

CRA-S-2270-SB of 2003

Date of Decision: 04.03.2015

NARINDER SINGH @ NINDER AND OTHERS Appellants

VERSUS

STATE OF PUNJAB Respondent

CORAM: HON'BLE MR. JUSTICE MAHAVIR S. CHAUHAN

Present: Mr. Vijay Rana, Advocate
for the appellants.

Mr. S. S. Dhaliwal, Addl. A.G., Punjab.

MAHAVIR S. CHAUHAN J. (ORAL)

Judgment of conviction dated 27.10.2003/order of sentence dated 30.10.2003 whereby learned Additional Sessions Judge, Kapurthala (hereinafter referred to as the 'trial Court') has convicted the appellants Narinder Singh @ Ninder, Darbara Singh, Sulakhan Singh and Ram Asra @ Lakha for the offence under Section 364 of the Indian Penal Code (for short 'IPC') read with Section 511, IPC, and has sentenced them to rigorous imprisonment for five years with fine amounting to Rs.1000/- and in default of payment of fine to further rigorous imprisonment for one month each, are under challenge in this appeal brought by the convicts.

I have heard learned counsel for the parties.

It is argued by learned counsel for the appellants that PW1-Tarsem Singh, author of the First Information Report, Exhibit PG, was not present at the time of the stated occurrence while PW2-Kulwant Singh has failed to identify the appellants as the persons involved in the occurrence and PW-4 Baldev Singh is not only a close relative of the complainant and, thus, an interested witness but has also failed to depose

with regard to disclosure statement Exhibit PL whereby the car statedly used in the occurrence is stated to have been taken in police possession. According to the learned counsel, the learned trial Court has based its judgment on the statements of PW-3 Prabhdeep Singh and PW-6 Amandeep Kaur, which is not sufficient to sustain the conviction as their testimonies have not been corroborated by independent evidence. It has also been submitted that FIR has been recorded after a delay of more than 24 hours which has remained totally unexplained and is fatal to the case of the prosecution.

Per Contra, learned State counsel contests the submissions put up on behalf of the appellants and submits that in the evidence of PW-3 Prabhdeep Singh and PW-6 Amandeep Kaur, the victims of the occurrence, the entire sequence of events has been sufficiently proved and it has been explained that their father, namely PW-1 Tarsem Singh was not available at home on the day of occurrence and it was for that reason that police was approached on the next day, i.e., on 25.08.2000.

Nothing more has been urged on either side.

Facts and circumstances giving rise to the instant appeal are that on 24.08.2000, Amandeep Kaur aged about 14-15 years and her younger brother Prabhdeep Singh aged about 12-13 years, daughter and son, respectively, of complainant Tarsem Singh were returning from their school to their village Rawal on a bicycle. On the way, they were intercepted by an Esteem Car bearing registration No. DL-3C-4061. Four-five persons were travelling in that car. Two of the occupants of the car alighted therefrom, stopped Amandeep Kaur and Prabhdeep Singh, told them that

they had been called by their father immediately and on their refusal to oblige tried to make them board the car by force. In the meantime, Faqir Singh (not examined as a witness) and Kulwant Singh (PW-2) reached there. On seeing them, the accused persons ran away leaving the two children there on the spot. Matter was reported to the police vide statement, Exhibit PA, made by Tarsem Singh (PW-1) at 4.25 P.M. on 25.08.2000 and based thereupon a formal First Information Report, Exhibit PG, was recorded. Matter was investigated into. Statements of witnesses were recorded. Necessary recoveries were effected. All the accused, except Nagar Singh (proclaimed offender), were arrested. A report in terms of Section 173 (2) of the Criminal Procedure Code, 1973 ('Cr.P.C.' for short) was presented before the learned Area Magistrate. Learned trial Court on hearing the Public Prosecutor and the defence found a prima facie case triable under Section 364/511, IPC, to be made out and the appellants were accordingly charged. On a plea of not guilty and a claim for trial having been put up on behalf of the appellants, prosecution examined Tarsem Singh-complainant as PW-1, Kulwant Singh, a witness of the occurrence as PW-2, Baldev Singh, who saw the accused planning to kidnap the victims and also riding the car in question, as PW-4, Surinder Singh a school teacher of Government Senior Secondary School as PW-5 to bring on record that two children were studying in afore-stated school, ASI Iqbal Singh PW-7 to bring on record various steps taken during the course of investigation, Shankar Dass as PW-8 (but he did not support the prosecution story and was declared hostile), Mahinder Singh as PW-9 (he did not support the prosecution story and was declared hostile) besides examining Prabhdeep

Singh as PW-3 and Amandeep Kaur as PW-6.

