

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

Criminal Appeal No.S-288-SB of 2001

Date of Decision: *July 29, 2015*

Kulwant Singh

..... APPELLANT

VERSUS

State of Punjab

..... RESPONDENT(S)

. . .

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

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1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

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PRESENT: - Mr. Vijay Rana, Advocate, for the appellant.

Mr. R.P.S. Sidhu, Assistant Advocate General,
Punjab.

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Jaspal Singh, J

1. Challenge in this appeal preferred by Kulwant Singh is to judgment and order of sentence dated March 3, 2001 passed by Additional Sessions Judge, Jalandhar, in case FIR No.68 dated September 27, 1995 under Sections 420, 364 IPC, registered in Police Station, Bhogpur, whereby, while acquitting

co-accused Rattanjit Singh and Sukhwinder Singh, appellant – Kulwant Singh has been convicted and sentenced to undergo RI for a period of 5 years and to pay fine to the tune of ₹ 2,500/- or in default of payment of fine, to further undergo RI for a period of 3 months under Section 420 IPC, as well as to undergo RI for a period of 5 years and to pay fine of ₹ 2,500/- or in default of payment of fine, to further undergo RI for a period of 3 months under Section 36 IPC. Both the sentences were ordered to run concurrently.

2. Instant case stands registered on the basis of complaint (Ex.PW3/B) lodged by Gurdev Kaur – complainant, who has alleged that she being issueless, adopted Kulbir Singh son of her brother Bhajan Singh, who after completing B.Com, intended to go abroad being unemployed. As suggested by Jaswinder Singh, she approached Kulwant Singh, brother of son-in-law of Joginder Singh, in the month of April 1992, who told that necessary arrangements can be done for sending Kulbir Singh to Germany on payment of ₹ 65,000/-. A week thereafter, Bhajan Singh, Joginder Singh and Kulbir Singh visited the house of accused and handed over to him a sum of ₹ 65,000/- alongwith passport of Kulbir Singh. Subsequent thereto, another demand of ₹ 40,000/- was made by Kulwant Singh who was

paid to him by complainant. At that time, other accused were also present. Kulwant Singh took Kulbir Singh to Delhi. Resham Singh brother-in-law of complainant accompanied him but he was sent back as it was told by Kulwant Singh that it will take some days to send Kulbir Singh abroad. However, Kulwant Singh remained with Kulbir Singh at Delhi. Thereafter, Sukhwinder Singh, co-accused told them to arrange a sum of ₹ 20,000/- more and they accompanied Sukhwinder Singh to Kulwant Singh with cash amount. After about 2 months, Kulwant Singh returned to village and disclosed to the complainant that Kulbir Singh was in Moscow and has demanded another sum of ₹ 85,000/- for sending Kulbir Singh to Germany. She consulted Mohan Singh who made an arrangement of said amount and same was paid to the accused. Thereafter, she had been enquiring the whereabouts of Kulbir Singh but nothing was disclosed by Kulwant Singh. Rather, he put-forth another demand of ₹ 1 lac for sending Kulbir Singh to Germany from Moscow. Bhajan Singh, brother of complainant, mortgaged his land with Joginder Singh for a sum of ₹ 50,000/- and son of Resham Singh sent a sum of ₹ 50,000/- from Germany to Moscow while remaining amount of ₹ 50,000/- was sent by Ranjit Singh which was received by Kulbir Singh in

Moscow. It has further been alleged by complainant that she could not contact with Kulbir Singh either from Moscow or any other place. She contacted Kulwant Singh who returned a sum of ₹ 45,000/- to her and was threatened with dire consequences. She reported the matter to police in the year 1995, on the basis of which, FIR was registered and investigation was put into motion.

3. There being a prima facie evidence appearing in report under Section 173 Cr.P.C. and documents annexed with it, Kulwant Singh alongwith Rattanjit Singh and Sukhwinder Singh were chargesheeted to face trial under Sections 420, 364 IPC to which they did not plead guilty and claimed trial. To substantiate charge framed against accused, prosecution examined Chagger Singh as PW-1, Mohan Singh PW-2, Gurdev Kaur PW-3, Bhajan Singh PW-4, Bhupinder Singh PW-5, Resham Singh PW-6, Lakhbir Singh PW7, SI Harjinder Singh PW8, ASI Amrik Singh PW9 and ASI Raunki Dass PW-10. Thereafter, prosecution closed its evidence.

4. When incriminating circumstances appearing in prosecution evidence were put to accused for eliciting their explanation as provided under Section 313 Cr.P.C., they denied

allegations, alleged false implication and pleaded innocence.

