

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

**CRA-S-4894-SB of 2014
Date of decision : 23.04.2015**

Devki Nandan

..... Petitioner

Versus

State of Haryana and another

..... Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr. N.K.Malhotra, Advocate
for the petitioner(s).

- 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?**

DARSHAN SINGH,J(Oral)

1. The present appeal has been preferred against the judgment of acquittal dated 27.08.2014 vide which respondent no.2 Nitin has been acquitted of the charges punishable under Sections 363 and 366-A of Indian Penal Code, 1860 (hereinafter called 'IPC') by the learned Additional Sessions Judge, Rohtak.

2. The prosecution allegations in nutshell are that on 19.04.2013, the prosecutrix having her date of birth as

09.05.1996 who is a student of 10+2 class had gone to HUDA park Kalanaur for morning walk, but she did not returned. It was suspected that respondent no.2 has enticed her away. The case was registered on the statement of present appellant the father of prosecutrix and investigation was started.

3. The prosecutrix was recovered near railway station Rohtak. Respondent no.2 was arrested on 25.04.2013. On completion of the investigation, the report under Section 173 Cr.P.C (hereinafter called Cr.P.C) was presented in the Court.

4. Respondent no.2 was charge sheeted for the offence punishable under Sections 363 and 366-A IPC vide order dated 11.09.2013 to which he pleaded not guilty and claimed trial.

5. In order to substantiate its case, the prosecution examined as many as seven witnesses.

6. After the closure of the prosecution evidence, the accused was examined under Section 313 Cr.P.C., wherein he pleaded false implication. However, he did not lead any evidence in defence.

7. After appreciating the evidence on record and contentions raised by learned counsel for the parties, the learned trial Court acquitted respondent no.2.

8. Aggrieved from the aforesaid judgment of acquittal, the present appeal has been preferred.

9. I have heard Mr.N.K.Malhotra, Advocate, learned counsel for the appellant and have carefully examined the case file.

10. Learned counsel for the appellant contended that the prosecutrix was below 18 years of age on the date of occurrence. She was kidnapped by respondent no.2. Even, the learned trial Court has mentioned in the judgment that if Section 366-A IPC is not proved, the conviction can be recorded for the smaller offence i.e. 363 IPC. He contended that from the evidence led by the prosecution, it is established that the prosecutrix was kidnapped/enticed away by respondent no.2. So, the judgment of acquittal has resulted in miscarriage of justice.

11. I have duly considered the aforesaid contentions.

12. The law is well settled with respect to the appeal against acquittal. Under the Indian Criminal Jurisprudence, the accused has two fundamental protections available to him in a criminal trial. Firstly, he is presumed to be innocent till proved guilty and secondly that he is entitled to a fair trial and investigation. Both these facts attained even greater significance where the accused has a judgment of acquittal in his favour. The judgment of acquittal enhances

the presumption of innocence of the accused. The High Court can exercise the power of jurisdiction to reverse an order of acquittal in cases where it finds that the lower Court has obstinately blundered or has through incompetence, stupidity or perversity reached such distorted conclusion as to produce a positive miscarriage of justice. The Hon'ble Supreme Court in case **Murugesan and others Vs. State through Inspector of Police 2013(1) RCR (Criminal) 791** has laid down that if two reasonable conclusions are possible on the basis of evidence on record, the Appellate Court should not disturb the finding of acquittal recorded by the trial Court. A possible view denotes a conclusion which could reasonably be arrived at regardless of the fact whether it is agreed upon or not by the higher Court and irrespective of the correctness or otherwise of such opinion. So long as the view taken by the trial Court can be reasonably found it should not be interdicted and the High Court should not supplant its own view over the view of the trial Court.

13. In view of the aforesaid ratio of law, we are to examine the case in hand. This fact is not disputed that in the instant case immediately after the recovery of prosecutrix her statement under Section 164 Cr.P.C was got recorded by the Investigating Officer and in that statement

the prosecutrix has stated that she had herself come to Rohtak along with accused for going to meet his friend in Itarsi at Madhya Pradesh and near railway station they were apprehended by the police and beaten up badly. But, while appearing in the witness box during the trial, she has stated that respondent no.2 took her to some house near railway station at Rohtak and threatened to kill her to give statement to the police if they were apprehended or for raising alarm. Thereafter, he took her towards railway station, where they were apprehended by the police.

14. Admittedly, HUDA park, Kalanaur from where the prosecutrix was allegedly taken away by respondent no.2 and the railway station are busy public places. She has admitted in the cross-examination that some persons were present in the park. The prosecutrix has not raised any alarm at any point of time against her forcible kidnapping. The statement of prosecutrix wherein she has levelled the allegations against respondent no.2 was recorded on 14.11.2013. She was recalled for further cross-examination on 13.08.2014 and deposed that on 15.5.2014 she and respondent no.2 got married in Sanatam Dharam Mandir, New Delhi out of free will. The marriage was got performed at temple because it was not of the liking of her parents. She further stated that she is happily residing at her

matrimonial home being wife of the accused.

15. In order to properly appreciate the evidence even the subsequent conduct of the witness can be taken into consideration. In the instant case, even during the pendency of the trial when only the part statement of the prosecutrix was recorded, she solemnized the run away marriage with respondent no.2. If this subsequent development is taken into consideration in context with the relationship between the prosecutrix and respondent no.2, the prosecution version that the prosecutrix was forcibly kidnapped by respondent no.2 is rendered totally unreliable. Rather, it appears that the prosecutrix has willingly and voluntarily accompanied respondent no.2.

16. The Hon'ble Supreme Court in case **S.Vardarajan Vs. State of Madras, ARI 1965 (SC) 942** has laid down that the slipping out of a minor girl out of the keeping of her lawful guardian does not tantamount taking way to constitute the kidnapping. Again in case **Shyam and another Vs. State of Maharashtra, 1995 AIR (SC) 2169,** the Hon'ble Apex Court has laid down that where the prosecutrix did not put any struggle nor raised any alarm while alleged to be taken away by the accused, it appears that she was a willing party to go with the accused and the culpability of accused is not established.

17. The ratio of law laid down by the Hon'ble Apex Court in both the cases referred above is fully applicable to the fact situation of the present case and there is no escape from the conclusion that the ingredients of the offence of kidnapping against respondent no.2 are not established. Thus, the impugned judgment of acquittal does not call for any interference by this Court.

18. Thus, keeping in view of my aforesaid discussion, the present appeal having no merits is hereby dismissed.

23.04.2015

s.khan

**(DARSHAN SINGH)
JUDGE**