

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

CRA No. 1248-SB of 2003 (O&M)

Date of Decision : 07.01.2015

Baljit Singh @ Billa and another

...Appellants

versus

Renu

...Respondent

CORAM : HON'BLE MR. JUSTICE AJAY TEWARI

Present : Mr. Naresh Kaushik , Advocate for the petitioner.

Mr. A.P.S, Gill, AAG, Punjab.

None for the complainant.

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)

None for the complainant despite service.

This appeal has been filed against the judgment of the conviction and sentence of 7 years imposed upon the appellant by the trial Court in complaint under Section 376/366/506/34 IPC. The allegations are that on 09.04.1999, at about 8 pm, when the respondent had gone to attend the fair at Bidhipur Church, the appellants abducted her in the presence of her sister and priest of the Church and thereafter, appellant No.1 raped her. Thereafter, the complainant and appellant No.1 were arrested by the police and challan under Section 109 Cr.P.C. has been presented. The complainant had reported the matter to the police and the police did not register a case against appellant No.1 as he was an influential person. Both the appellants had threatened the complainant that they would kill her along with her family. On account of this fear, the complainant did not approach the police but after 4 months, she sent a registered complaint to SSP, Gurdaspur. Since no

action was taken on the complaint, thereafter, she filed the instant complaint.

At the very outset, Mr. APS Gill, AAG, Punjab states that this is a complaint case and none is appearing on behalf of the complainant. One more notice be sent to her.

In my opinion, once the complainant had been served and this appeal has been pending for the last about 12 years, no useful purpose would be served by again trying to serve the complainant.

The prosecution examined 4 witnesses i.e. CW3 Rominder Kaler, CW4- Sukhraj Masih and CW2-Vergina and CW1-complainant. The complainant had given up the priest, as a witness being unnecessary and closed the prosecution evidence.

Learned counsel for the appellant has argued that once it was a case of the complainant herself that she had gone to a Christian Convention it was very difficult for the appellants to have forcibly kidnapped her and even if it had happened, there was no earthly reason that her sister had not raised any hue and cry. He has further stated that in her deposition that she had seen the appellants for the first time when she was kidnapped. She further denied that she had any relation with appellant No.1. CW3-Doctor only deposed about the pregnancy of the respondent. PW3 had also mentioned that the respondent had filed a complaint on 05.08.1999. He has further pointed out that in her statement the sister of the complainant, mentioned that there may have been 5000 persons along with police officials in the convention. She further stated that when the appellants kidnapped her sister, she raised raula and on hearing that persons present in the Convention tried to chase the appellants but could not be apprehended. Learned counsel for the appellants has argued that actually the complainant had an affair with

appellant No.1 and when that relationship soured she made the present complaint. In this connection, the appellants have produced photographs Ex. D1 and D2 and the photographer and the Sarpanch of the village of the complainant and appellant No.1, had identified that these photographs were of appellant No.1 and the respondent. He has further argued that both appellant no. 1 and the respondent were apprehended by the police in Calendra under Section 109 of Cr.P.C. and were produced before the Sub Divisional Magistrate on various occasions between April and August and on none of the occasions, the complainant had mentioned that she had been abducted/raped. He has further argued that firstly it would be inconceivable for any one to abduct a person from the midst of a gathering when thousands of people are there without attracting any attention. Secondly, he has drawn the attention of the Court to the testimony of CW4 wherein she has stated that she had raised a raula and people had tried to chase the appellants but had given up. He has stated that no reason has been shown by the respondent as to why she was so afraid for 4 months that she did not make any complaint and what happened after 4 months which made her lose her fear. He has further stressed the point that the respondent appeared so many times before the Magistrate but never thought it fit to make any allegation of kidnapping/rape. As per him, these facts have been completely glossed over by the trial Court.

In my opinion, there is weight in the argument of leaned counsel for the appellants. It is unconceivable that a person will be abducted from the midst of a religious convention where there are thousands of people including police officials present and even no report would be lodged. It is also strange that ultimately apart from her sister, no other person has

appeared to support the story of kidnapping. The photographs Ex.D1 and Ex.D2 also reveal relationship between appellant No.1 and the complainant and if these are juxtaposed against the statement of the respondent that she had never seen appellant No.1 (who was admittedly resident of the same village) it tells its own story. There is no whisper in the complaint or in the testimony of the respondent as to why she was so afraid of appellant No.1 from 09.04.1999 and she lost her fear against him on 05.08.1999, when she made the first complaint. In these circumstances, in my considered opinion, learned counsel for the appellants has succeeded in throwing a reasonable doubt on the prosecution version and consequently the appellants are entitled to the benefit thereof.

Resultantly, the appeal is allowed and the judgment of conviction and sentence is hereby set aside.

07.01.2015
pooja saini

(AJAY TEWARI)
JUDGE