

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

CRA-S-1872-SB of 2003(O &M)

Date of Decision :11.02.2015

Ashok Kumar and others

.....Appellants

Versus

State of Punjab

..... Respondent

CORAM : HON'BLE MR. JUSTICE AJAY TEWARI

Present : Mr. A.S.Gulati, Advocate
for Mr. A.S.Sullar, Advocate for the appellants.

Mr.Deepak Garg, AAG, Punjab.

- i. Whether Reporters of local papers may be allowed to see the judgment?
- ii. To be referred to the Reporters or not?
- iii. Whether the judgment should be reported in the Digest?

AJAY TEWARI, J. (Oral)

This appeal has been filed against the conviction of the appellants under Section 366-A read with Section 511 IPC.

The allegation is that the appellants tried to abduct their daughter who was living with her grand parents at the instance of one Sunita Sharma who used to indulge in immoral trafficking for the purpose of pushing her into flesh trade. The second allegation was that they had tried to set on fire the house of the grand parents of the complainant.

At the very outset it is not disputed that aforesaid Sunita

Sharma has been acquitted. The case was initiated on a complaint made by the daughter of the appellants to the Human Rights Commission. In that complaint she made no allegation that her parents wanted to drag her into immoral trafficking but only stated that her parents wanted to take her back and she did not want to go with them. No time, date or place was mentioned where they may have attempted to abduct her. It was only in her statement under Section 161 Cr.P.C. and in Court that she stated that on 24.10.2001 her parents came to the house of her grandparents along with aforesaid Sunita Sharma and insisted that she should accompany them. When she refused they left but her mother 'hit the door of the house.' The trial Court held that the offence under Section 436 IPC read with Section 511 IPC was not proved and consequently acquitted the appellants under that Sections and that part of the order has become final.

Learned counsel for the appellant has argued on two aspects. His first argument is that in her various statements the complainant had stated that it was Sunita Sharma who wanted to force her into the flesh trade. Her mother had come under her influence and they had both administered intoxicants to her father. As per learned counsel once Sunita Sharma was acquitted the whole basis of the case against the present appellants was displaced. His second argument is that even if the allegations are taken to be the gospel truth still the offence under Section 366-A read with Section 511 IPC is not made out because there is nothing illegal in her parents' attempting that the minor girl should accompany them. Further as per the complainant when she refused the appellants left the house. Learned counsel has argued that this action can in no manner be taken to be an attempt to kidnap. There is no allegation that they forced her to accompany them by lifting her or by dragging her.

Learned AAG has argued that the mere acquittal of Sunita Sharma on the basis of benefit of doubt would not mean that the appellants are not guilty. However, he has had to accept that as per the allegations of the complainant and the other witnesses the appellants had only verbally insisted that she should accompany them and, on her refusal had left the house. PW2 who is the younger sister of the complainant has only made a bald statement that the appellants had threatened her and the complainant that they should accompany them failing which they would get them killed but did not give any date or time when this threat took place. Even PW3, father of appellant No.1 only stated that about 1 ¼ years ago the appellants came to her house and started altercation and tried to take away Jyoti with them.

Keeping in mind the entire factual matrix it has to be held that the prosecution has not been able to bring home the guilt of the appellants beyond reasonable doubt. They have to be given the benefit thereof.

Resultantly the appeal is accepted. The judgment of conviction and order of sentence are set aside and the appellants are acquitted.

Since the main case has been decided, the Criminal Misc.Application, if any also stands disposed of.

(AJAY TEWARI)
JUDGE

February 11 , 2015
sunita