

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

**CRA-S-844-SB of 2004.
Date of Decision: May 06, 2015.**

AMARJIT KAUR

....APPELLANT.

VERSUS

THE STATE OF PUNJAB

....RESPONDENT.

CORAM : HON'BLE MRS. JUSTICE SNEH PRASHAR

Present: Mr. Sidakmeet Sandhu, Advocate for the appellant.

Mr. A.S. Klar, Assistant Advocate General, Punjab.

SNEH PRASHAR, J.

1. This is an appeal preferred by appellant Amarjit Kaur, assailing the judgment of conviction and order of sentence dated 25.03.2004 recorded by learned Additional Sessions Judge (Fast Track Court), Ferozepur, in case bearing First Information Report No.193 dated 22.09.2003 under Sections 364 and 307 of the Indian Penal Code (for short "I.P.C.") registered at Police Station City, Ferozepur.

2. Precisely, the story of the prosecution was that Gurcharan Singh son of Mahla Singh, resident of Gali No.5 at the back of R.S.D. College, Ferozepur had two sons. His elder son Sukhdev Singh was 4½

years old and younger Vishal was 6/7 months old. His brother Resham Singh, who had a son and a daughter was also residing in the same street. Sukhdev Singh and children of Resham Singh were studying in Saraswati Vidya Mandir school. At the relevant time, Sukhdev Singh was in L.K.G.

On 22.09.2003, when Sukhdev Singh, as usual, did not return home from his school at 1 p.m., Gurcharan Singh and his wife Neelam went to the school to enquire about him and came to know that Sukhdev Singh had been taken by his paternal aunt (Tai) Amarjit Kaur at about 11:30 a.m. alongwith her own children. They went to the house of Amarjit Kaur and found that it was locked. Suspecting that Amarjit Kaur had taken their child with an intention to cause his disappearance or to kill him, Gurcharan Singh lodged a complaint with the police.

In his complaint, Gurcharan Singh added that in 1997 Amarjit Kaur had got a false criminal case registered against their family which was lateron cancelled and her marriage with his brother Resham Singh was dissolved. However, about two years prior to the occurrence Amarjit Kaur and Resham Singh had reached a settlement and had started residing together. They were not on talking terms with him (complainant Gurcharan Singh) though their children had been playing together. On 20.09.2003, children of Amarjit Kaur had taken away his mobile phone to which he protested and Amarjit Kaur took ill of it. Because of that grudge, Amarjit Kaur had indulged in such illegal act.

3. On the statement of the complainant, a formal First Information Report was recorded and a case under Section 364 I.P.C. was

registered. Investigation revealed that a lady was seen drowning a child into the canal but the child was rescued by standers Balbir Singh and Mohinder Singh. The lady was identified as Amarjit Kaur. Accordingly, Amarjit Kaur (appellant) was arrested and was challaned under Sections 364 and 307 I.P.C.

4. The appellant was charge-sheeted to which she pleaded not guilty and claimed trial. The prosecution examined PW1 Chanan Singh, PW2 Gurcharan Singh, PW3 Balbir Singh, PW4 Inspector Satnam Singh, PW5 AMHC Kulwinder Singh and PW6 Bindu. After closure of evidence of the prosecution, statement of appellant under Section 313 of the Code of Criminal Procedure (for short "Cr.P.C.") was recorded by putting to her the incriminating evidence available on record. She pleaded innocence and took the stand that in 1997 she had got registered a case under Section 307 I.P.C. against complainant Gurcharan Singh and his family members because she was administered poison and thereafter had taken divorce from her husband. Later on, she and her husband compromised and started living together. Since prior to their reunion her husband was giving his entire income to the complainant etc. but after her rehabilitation he stopped giving the same, out of that grudge the complainant falsely implicated her in the present case. She examined three witnesses including her husband Resham Singh to support her defence.

5. Analyzing the evidence available on record and the submissions made by learned Public Prosecutor and learned counsel representing the appellant, learned trial Court came to the conclusion that

the prosecution had successfully brought home guilt to the appellant and convicted her for commission of offence punishable under Sections 307 and 364 I.P.C and sentenced the appellant as under:-

“Keeping in view the age of the convict and her character and antecedents and other circumstances of the case I sentence her to undergo R.I. for 7 years and to pay a fine of Rs.1,000/- for the offence punishable under Section 307 IPC and in default of payment of fine further to undergo R.I. for one year. She shall also undergo R.I. for 5 years and to pay a fine of Rs.500/- for the offence under Section 364 IPC and in default of payment of fine further to undergo R.I. for 9 months.