All the inculcating circumstances appearing in the evidence of prosecution were put to the appellants while examining them under Section 313, Cr.P.C. They denied all the circumstances as false and incorrect and reiterated their plea of innocence and false implication but neither brought forth any plea of defence nor adduced any evidence in their defence.

On hearing the learned Public Prosecutor and the learned defence counsel in the light of evidence available on record, learned trial Court recorded a very definite finding that the prosecution was able to establish guilt of the appellants beyond reasonable doubt and, accordingly, convicted and sentenced them as hereinbefore stated.

As rightly pointed out by learned counsel for the appellants PW-1 Tarsem Singh, the complainant is not a witness of the occurrence and PW-2 Kulwant Singh has failed to identify the appellants as the persons involved in the occurrence. However, PW-4 Baldev Singh has gone on record to state that he heard the appellants planning to kidnap the victims and saw them riding the car in question. PW-5 Surinder Singh has brought on record certificates, Exhibits PE and PF, showing that Amandeep Kaur and Prabhdeep Singh were students of Government Senior Secondary School Rampur Jagir during the relevant period. Victims of the occurrence, namely Prabhdeep Singh, PW-3 and Amandeep Kaur, PW-6, have narrated the entire sequence of events in a picturesque manner and have identified the appellants as the persons who attempted to kidnap them. Interestingly, PW-3 Prabhdeep Singh was confronted with a suggestion on behalf of the appellants that the occurrence did take place at 4.00 P.M. Though the

suggestion was denied by PW-3 Prabhdeep Singh but it indicates that the appellants do not dispute the factum of the occurrence and only dispute the time thereof. Beyond this, the two witnesses, namely Prabhdeep Singh and Amandeep Kaur, have been able to stand the test of cross-examination successfully. It has also come in the evidence of PW-3 Prabhdeep Singh that on the day of occurrence his father Tarsem Singh was not at home and he came on the next day and for that reason the occurrence was reported to the police on 25.08.2000. Interestingly, none of the witnesses examined on behalf of the prosecution has been confronted with a question or suggestion on behalf of the appellants to show that there was either any enmity between the two sides or the complainant side had a motive to falsely implicate the appellants in the case.

From the evidence of PW-3 Prabhdeep Singh and PW-6 Amandeep Kaur it comes out that even in the absence of evidence of other witnesses, the factum and manner of occurrence, as alleged by the prosecution, are established beyond any manner of doubt, and that being so, the contention raised on behalf of the appellants is rendered inconsequential. As aforesaid, use of car bearing registration No.DL-3C-4061 in the occurrence has been deposed to by PW-4 Baldev Singh. He has also been able to stand the test of cross-examination successfully.

Thus, the prosecution has not only proved the occurrence but has also explained the delay in lodging the First Information Report. Therefore, findings of conviction recorded by learned trial Court cannot be interfered with.

However, learned counsel for the appellants submits that the appellants namely Narinder Singh @ Ninder, Darbara Singh and Sulakhan Singh are stated to have spent 1 ½ years in imprisonment and Ram Asra @ Lakha to have suffered the entire sentence of imprisonment awarded to him by the learned trial Court. There is no pre or post incident except the present one wherein the appellants were involved, therefore, the appellants deserve to be shown some leniency as regards quantum of sentence.

The fact as regards custody is affirmed by the custody certificates of the convicts placed on record on behalf of the respondent-State. It is also a matter of record that FIR in the matter was recorded on 25.08.2000 and since then the appellants have been facing the agony of a tough investigation, a protracted trial and consequent proceedings.

In view of all these circumstances, appellants deserve leniency as regards quantum of sentence. Consequently, order on quantum of sentence is modified and substantive sentence awarded to the appellants is restricted to the period(s) already spent by them in custody. Sentence as regards fine is, however, maintained.

With the aforestated modification in the order on quantum of sentence, the appeal fails and is dismissed.

(MAHAVIR S. CHAUHAN)
JUDGE

March 04, 2015
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