

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Criminal Appeal No.D-1071-DB of 2015

Date of Decision : November 02, 2015

Gurmail Singh

.....Appellant

Versus

Gurpreet Singh and another

....Respondents

CORAM : HON'BLE MR. JUSTICE T.P.S. MANN
HON'BLE MR. JUSTICE GURMIT RAM

Present : Mr. Rajan Singh Dadwal, Advocate.

T.P.S. MANN, J.

The appellant, who is grand-father of the prosecutrix, has filed the present appeal for challenging the judgment dated 16.4.2015 passed by learned Additional Sessions Judge, Barnala whereby respondent-Gurpreet Singh (here-in-after referred to as 'the accused') stands acquitted of the charges under Sections 363, 366 and 376 IPC.

Briefly stated, the prosecutrix, who was aged about sixteen years and two months, was residing with the appellant, who was her maternal grand-father, since childhood. She was matriculate and doing household work. On 11.9.2014, the appellant's daughter, who was mother of the prosecutrix came to meet them and after having meals, they went to sleep at 8.00 p.m. At about 10.30 p.m., the appellant's daughter noticed that the prosecutrix was not in her bed. An attempt was made to search for the prosecutrix but all in vain. The appellant and his daughter suspected the involvement of the accused in taking away of the prosecutrix on the pretext of marrying her.

Having heard learned counsel for the appellant and on going through the impugned judgment of acquittal, this Court finds that the prosecutrix, while stepping into the witness box as PW1, deposed that neither she had recorded her statement under Section 161 Cr.P.C. on 22.9.2013 nor her statement was recorded under Section 164 Cr.P.C. As she did not support the case of the prosecution, she was got declared hostile and allowed to be cross-examined by learned Additional Public Prosecutor. During her such cross-examination she denied making statement mark 'A', said to have been suffered by her before the police. PW2 Gurmail Singh is not a material witness despite the fact that he was the one who had lodged the FIR as he only proved the documents with regard to recovery of the prosecutrix. Similarly, PW3 Inspector Jaswinder Kaur proved the various documents prepared by her during the course of investigation. Once the star witness of the prosecution has failed to support the prosecution case, it can safely be concluded that the involvement of the accused does not stand established.

Learned counsel for the appellant has submitted that even though the prosecutrix has not supported the prosecution case yet the fact remains that the prosecutrix, who was less than eighteen years of age, had been kidnapped by the accused and, therefore, he ought to have been convicted under Sections 363 and 366 IPC. In this regard, he has relied upon the judgment of Hon'ble Supreme Court in Sajjan Kapar Vs. State of Bihar, (2005) 9 Supreme Court Cases 426 wherein

it was held that the offence of kidnapping was complete when the accused took the minor girl away from the lawful guardianship of her father.

It is true that the prosecutrix was less than eighteen years of age on the date of commission of the crime but there is no material on the file which could indicate that it was the accused, who had kidnapped the prosecutrix from the lawful guardianship of her mother or her grand-father. The only material which has come on the record is that on 11.9.2014 at about 10.30 p.m., the mother of the prosecutrix noticed that the prosecutrix was not in her bed. In her deposition before the trial Court as PW1, the prosecutrix did not utter a single word about the accused enticing her away from the lawful guardianship of her mother and grand-father. Under these circumstances it cannot be said that the prosecution has been able to establish the charges under Sections 363 and 366 IPC.

In view of the above, no case is made out for any interference in the impugned judgment of acquittal of accused of the charges against him.

The appeal is without any merit and, therefore, dismissed.

(T.P.S. MANN)
JUDGE

(GURMIT RAM)
JUDGE

November 02, 2015