Substantive sentences however in this case shall run concurrently.”

6. Feeling aggrieved by the impugned judgment of conviction and order of sentence dated 25.03.2004 passed by learned trial court, the appellant preferred the instant appeal.

7. The submissions made by Mr. Sidakmeet Sandhu, learned counsel representing the appellant and Mr. A.S. Klar, Assistant Advocate General for the State of Punjab have been heard and record has been perused.

8. To begin with, learned counsel for the appellant argued that the allegations of the prosecution rested solely on the testimony of PW2 complainant Gurcharan Singh and PW3 Balbir Singh. Both the witnesses

were closely related to each other as Balbir Singh was real nephew (sister's son) of Gurcharan Singh. The other eyewitness, who was an independent person namely, Mohinder Singh, was not examined by the prosecution. Soma was also cited as a prosecution witness but was given up on the pretext that she had been won over by the accused/appellant. Subsequently, she appeared during defence evidence of the appellant as DW1 and proved that Balbir Singh is nephew (sister's son) of Gurcharan Singh. Learned counsel asserted that because of close relationship between complainant PW2 and the only eyewitness PW3 examined by the prosecution and there being no independent corroboration of their version they do not deserve to be relied upon.

9. Referring to the statement of complainant Gurcharan Singh, learned counsel pointed out that as per his deposition on 22.09.2003 after he lodged a complaint with the police and found the house of Amarjit Kaur locked, he alongwith the police visited her parental village Habibwala and when she was not available there also and when they were returning to their village, they saw a crowd in the grain market by the side of the canal in village Bare Ke. He spotted his son and the appellant who were surrounded by the crowd. However, except for naming Balbir Singh and Mohinder Singh to be present in the crowd, no other natural and independent person was named by the complainant or was joined in investigation by the police. Apparently, the investigation officer joined only the interested witnesses which shows that it was a manipulated story.

Also for the fact that the complainant was not on speaking

terms with the appellant and her husband Resham Singh because he was not happy with the settlement arrived at between them by virtue of which they had reunited and were living together, the deposition of the complainant and his near relative could not be accepted as free of doubt.

10. As regards, the school record proved by PW6 Bindu, according to which on the day of occurrence i.e. 22.09.2013 Sukhdev Singh (son of the complainant) was taken away by his paternal aunt (appellant) at 11:30 a.m., learned counsel urged that the entry Ex.P7 in the attendance register was the sole entry in the register and therefore, did not inspire truth. More so, in her cross-examination PW6 admitted that permission to leave the school before closing time was given only by the Principal of the school. She stated that Amarjit Kaur had sought the requisite permission from the Principal but there was no written document to prove either the request made by the appellant or the permission given by the Principal. Absence of the relevant documents indicate that the entry Ex.P7 had been subsequently recorded in the attendance register to create evidence. To support his arguments that the story presented by the complainant was improbable and not worth reliance, learned counsel relied upon ***Mano Dutt and another vs. State of U.P., (2012) 4 SCC 79.***

11. The evidence on record reveals that the complainant while lodging the First Information Report had not concealed the facts because of which he and the appellant were not on talking terms or were allegedly inimical to each other. He categorically mentioned in the First Information Report that in 1997 a criminal case was got registered by appellant

Amarjit Kaur against him and his family which was later on cancelled and thereafter her marriage with his brother Resham Singh was dissolved. He also stated that nearly two years prior to the occurrence appellant Amarjit Kaur and his brother Resham Singh had arrived at a settlement and had started residing together but they were not on talking terms with him although their children used to play together. In the said set of facts the disharmony in the relationship between the complainant and the appellant could not be a ground to suspect the credibility of the complainant. He even mentioned the incident that had taken place two days prior to the occurrence which had caused fresh grievance in the mind of the appellant.

