

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

Criminal Appeal No. S. 1635 SB of 2002
Date of decision : 20.02.2015.

Manoj and another

..... Appellants.

versus

State of Haryana

..... Respondent.

Present : Mr. Karan Pathak, Advocate for the appellant.
Mr. P.P.Chahar, AAG, Haryana.

Criminal Appeal No. S. 1644 SB of 2002

Kedar

..... Appellant.

versus

State of Haryana

..... Respondent.

CORAM :- HON'BLE MR.JUSTICE K.C.PURI.

1. Whether Reporters of Local Newspapers may be allowed to
see the judgment? yes
2. To be referred to the Reporters or not? yes
3. Whether the judgment should be reported in the Digest? yes

Present : Mr. S.S.Verma, Advocate for
Mr. K.P. Singh, Advocate for the appellant.
Mr. P.P.Chahar, AAG, Haryana.

K.C.PURI, J.

By this common judgment, I intend to dispose of Criminal

Appeal No. S. 1635 SB of 2002 titled as Manoj and another versus State of Haryana and Criminal Appeal No. S. 1644 SB of 2002 titled as Kedar versus State of Haryana as both these appeals have arisen out of the same incident, judgment and order. For convenience, facts are being taken from Criminal Appeal No. S. 1635 SB of 2002 titled as Manoj and another versus State of Haryana.

2. Challenge in these appeals is the judgment dated 24.09.2002 and order dated 25.09.2002 passed by Shri N.L.Pruthi, learned Additional Sessions Judge, (Adhoc), Fast Track Court -II, Faridabad vide which the accused-appellants were convicted under Section 365 read with Section 120-B of the Indian Penal Code (in short – the IPC) and sentenced to undergo RI for a period of three years and to pay a fine of Rs.1000/- each and in default thereof to further undergo RI for a period of three months.

3. Briefly stated, the prosecution story is that on 30.03.1999 Jai Kishan complainant was sitting in the house of his brother Devinder. Harish son of Devender was also present. Accused Soran came there and stated that since he did not know how to use telephone, let Harish accompany him to assist him in making a telephone call. Devender agreed to the same. In the meantime, accused Kedar also came there and thereafter accused Soran and Kedar took Harish along with them on their bicycle. Complainant and his brother Devender thereafter got busy in their work. At about 3.00p.m., his brother Devender came to him to inform that Harish had not come back. On this he and his brother went to village Chandpur

where the accused had taken Harish for making a telephonic call. There at the bus stop of Chandpur one Kalyan resident of Sahajahnpur met them. On enquiry from him he told them that in the morning, he had seen Harish being brought on bicycle. He further informed the complainant that the bicycle was parked near the road and the accused Soran and Kedar alongwith 2-3 more persons took Harish in a Maruti Car without registration number and went towards Ballabgarh side. When they did not find Harish anywhere, the complainant and his brother came back to their village and gave information about the kidnapping of Harish to the villagers. When Harish did not return even during night report was lodged in the Police Post Tigaon. On the basis of aforesaid statement, FIR was got recorded. Accused were arrested. Investigating officer also prepared rough site plan of the spot with correct marginal notes and further recorded statements of the witnesses. After completion of formal investigation, challan against the accused was presented in court.

4. On presentation of challan, copies of documents were supplied to accused free of costs as required under section 207 Cr.P.C. Shri Rakesh Singh, the then Judicial Magistrate Ist Class, Faridabad vide order dated 24.7.1999 committed the case to the Court of Session as the offence alleged against the accused was exclusively triable by the said learned Court. Charge under Sections 364-A read with Section 120-B of the IPC was framed against the accused. Accused pleaded not guilty to the charge and claimed trial.

5. In support of its case, prosecution examined PW1 Jarnail

Singh, PW2 SI Chand Ram, PW-3 Complainant Jai Kishan, PW-4 Rakesh Singh, Judicial Magistrate Ist Class, PW-5 Devender Kumar, PW-6 Mahipal, PW-7 Ashok Kumar Draftsman, PW-8 Harish , PW-9 ASI Dharampal and closed its evidence.

6. After the closure of prosecution evidence, all the incriminating circumstances appearing against the accused were put to them in their statements recorded under section 313 Cr.P.C., they denied all the allegations and pleaded their innocence due to party faction in the village. Accused examined Bhagat Singh as DW-1, