

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of Decision: 19.12.2015

CRA-S No.1338-SB of 2013

Riyajul

...Appellant

Versus

The State of Haryana

...Respondent

Present: Mr. Rajesh Lamba, Advocate, for the appellant.

Mr. Vivek Saini, AAG, Haryana, for the respondent.

**CORAM: HON'BLE MR. JUSTICE HEMANT GUPTA
HON'BLE MRS. JUSTICE RAJ RAHUL GARG**

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?

HEMANT GUPTA, J.

Riyajul is in appeal aggrieved against the judgment of conviction dated 08.04.2013 and order of sentence dated 11.04.2013 passed by the learned Additional Sessions Judge, Faridabad, vide which the appellant was convicted for an offence punishable under Section 363 IPC and sentenced to undergo rigorous imprisonment for three years and to pay a fine of Rs.5000/-. In default of payment of fine, the appellant shall further undergo rigorous imprisonment for a period of two months.

It may be noticed that while hearing CRA-D No.1321-DB of 2014 titled 'Nijesh Vs. State of Haryana & others' as well as other connected appeals directed against the judgment of conviction dated 28.02.2014 and order of sentence dated 06.03.2014 rendered by the Additional Sessions Judge, Bhiwani, convicting the three accused namely Asha Rani, Arun & Riyaj for an offence under Section 306 IPC and sentencing them to undergo rigorous imprisonment for ten years, the present

appeal was ordered to be posted for final hearing being the appeal arising out of the same sequence of events, as the FIR in this case is first in the chain of circumstances.

The prosecution case was initiated on the statement of Ram Niwas son of Prabhu Singh, resident of House No.17, Sector-4, Gurgaon made to ASI Jagbir Singh, Police Post, Sector-8, Faridabad on 11.11.2011. In his complaint (Ex.P10), Ram Niwas stated that Neetu daughter of his younger sister Durgesh wife of Shiv Singh, resident of Haluwas, is a student of Ist year of Diploma in Women Polytechnic College, Sector-8, Faridabad. His brother-in-law, father of Neetu, is posted in Army at Jammu. He stated that on 08.11.2011, Neetu's room partner namely Pooja made phone to his brother-in-law Shiv Singh that Neetu is missing from the hostel since 06.11.2011 without any information. On the same day at about 10.00 PM, his brother-in-law informed him telephonically regarding missing of Neetu. On 09.11.2011, he went to Women Polytechnic College, Sector-8, Faridabad and after meeting the teachers, he came to know from girl Pooja that Neetu was enticed away by Riyaj @ Riyajul, resident of Idgah Colony, Sector -6, Faridabad, who is working at Nand Lal Clinic, Sector-8. He disclosed the date of birth of his niece as 10.12.1994. On this, he and his nephew namely Nijesh son of Shiv Singh tried to trace out Neetu and Riyaj, but no clue was found. He stated that he is confident that his niece, who is 17 years of age, was enticed away by Riyaj. On the basis of such statement, ruqa was sent to the Police Station for registration of an FIR. On receipt of ruqa, FIR (Ex.PJ) was recorded on the same day.

Thereafter, ASI Jagbir Singh – the Investigating Officer along-with the complainant went to the Government Women Polytechnic, where Neetu was studying. He took into possession gate pass (Ex.PL), photocopy

of entry register of hostel (Ex.PM) and 10th class mark-sheet of Neetu (Ex.P13) vide recovery memo Ex.P12. Apart from preparing rough site plan of Sidarth Nagar (Ex.P14), he recorded the statements of S.K.Goyal and Satbir.

On the same day, Ram Niwas received a mobile call in the evening from Neetu that she is at bus-stand, Bahadurgarh. Upon this, they brought Neetu at Gurgaon. On 12.11.2011, they went to the Police Post, where after recording the statements of Neetu, Ram Niwas and Nijesh (brother of Neetu), ASI Jagbir Singh handed over Neetu to the complainant vide memo Ex.PB. On 16.11.2011, pursuant to an application for recording the statement of Neetu, her statement under Section 164 Cr.P.C. was recorded by the Illaqa Magistrate.

Accused Asha was arrested on 14.12.2011, whereas accused Riyajul was arrested from Pune (Maharashtra) on 06.01.2012. However, Asha was released on 06.01.2012. During personal search of accused Riyajul, two receipts of Motel, Badkhal Lake Complex, Faridabad dated 06.11.2011 (Ex.PH) and 07.11.2011 (Ex.PH/1) were taken into possession. During interrogation, accused Riyajul suffered disclosure statement Ex.PE to the effect that on 06.11.2011 and on 07.11.2011, he stayed with Neetu at Badkhal Lake Motel. On completion of necessary formalities, accused Riyajul was made to face trial.

To prove its case, the prosecution has examined as many as 11 witnesses. After conclusion of prosecution evidence, the statement of the accused was recorded under Section 313 Cr.P.C. The incriminating circumstances appearing against him in the prosecution were put to the accused. He denied the prosecution case and pleaded false implication.

After going through the evidence on record, the learned trial Court returned a finding that the prosecution has succeeded in proving that on 06.11.2011, accused Riyajul had kidnapped prosecutrix out of lawful guardianship and committed an offence punishable under Section 363 IPC and accordingly convicted and sentenced them, as mentioned above.

Before this Court, learned counsel for the appellant has vehemently argued that the prosecution has miserably failed to prove the allegations against the appellant. The evidence led by the prosecution is contradictory to the statement of Neetu recorded under Section 164 Cr.P.C. In her statement recorded under Section 164 Cr.P.C., Neetu has not stated that she was taken to Badhkhal Lake Motel, where they spend two nights. She has also not deposed that the accused established sexual relationship with her during the period she remained with him. The prosecution has not produced the guest register, but felt content with producing the payment receipts, which do not give complete address of the guest or the signatures of the appellant in support of the fact that Neetu was with the appellant on the days, when he purportedly stayed in Badhkhal Lake Motel.

We have heard learned counsel for the parties at length and with their assistance gone through the record carefully. However, we do not find any merit in the present appeal.

Neetu was less than 18 years of age on 06.11.2011 having born on 10.12.1994 vide birth certificate Ex.P13. Neetu left the Women Polytechnic College on 6.11.2011, where she was studying, without permission of any of her guardian. As per her statement recorded under Section 164 Cr.P.C., she went from place to place. Though she has not specifically deposed that the accused established sexual relationship with her, but the fact remains that Neetu a young girl went with the accused

without informing any family member, friend or relation. When a girl is accompanying a man, moving from one station to another, the inference is obvious that they were in relationship, though such fact was not given by Neetu in her statement.

While stepping into witness box, PW-4 Vijay Kumar son of Bhola Ram has produced the register of Haryana Tourism Corporation Ltd., Badkhal Lake, Faridabad for the allotment of rooms to the guests. As per the said record, at Sr.No.22, the visitor Riyaz resident of House No.IG-02, Idgah Colony, Faridabad, Sector-6, Ballabgarh arrived at the Tourism Centre on 06.11.2011 at 7.00 PM with a lady. Room No.14 was allotted to him. His driving licence number was also mentioned in the said record. PW-4 Vijay Kumar has further deposed that Riyaj also stayed on the next day i.e. 07.11.2011 at the Tourism Centre and he was allotted room No.11 at 1.40 PM. He departed on 07.11.2011 at 9.00 PM. He also proved the receipts issued in token of payment as Exs.PH and PH/1. In his cross-examination, no question was asked in respect of driving licence of the accused. The cross-examination is only to the effect that receipts Exs.PH and PH/1 do not contain the signatures of Riyaj. He stated that the entry regarding allotment of room to appellant had not been made by him and that he had not seen Riyaj and the lady with him on the said date i.e. 06.11.2011 and 07.11.2011.

The entries in respect of visitor Riyaj has been made by the official in the ordinary course of business. Such act carries presumption of correctness. Not only the register was produced by the witness, but the receipts regarding payment have also been produced by him. Mere fact that such receipts do not carry signatures of the accused does not rebut the statement of the witness that the accused along with a lady stayed in the

Tourist Centre on 06.11.2011 and 07.11.2011. Thus, it stands proved that Neetu was with the appellant.

Ram Niwas, uncle of Neetu, has been examined as PW-10. He has deposed with regard to the age of Neetu and the fact that he received phone call on 08.11.2011 that Neetu is absent from the hostel. He also deposed that police recovered her on 12.11.2011 vide recovery memo Ex.PA. Her statement under Section 161 Cr.P.C. was recorded by the Investigating Officer. It was on 16.11.2011, statement of Neetu under Section 164 Cr.P.C. was recorded. Such statement of the complainant read with the statements of the formal witnesses, leaves no manner of doubt that Neetu went with the appellant and the appellant alone without the permission or knowledge of her guardian.

In view of the above, we find that the learned trial Court has considered the entire evidence in correct perspective to return a finding that the prosecution has succeeded in proving the charges against the appellant that on 06.11.2011 accused Riyazul had kidnapped prosecutrix out of lawful guardianship and committed an offence punishable under Section 363 IPC. The judgment of conviction and order of sentence recorded by the learned Additional Sessions Judge do not suffer from any patent illegality or irregularity.

Consequently, the present appeal is dismissed.

(HEMANT GUPTA)
JUDGE

19.12.2015
Vimal

(RAJ RAHUL GARG)
JUDGE