

REFER TO REPORTER

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRA-S-1315-SB-2001 (O&M)
Date of Decision: May 6, 2015

Suleman and another

...Appellants

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE NARESH KUMAR SANGHI

Present: Mr. Dhirinder Chopra, Advocate,
for the appellants.

Mr. Piyush Bansal, DAG, Punjab,
for the respondent.

NARESH KUMAR SANGHI, J (Oral)

Challenge in this appeal is to the judgment of conviction and the order of sentence, dated 6.10.2001, passed by learned Additional Sessions Judge, Sangrur, whereby the appellants, Suleman son of Ali Sher, and Tanjilla wife of Suleman, were held guilty for the offences punishable under Section 367 read with Section 34 and Section 368 read with Section 34, IPC, in a case arising out of FIR No. 113, dated 31.8.1994, registered at Police Station, Dhuri, District Sangrur, and each one of them was ordered

to undergo the following sentences:-

Under Section	Sentence (R.I.)	Fine (in Rs.)	In Default (R.I.)
367/34, IPC	4 years	500/-	2 months
368/34, IPC	4 years	500/-	2 months

Both the sentences were ordered to run concurrently.

At the very outset learned counsel for the appellants submits that even if the whole case of the prosecution is taken at its face value, then also the essential ingredients of Sections 367 and 368, IPC, are not attracted for holding the appellants guilty. He pointed out that 'kidnapping' or 'abduction' is an essential constituents of the offences for which the appellants have been convicted and sentenced, but the prosecution has miserably failed to substantiate the fact that the aggrieved persons, i.e. Rashidan (PW-1) and Rabia (PW-2), were ever kidnapped or abducted from West Bengal and brought to Punjab for illegal purposes. He further argued that there were severe contradictions in the *inter se* depositions of Rashidan (PW-1), Rabia (PW-2), Suleman son of Umardin (PW-4) and police officials who had investigated the case. He further pointed out that there was a severe dent in the prosecution case when Rashidan (PW-1), who was the star witness of the prosecution, has failed to support the prosecution version. He further pointed out that though Rabia (PW-2) supported the

prosecution version to some extent, but her statement will not bring the appellants within the net attracting the mischief of Sections 367 and 368, IPC. He also pointed out that there was no cogent evidence on the file to show that Rashidan (PW-1), Rabia (PW-2) were forced to indulge themselves in illicit intercourse/mal-practices or they were kept in captivity, by the appellants.

On the other hand, learned counsel for the State vehemently argued that despite the fact that Rashidan (PW-1) and Rabia (PW-2) have not deposed specifically with regard to their kidnapping or abduction, but Rabia (PW-2) was very clear in her deposition that Tanjilla (Appellant No. 2) had enticed Rabia to accompany her by saying that there were so many places to visit in Punjab. In support of his contention, learned counsel for the State has also read out the statement of Rabia (PW-2), recorded under Section 164, Cr.P.C., by Mr. S.K. Sharma (PW-8), the then Sub-Divisional Judicial Magistrate. He further argued that the recovery of Rashidan (PW-1) and Rabia (PW-2) from the house of Suleman (PW-4) would clearly spell out that they were not only kidnapped but were further sold to Suleman (PW-4).

I have heard learned counsel for the parties and with their able assistance gone through the record received from the

Trial Court.

Before dealing with the rival contentions raised by learned counsel for the parties, it is deemed necessary to narrate the facts of the case at the first instance.

On 31.8.1994, SI Gurbhajan Singh (PW-6) received secret information to the effect that Suleman (appellant No.1) and his wife Tanjilla (appellant No. 2) were selling women after bringing them to Punjab from Calcutta. The women brought by them were kept in the house of Suleman (PW-4), resident of village Issi, and if raid was conducted the accused/appellants could be arrested. Believing the secret information to be reliable, FIR No. 113, dated 31.8.1994, for the offences punishable under Sections 367, 368, 370 and 371 read with Section 34, IPC, was registered at Police Station, Dhuri, District Sangrur. A police party was constituted to go to village Issi for raiding the house of Suleman (PW-4). On the way, Dharam Singh, resident of village Kakarwal (not examined) was associated in the police party. When the said police party reached at the Bus Stand of village Issi, then Suleman (PW-4) met them and disclosed to SI Gurbhajan Singh (PW-6) that both the appellants alongwith Rashidan (PW-1) and Rabia (PW-2), were present at his house. Suleman (PW-4) and Chowkidar Niranjan Singh were also associated in the police party and

thereafter the house of Suleman (PW-4) was raided. In addition to Rabia and Rashidan, one young girl was recovered from the custody of the appellants. The appellant, Suleman ran away from the spot while appellant Tanjilla was arrested. The recovery memos were prepared which were attested by ASI Joginder Singh (PW-5) and Dharam Singh (not examined). The statements of the witnesses were recorded. Rough site plan of the place of occurrence was prepared. Rashidan (PW-1) and Rabia (PW-2) were produced before Mr. S.K. Sharma (PW-8), the then Sub-Divisional Judicial Magistrate, who recorded their statements in terms of Section 164, Cr.P.C. During investigation, Suleman, appellant No. 1, was arrested on 29.10.1994. Rabia and Rashidan were sent to protection home. After completion of the investigation, the charge-sheet (report under Section 173, Cr.P.C.) was presented against the appellants. After supplying the copies of the charge-sheet, the case was committed to the Court of Session.