Specific plea taken by Kulwant Singh runs ut-infra:-

“Kulbir Singh, myself and other boys were anxious to go to Germany through Moscow. We had collected joint amount for spending to go to Germany. Kulbir Singh met me at Moscow and we had been trying to go to Germany. Kulbir Singh is still alive and has married in Moscow and is living there happily. He is communicating with Gurdev Kaur PW. Gurdev Kaur is intentionally with holding this fact to blackmail me and to extract money. Kulbir Singh has been shown in photos which have been placed on record. My photo and that of other boys is also there. I was given Rs 65000/- for spending for obtaining visa and ticket and for exchange of foreign currency out of which Rs 20000/-was spent on obtaining visa and tickets and the balance amount of Rs 45000/- was returned to Gurdev Kaur but she cleverly wants to extract money from me for that reason by making false statement. No other amount than Rs 65000/- was given to him. I am innocent have not kept even a penny with me out of Rs 65000/-. My other relations i.e. co-accused are not concerned with the transaction and they have been falsely implicated.”

5. Accused Kulwant Singh also opted to lead evidence in defence and examined Manohar Singh DW-1, Rajiv Sharma DW-2, Hardip Singh DW-3 and DSP Harmail Singh DW-4.

6. After hearing Public Prosecutor as well as learned defence counsel and appraisal of evidence, accused Kulwant Singh was convicted and sentenced as reflected in Para 1 of judgment whereas his co-accused, namely, Rattanjit Singh and Sukhwinder Singh were acquitted by extending the benefit of doubt.

7. Feeling disheartened, Kulwant Singh preferred the instant appeal which was admitted for hearing vide order dated March 13, 2001. Lower court record was also requisitioned and received.

8. Appellant has been convicted and sentenced under Section 420 IPC that he committed cheating and defrauded the complainant with some amount on the pretext of sending Kulbir Singh to Germany and further under Section 365 IPC on the ground that appellant is proved to have abducted Kulbir Singh with an intent to secretly and wrongfully confining him and his whereabouts are not known uptill now.

9. During the course of arguments, it has emerged that Kulbir Singh has married in Moscow, having two kids and is living there happily. Further, he is communicating with Gurdev Kaur – complainant.

10. Here, it would be pertinent to mention that on the similar allegations, Gurdev Kaur – complainant instituted a civil suit for recovery of ₹ 7 lac on account of damages/ compensation for causing dis-appearance of Kulbir Singh as well as for recovery of the amount alleged to have obtained by Kulwant Singh and others from her by way of inducement. That suit was resisted by Kulwant Singh and others. Resultantly, said

suit was dismissed vide judgment and decree dated October 19, 2009 (Annexure A-1). Even an appeal preferred against aforesaid judgment and decree dated October 19, 2009 also stood dismissed vide judgment dated January 10, 2011 (Annexure A-2) by the Additional District Judge (Fast Track Court), Jalandhar. Judgment dated October 19, 2009 (Annexure A-1) has become final and conclusive as no regular second appeal has been preferred by Gurdev Kaur challenging the judgment passed by Additional District Judge, Jalandhar.

11. A glance at judgments Annexure A-1 as well as A-2 makes it crystal clear that Kulbir Singh is alive and is living with his father Bhajan Singh. Even the Civil Court has concluded that Kulbir Singh is not the adopted son of Gurdev Kaur as has been claimed by her. A specific issue was framed by the Civil Court in this regard which has been answered against Gurdev Kaur. In the civil suit, Gurdev Kaur examined Resham Singh (PW-2), Lakhbir Singh (PW-3) and Bhupinder Singh (PW-4), besides appearing herself as a witness (PW-1). Gurdev Kaur, during her cross examination, has categorically admitted that Kulbir Singh has returned to the village and his residing with Bhajan Singh and Bhajan Singh has got a ration card showing Kulbir Singh as one of the members of his family.

Similarly, Resham Singh (PW-2) also specifically deposed that Kulbir Singh has returned from foreign country. On the similar lines is the statement of Lakhbir Singh (PW-3) that his brother Kulbir Singh has returned from the foreign country in the month of February 2005. Not only this, even Bhupinder Singh (PW-4) has also deposed about the return of Kulbir Singh from foreign country. For the reasons best known to Gurdev Kaur, Kulbir Singh was not examined before the Civil Court. So, from the judgments rendered by the Civil Court(s), it is evident that allegations either with regard to commission of any cheating or fraud as well as that Kulbir Singh has been abducted or that his whereabouts are not known fall to the ground. Besides the statements of above referred witnesses, Kulwant Singh etc. moved an application to Senior Superintendent of Police, Jalandhar, alleging false implication by Gurdev Kaur and a deep enquiry was conducted. During that enquiry, Kulbir Singh was examined who has admitted that he has gone abroad at his own accord. So, enquiry report also completely falsifies the stand taken by Gurdev Singh in this case. In view of the above narrated facts which are fully proved on record, conviction and sentenced imposed by the Trial Court are not sustainable in the eyes of law.

12. Resultantly, instant appeal is allowed. Impugned judgment of conviction and order of sentence dated March 3, 2001 is set aside. Appellant is acquitted of the charge framed against him.

July 29, 2015
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(Jaspal Singh)
Judge