan and Sajjan were also with him. They were going towards the cremation ground. He further stated that Sonu-accused was known to him. It was subsequently he came to know that the kidnapped child was in their custody. Satnam Kaur PW2 who was the Head Mistress of New Modern High School, Amritsar, reiterated the version as recorded in the FIR. She stated that she saw the person who had come to take the minor child through the chinks of the gate of the school. Mohinder Masih PW3 also deposed in support of the version of the case. ASI Kidar Nath PW4 stated that Karan was recovered from the custody of Sonu and Jiwan in his presence on 13.2.2000 and on 16.2.2000 the other accused Jyoti and Sajjan were also arrested and through them the school bag of the child was recovered.

Statements of all the accused under Section 313

Cr.P.C. were recorded where they denied the circumstances put to them. They examined in their defence Harjit Singh DW1 who stated that Sonu is known to him and he never saw the police officials going to the house of Sonu and that no child was ever recovered by the police from the custody of Sonu.

The trial Court after hearing the arguments of the prosecution as well as the defence disbelieved the statement of Dharam Pal PW1 and acquitted accused Sonu, Jiwan and Sajjan of all the charges but convicted accused-Jyoti for the offence punishable under Section 365 IPC and sentenced him to undergo rigorous imprisonment for a period of five years along with fine of ₹1000/-. However, the accused Jyoti was acquitted of the charge under Section 364-A IPC.

Mr. Veneet Sharma, counsel for the accused/appellant, has vehemently contended that no call details of the phone alleged to have been made by the accused-Jyoti to Satnam Kaur, Head Mistress of the School, have been placed on record. It is argued that whether or not the accused had made a phone call to the Head Mistress could only be verified if the call details were produced in Court and in the absence of the same, it cannot be said that it was the accused who had given a call to the Head Mistress. It was also argued that no identification parade of

the accused was held. It was further argued that the accused-Jyoti was seen by Satnam Kaur through the chinks of the gate only and it was not possible for her to recognize the accused in Court. It was lastly argued that the case of the accused-Jyoti is similar to that of the other accused and as they have been acquitted, hence the accused-Jyoti also ought to have been acquitted.

Per contra, Ms. Munisha Gandhi, Additional Advocate General, Punjab, has argued that the accused-Jyoti was identified by Satnam Kaur PW2 in Court to be the person who had come to take the child away after questioning the accused, she had handed over the child to the accused-Jyoti. It has further been argued by the State counsel that disclosure statement was made by the accused on the basis of which the school bag of the minor child Karan was recovered from Jyoti from the double bed in his house. It was lastly argued that as Jyoti had taken away the minor child from the custody of his lawful guardians, hence the child was kidnapped by the accused-Jyoti.

I have heard the counsel for the parties at length.

A perusal of the evidence led in the present case shows that it was Jyoti who had given a call to Satnam Kaur, Head Mistress of New Modern High School, Amritsar, that the child has to be taken home to condole the death of a relative. The accused was identified in Court by Satnam Kaur

PW2. Apart from the above, in pursuance to the disclosure statement made by the accused the school bag of the child was recovered from his house in the presence of ASI Kidar Nath PW4. All these circumstances clearly establish the fact that the minor child-Karan was kidnapped by the accused Jyoti. The identity of the accused-Jyoti has clearly been established as PW2 Satnam Kaur who had sufficient conversation with him and it was only when she was satisfied that he knew the child, that Karan was allowed to go along with the accused. Thus, it was not necessary to have the accused identified by way of arranging the identification parade as his identity was duly confirmed by Satnam Kaur PW2. She has categorically stated that Jyoti-accused is the same person who had taken away Karan along with him. She had no reason to falsely implicate the accused.

As the child was a minor of 4 years of age only, hence the offence of kidnapping becomes complete as soon as the minor boy was taken out of the lawful guardianship of his parents/grandfather. The child was recovered from the custody of the accused after a period of 13 days and hence the accused has rightly been convicted under Section 365 IPC by the trial Court. In view of the above, I uphold the conviction of the accused-Jyoti under Section 365 IPC.

It was lastly argued by the counsel for the

appellant that the prosecution has not been able to establish any motive in the present case. It has not been proved as to whether the child was kidnapped for ransom or in order to settle some old enmity. No old enmity has been established nor was there any ransom call and in the absence of mensrea in the present case, a lenient view should be taken while sentencing the accused.

It is no doubt true that the prosecution has not established any motive in the present case. Neither any demand of ransom has been proved by the prosecution nor there was any previous enmity between the accused and the family of the kidnapped child. Thus, because of this reason, I am inclined to take a lenient view while sentencing the accused.

Resultantly, I uphold the conviction of the appellant under Section 365 IPC and reduce the sentence from rigorous imprisonment of five years to rigorous imprisonment of four years under Section 365 IPC. The order of fine is, however, maintained. The accused-Jyoti is on bail. His bail bonds are cancelled. He be taken into custody forthwith to serve out the remaining portion of his sentence.

With the above modification in the order of sentence, the appeal is partly allowed.

(ASHUTOSH MOHUNTA)
JUDGE

30.1.2015
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