Finding *prima facie* case, charges for the offences punishable under Sections 367 and 368 read with Section 34, IPC, were framed to which the appellants pleaded not guilty and claimed trial.

In order to substantiate their allegations, the prosecution examined the following witnesses:-

PW-1 Rashidan : She deposed that she knew both the appellants. They had not abducted her for illicit purposes or for sale. In fact, she (Rashidan) was brought from Calcutta by her mother and thereafter as per their (Rashidan and Rabia) consent, her (Rashidan) *Nikah* was performed with Lilu @ Jamil Khan.

At the request of learned Additional Public Prosecutor, the witness was declared hostile and permitted to be cross-examined by learned APP.

Despite lengthy cross-examination, the witness did not deviate from her stand narrated in examination-in-chief and stuck to the fact that she was not abducted.

During cross-examination by counsel for the defence, the witness admitted the fact that the police had beaten and forced her to make statement. The Thanedar (Station House Officer) remained standing with her during the recording of her statement before the Magistrate. The Thanedar was also threatening her to make statement as per his wishes.

PW-2 Rabia : She supported the prosecution version and deposed that both the appellants present in the

Court were known to her. About eight months prior to her deposition, she had come with Tanjilla to Punjab. It was narrated by Tanjilla that she (Rabia) should accompany her (Tanjilla) to Punjab for sight seeing. Both the appellants kept her in their house and thereafter sold her (Rabia) to Suleman (PW-4) for consideration of Rs. 13,000/- (Rupees thirteen thousand).

PW-3 Kashmir Singh : He being a Draftsman, had prepared scaled map (Ex. PW3/A) at the instance of Dharam Singh (not examined).

PW-4 Suleman son of Umardin : He deposed that the appellants were known to him. One year prior to his deposition, the appellants had brought two ladies at his house. It was disclosed that the women were brought from Calcutta side and he (PW-4) could retain one of them. It was also disclosed by the witness that the appellants had brought those women for sale from Calcutta. When the appellants went to sleep, then he informed the police, which met him at the bus stand of village Issi. The police came to his house and arrested the appellants and the two women.

PW-5 ASI Joginder Singh : On 31.8.1994, he was member of the raiding party. He deposed regarding receipt of secret information and formulation of the police party. He also deposed that Suleman (PW-4) and Niranjan Singh, Chowkidar (not examined) were joined in the raiding party and thereafter the house of Suleman (PW-4) was raided where both the appellants alongwith two women and a girl child were present. Both the women were taken into police possession vide recovery memo (Ex.PC), which was attested by Dharam Singh (not examined).

PW-6 SI Gurbhajan Singh : He was the investigating officer of the case and he did depose regarding the steps taken by him during investigation.

PW-7 Constable Harjinder Singh : He had delivered special reports to learned Area Magistrate and other higher officers at Sangrur.

PW-8 S.K. Sharma, the then Sub-Divisional Judicial Magistrate, Dhuri : On 19.9.1994, he had recorded the statement (Ex. PW8/A) of Rabia as well as statement (Ex. PB) of Rashidan, at the request of the police.

After completion of the prosecution evidence, the

statements of the appellants in terms of Section 313, Cr.P.C., were recorded. In response to the penultimate question, appellant No. 1, Suleman, stated as under:-

“I am innocent. I have got no concern with Rabia daughter of Hansa. Actually she is the wife of PW4 Suleman son of Umar Din. PW Rashidan is daughter of Kuchi Maji and she is wife of Zamil Khan alias Millu resident of village Inna Bajwa. I have never done illegal trafficking of girls or women.”

Similar reply was suffered by appellant No. 2. In their defence, the appellants produced the following witnesses:-

DW-1 Sajjan Singh : He deposed that about six years back police officials went to the house of appellant No. 1, Suleman, and took away the appellants as well as the wife of his brother. No other women was recovered from the house of appellant Suleman. The appellants were falsely implicated in the case in hand.

DW-2 Babu Singh : He was one of the Panches of the Gram Panchayat of village Inna Bajwa and deposed that he knew both the appellants. In the month of August, 1994, the police visited his village and took away the appellant Suleman, his wife and his brother's wife. By the time the villagers approached the higher police

officers, the appellants were falsely implicated in the case in hand. Nothing was recovered from the appellants at the time when they were apprehended by the police.