When the complainant had come to know from the school staff and the school record that his son had been taken away by the appellant before the school closed, it was natural for him to suspect some foul play because of the hostile relationship between him and the appellant. For the reason that the inimical relationship was admitted and obvious, the testimony of the complainant and other witnesses cannot be discarded outrightly because the allegation of the complainant was that the offensive act was founded on the grievance the appellant nourished. In such circumstances, The only safeguard to be used is to scrutinize the deposition of the complainant and his witnesses closely and meticulously and if the evidence is good enough to stand the test, it could be relied upon.

12. In the case in hand, the allegation of Gurcharan Singh that his son was kidnapped by the appellant was substantiated by the school

record i.e. the entry Ex.P7 in the attendance register proved by PW6 Bindu. PW6 was the teacher to whom the appellant had approached at about 11/11:30 a.m. and had requested to send Sukhdev Singh and her children with her. PW6 deposed that the appellant first came at 9:30 a.m. but when she refused to send the children she again came to her at 11:00 a.m. and repeated her request. She then sought permission of the Principal and after the Principal accorded the required permission she allowed Sukhdev Singh to leave the school with the appellant and made entry Ex.P7 to that effect in the attendance register.

There may not be any other entry in the attendance register similar to the entry Ex.P7 but that is no reason to disbelieve the school record and the deposition of PW6 Bindu in whose presence Sukhdev Singh had left the school in the company of the appellant who was none else but paternal aunt (Tai) of Sukhdev Singh. PW6 was an independent witness and being a teacher of Sukhdev Singh as well as children of the appellant had no reason to favour the complainant or depose against the appellant.

13. As far as the statement of PW3 Balbir Singh is concerned, it was not put to PW2 complainant Gurcharan Singh that Balbir Singh was his real nephew. DW1 Soma tried to prove the relationship of maternal uncle and nephew between Gurcharan Singh and Balbir Singh but surprisingly she did not name the mother of Balbir Singh whom she alleged to be sister of Gurcharan Singh. By merely saying that there was a relationship of maternal uncle and nephew neither the relationship was

proved nor it could be assumed that Balbir Singh was an interested witness. Otherwise also, in case Balbir Singh was related to Gurcharan Singh, he also had similar relationship with the appellant. Therefore, had he not witnessed the occurrence, there was no reason for him to become an eyewitness and make a statement against the appellant.

14. In his deposition, PW3 Balbir Singh stated that on the relevant day and time he alongwith Mohinder Singh was going to village Gokhi Wala to arrange a combine for harvesting their paddy crop. When they reached near the canal they saw the appellant throwing the bag of the child in the canal and then attempting to drown that child. When they questioned her, she threw the child into the canal. PW3 stated that he jumped into the canal and saved the child.

15. No doubt, Mohinder Singh, the other eyewitness was not examined by the prosecution but his non examination is of no consequence when PW3 Balbir Singh appeared and unequivocally proved the allegations against the appellant. The requirement of law is not to adduce voluminous evidence consisting of huge number of witnesses but only to produce material, substantive and reliable evidence. The statement of the complainant that his son was kidnapped by the appellant was supported/established by PW6 Bindu. The further allegation that the appellant had tried to kill the child is proved from the statement of PW3 Balbir Singh.

16. Accordingly, the judgment of conviction dated 25.03.2004 recorded by learned trial court holding the appellant guilty for

commission of offence under Section 364 and 307 I.P.C. is maintained. As regards the quantum of sentence, order of learned trial court calls for no interference as the sentence awarded is adequate.

The appellant is on bail, her bail bond, shall stand cancelled. The concerned Chief Judicial Magistrate, shall get the convict arrested and commit her to prison for serving the remaining period of sentence and shall take necessary steps, to comply with the judgment, with due promptitude, keeping in view the applicability of the provisions of Section 428 Cr.P.C., and submit compliance report, to this Court, within a period of two months, from the date of receipt of a copy thereof.

The District and Sessions Judge, Ferozepur shall ensure that the directions are complied with, within the time frame, and the compliance report is submitted immediately thereafter.

The Registry shall keep track of the submission of compliance reports, and put up the papers whether the reports are received or not, within the time frame, immediately after the expiry thereof.

(SNEH PRASHAR)
JUDGE

May 06, 2015.
jitender

Note: Whether to be referred to the Reporter or not? Yes/No.