

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**Crl. Appeal No. S-1526-SB of 2009
Date of decision : 19.08.2015**

Rinku

..... Appellant

versus

State of U.T. Chandigarh

... Respondent

CORAM:- HON'BLE MRS. JUSTICE ANITA CHAUDHRY

1. Whether Reporters of local papers may be allowed to see the judgment? Yes/No
2. To be referred to the Reporters or not? Yes/No
3. Whether the judgment should be reported in the digest? Yes/No

**Present: Mr. Manpreet Singh, Advocate-Amicus curiae
with Mr. Sumeet Sheokand, Advocate
for the appellant.**

**Mr. Gautam Kaile, Advocate for
Mr. Rajiv Sharma, Advocate for
U.T. Chandigarh.**

ANITA CHAUDHRY, J.

Appellant Rinku has preferred the instant appeal against the judgment of conviction and sentence dated 28.05.2009 vide which he was convicted and sentenced to undergo rigorous imprisonment for three years and pay a fine of Rs.3000/- and Rs.5000/- respectively under Sections 363 and 366 IPC. In default of payment of fine, he was required to further undergo rigorous imprisonment for six months and one year respectively. Both the sentences were ordered to run concurrently.

The facts leading to the institution of present appeal are being noticed first.

On 01.11.2008, Niranjana Dass, father of the prosecutrix made a

complaint that his 14 year old daughter was missing since 26.10.2008. He suspected that Rinku who was residing in neighbourhood had enticed his daughter, alluring her with marriage.

On the basis of complaint (Ex.P6), FIR No. 482 dated 01.11.2008 was registered under Sections 363, 366 and 376 IPC at Police Station Manimajra, Chandigarh against the appellant and was investigated.

The appellant who was lodged in Ludhiana jail was summoned through production warrants and joined in the investigation of the case on 07.11.2008.

On 08.11.2008 the prosecutrix was produced by her parents before the police. Her medical examination was done and she was handed over to her parents. On 20.11.2008 her statement under Section 164 Cr.P.C. was recorded.

On completion of investigation, challan was filed and the accused was put to trial for offences under Sections 363, 366 and 376 IPC on the allegations that on 26.10.2008 he had kidnapped the prosecutrix from the lawful guardianship of her parents with intent to force her to illicit intercourse and he had committed rape from 25.10.2008 to 7.11.2008 and four months prior to 08.11.2008.

During trial, the prosecution produced nine witnesses, including the prosecutrix, her parents and medical witnesses. The prosecutrix nor her parents supported the prosecution case and were turned hostile.

On conclusion of trial, the trial Court acquitted the appellant under Section 376 IPC, but convicted and sentenced him under Sections 363

and 366 IPC in the manner indicated above.

I have heard learned counsel for the appellant and learned State counsel and have gone through the record carefully.

The question which arises for determination is, whether ingredients of Sections 363 and 366 IPC were made out. Section 363 IPC provides punishment for kidnapping from lawful guardianship while Section 366 IPC prescribes punishment for a person whoever kidnaps or abducts any woman with intent that she may be compelled, or knowing it to be likely that she will be compelled, to marry any person against her will, or in order that she may be forced or seduced to illicit intercourse, or knowing it to be likely that she will be forced or seduced to illicit intercourse.

Kidnapping from lawful guardianship has been defined in Section 361 IPC, which reads as under:-

“361. 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.”

The object of this section seems as much to protect the minor children from being seduced for improper purposes as to protect the rights and privileges of guardians having the lawful charge or custody of their minor wards. The two words “takes” and “entices” as used in Section 361 IPC are intended to be read together so that each takes to some extent its colour and content from the other. The statutory language suggests that if the minor leaves her parental home completely influenced by any promise,

offer or inducement emanating from the guilty party, then the latter cannot be considered to have committed the offence as defined in Section 361 IPC.

Adverting to the present case, it is a matter of record that in her statement under Section 164 Cr.P.C. the prosecutrix had stated that she had developed relations with the accused; he took her to his room and raped her and that he took her to his village and confined her there in a room for 15 days and raped her there also. But while appearing in the witness-box she totally demolished the prosecution case and turned volte face and denied that she was raped by the accused. Though she admitted in her examination-in-chief that she went with the accused from one place to another and she travelled to his village as he had promised marriage, but in her cross-examination she denied that two days before the Diwali she had gone with the accused to bus stand, Chandigarh or to Karnal or that she was confined in a room by the accused. She resiled from the previous statement made before Magistrate. She was confronted with the statement recorded under Section 164 Cr.P.C., but she denied it and explained that it was made under police pressure. She further stated that before her statement she was taken to the police station where she was told what statement she had to make before the Magistrate and under the fear it was made.

There is no evidence regarding the age of the prosecutrix. The charge under Section 376 IPC was not proved and he was acquitted by the trial Court.

PW4 Niranjana Dass deposed that on 26.10.2008 he was away to Gujarat and on coming back to Chandigarh on 30/31.10.2008 he came to know that his daughter was missing. He further deposed in his cross-

examination that he made the complaint Ex.P6 on the asking of his relatives and neighbourers. PW7 Prem Lata, mother of the prosecutrix in clear terms deposed that she was not aware as to who had taken her daughter on 26.10.2008. There is not even a whisper that it was the accused who took the prosecutrix out of their lawful guardianship.

In a criminal case, the prosecution has to prove its case beyond reasonable doubt against the accused. In the instant case, the prosecution has failed to prove the case against the accused beyond shadow of reasonable doubt. Conviction and sentence of the appellant under Section 363 and 366 IPC cannot be sustainable and is set aside. The appeal is allowed. Accused is acquitted of the charges.

August 19, 2015
Jiten

(ANITA CHAUDHRY)
JUDGE