After hearing counsel for the parties, learned Trial Court held both the appellants guilty for the offences punishable under Sections 367 and 368 read with Section 34, IPC, and ordered them to undergo the sentences as discussed in the earlier part of this judgment.

There appears to be substance in the submission of learned counsel for the appellants when it was submitted that the prosecution has miserably failed to substantiate that Rashidan (PW1) and Rabia (PW2) were kidnapped or abducted from West Bengal or brought to Punjab. Perusal of Sections 367 and 368, IPC, clearly spell out that kidnapping or abduction is an essential constituent for attracting the mischief of Sections 367 and 368, IPC.

In the matter of **Rekha Mondal @ Singh v. State of West Bengal**, 2005 (4) CHN 595, it was held by a Division Bench of Hon'ble Calcutta High Court that to establish the commission of offence under Section 367, IPC, the first ingredient that requires to be established is kidnapping or abduction by the accused. It has also been held that abduction by itself would be no offence unless

it is coupled with one of the intentions contemplated by the Penal Code.

In **Saroj Kumari v. State of Uttar Pradesh, AIR 1973 SC 201**, Hon'ble the Supreme Court held that to constitute an offence under Section 368, IPC, the prosecution must establish the following ingredients – (1) the person in question has been kidnapped; (2) the accused knew that the said person had been kidnapped; and (3) the accused having such knowledge, wrongfully conceals or confines the person concerned.

In view of above case law, if the facts of the case in hand are analyzed, then it is found that neither Rashidan (PW-1) nor Rabia (PW-2) had disclosed during their depositions before learned Trial Court that either anyone or both of them were kidnapped or abducted by the appellants from West Bengal. Mere deposition of Rabia (PW-2) that Tanjilla (appellant No. 2) had stated that there were places for sight seeing in Punjab, by itself would not be sufficient to entice her (Rabia) to leave her house at West Bengal and come to Punjab with the appellants. It is apposite to mention that Rabia (PW-2) was not a minor girl at the time of her visit to Punjab from West Bengal. During her deposition, she had disclosed her age as 19 years and there is no dispute in that regard. Rashidan (PW-1) has given a clean-chit to both the

appellants. In fact, she deposed that she had come to Punjab along with her mother and thereafter her marriage was solemnized with Lilu @ Jamil Khan with her own consent. The deposition of Rashidan (PW-1) would totally demolish the case of the prosecution. While dealing with this aspect, this Court is conscious of the fact that on the basis of the deposition of Rabia (PW-2) the conviction of the appellants can be maintained provided her deposition is above board. The improvements in her deposition regarding receipt of Rs.13,000/- (Rupees thirteen thousand) for selling to Suleman (PW-4) appears to be an after thought version. She did not disclose the said fact to the police in her statement recorded under Section 161, Cr.P.C, or to Mr. S.K. Sharma (PW-8), the then Sub-Divisional Judicial Magistrate, Dhuri, when her statement was recorded under Section 164, Cr.P.C. Rashidan (PW1) had admitted during her cross-examination conducted by learned counsel for the defence that when her statement under Section 164, Cr.P.C., was being recorded, the Thanedar remained present in Court and she was threatened by the police.

There also appears to be substance in the submission of learned counsel for the appellants when he submitted that there were severe contradictions in the *inter se* depositions of the prosecution witnesses. He pointed out that ASI Joginder Singh

(PW-5) was very clear in his deposition that the house of the appellants was raided and Rabia and Rashidan were recovered from there while Suleman (PW-4) had carried the police party to his house at village Issi, wherefrom Rashidan and Rabia along with a young girl were recovered. He further pointed out that as per prosecution case, after the raid appellant Suleman and his wife were apprehended, then where was the occasion for Suleman (appellant No. 1) to run away from the spot, particularly in the presence of several police officials. He further pointed out that as per the prosecution version itself, one Dharam Singh and one Niranjana Singh, Chowkidar, were associated in the police party for raiding the house of Suleman (appellant No. 1), but none of them was produced before learned Trial Court to support the prosecution version.

During discussion it was also pointed out that as per the prosecution witnesses, Rabia (PW-2) was sold to Suleman (PW-4) after charging Rs. 13,000/- (Rupees thirteen thousand), then how Rashidan (PW-1) was found present at the house of Suleman (PW-4). It was also pointed out that as per the prosecution witnesses, one young girl was also recovered from the house of Suleman (PW-4), but there is no reference as to whether she was sent to some protection home or handed over to any other

respectable person.

As a sequel to the above discussion and taking into consideration the ratio of the judgments cited hereinabove, this Court is of the opinion that prosecution has miserably failed to connect the appellants with the offences punishable under Sections 367 and 368, IPC, and, as such, the verdict of guilt and the sentences awarded to the appellants by learned Trial Court are hereby set aside. The appeal is allowed. The fine, if deposited by the appellants, be returned to them as per norms.

Trial Court record be returned immediately.

(NARESH KUMAR SANGHI)
JUDGE

May 6, 2015
Pkapoor