

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

CRA-D No.130-DB of 2015

Date of decision:31.3.2015

Pithi Chaudhary

....Appellant

VERSUS

State of Haryana and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE HEMANT GUPTA

HON'BLE MS. JUSTICE LISA GILL

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?

Present: Mr. S.S. Narula, Advocate for the appellant.

HEMANT GUPTA, J.

The present appeal is directed against an order dated 16.10.2014 passed by learned Additional Sessions Judge, Karnal whereby the respondent-Renuka Chaudhary was held guilty for an offence under Section 452 and 506 of Indian Penal Code (for short 'IPC') while granting benefit of doubt for commission of offence under Section 364 read with Section 511 IPC. Subsequently, learned trial Court released the convict on probation for a good behavior for a period of one year on furnishing of probation bonds in the sum of Rs.20,000/-.

The said order was passed by learned trial Court on the basis of a complaint filed by the appellant against the respondent on the allegation that on 08.02.2010 at about 4.30 PM when she was

working in kitchen along with her mother-in-law, they heard cries of Aryaki, daughter of complainant, aged 5 years. When they came out of the kitchen they saw that the accused had trespassed into their house with intent to kidnap Aryaki forcibly in order to murder her. They tried to snatch the girl from accused upon which she pushed the complainant. The respondent asked that statements be got made from complainant's husband Honey Chaudhary and her brother Pinku regarding the Will of Nabheet Kalyan in their favour in the Court so that she may become owner of the property of Nabheet. It is further asserted that complainant with great efforts got released Aryaki from the clutches of accused-Renuka.

In evidence, the complainant relied upon her statement when she appeared as PW4 and also examined PW5 Gian Chand and PW6 Hukam Singh, the employees working in Chaudhary Oil Company, a petrol pump run by her husband and PW8 Bishan Chaudhary- her mother in law.

Learned trial Court has found that the accused has trespassed into the house of the complainant but granted benefit of doubt in respect of offence of attempt to kidnapping. Learned trial Court recorded the following findings:-

“38. From the facts of the case, firstly it is doubtful that the accused had made any attempt to kidnap the child as the child was not allowed to be examined by 10 nor her MLR was got conducted and secondly, even if the version of prosecution is believed, it appears that the accused may have picked up the child but when she raised hue and cry and the complainant reached there, the accused left the child and left the house. From the evidence of prosecution, the mensrea of the accused to kidnap the child is not established. Moreover, she had not moved the child from the lobby. The version of the prosecution witnesses that the child was

taken by the accused to the gate of the house is the improved version and this fact was not mentioned by the witnesses in the FIR or in their earlier statements. By this act of the accused, the ingredients of an attempt to kidnapping does not appear to be fulfilled. Thus, as the version of the prosecution regarding attempt to kidnap the child is highly improbable, she is entitled for the benefit of doubt.”

Learned counsel for the appellant referred to the statement of PW4 Pithi Chaudhary wherein she has, inter alia, deposed that when she along with her mother-in-law was working in the kitchen she heard cries of her daughter Aryaki from the lobby and when she and her mother-in-law reached the lobby, they found that accused Renuka was taking away Aryaki forcibly after entering into the house and without giving any knock on the door. When she tried to caught hold of the accused, the accused took away her daughter outside of the house stating that she and her family should depose in her favour relating to the dispute of Will of her house otherwise she would kill her daughter. Giving this *lalkara*, she reached the main gate of her house and then pointed towards her bag and stated that she is having a pistol in her bag and she will kill them as she had already killed the brother of the complainant. When the complainant raised hue and cry, some employees of petrol pump such as PW5 Gian Chand and PW6 Hukam Singh reached there and on seeing them, “accused released her daughter and left the house on foot”.

On the other hand, PW5 Gian Chand deposed that on hearing hue and cry of complainant, he reached the house of the complainant and saw that “complainant and accused were grappling with each other and a baby girl was caught hold by both of them. On

seeing them, accused left the baby girl and left the place after warning to the complainant”. PW6 Hukam Singh has deposed in the same manner as PW5 Gian Chand.

PW8 Bishan Chaudhary, mother-in-law of the complainant, deposed that she along with the complainant found that the accused-Renuka had entered the house without ringing the bell and had lifted Aryaki and was taking her outside the house. Pithi Chaudhary, the complainant, tried to take Aryaki back from the accused, “accused pushed her and tried to press the neck of Aryaki” by saying that Pinku and Honey Chaudhary should depose in her favour in the Court otherwise they will meet the same fate as she had done with Nabheet.

It, thus, appears that PW5 Gian Chand and PW6 Hukam Singh have deposed having seen the accused and the complainant grappling with each other regarding the custody of the child whereas PW4 Pithi Chaudhary has deposed that when she raised hue and cry and on employees reaching there, accused released her daughter and left the house of foot. On the other hand, mother-in-law Bishan Chaudhary has taken another extreme situation where she deposed that accused has tried to press the neck of Aryaki which is not the stand of either of the complainant or the two witnesses.

In this view of the matter, it is apparent that the prosecution witnesses are not coherent and have given contradictory statements which leads to serious doubt on the veracity of the statement of the complainant.

Consequently, the findings recorded by learned trial Court granting benefit of doubt for an offence under Section 364 read with Section 511 IPC has rightly been found as not made out.

Learned counsel for the appellant has further argued that the order of release of the accused on probation is not fair and reasonable; having committed house trespass. The accused should have been sentenced substantially.

A perusal of the order passed by learned trial Court shows that the Court has taken into consideration all the facts and the fact that the accused is a first offender and has a young child of 7 years. We also find that parties are related and there is dispute regarding Will.

Keeping in view the relationship of the parties and the fact that the accused has a young child and that there is history of litigation between the parties, we find that no case is made out for enhancement of sentence of accused.

Consequently, the present appeal is dismissed.

(HEMANT GUPTA)
JUDGE

MARCH 31, 2015
‘D. Gulati’

(LISA GILL)
JUDGE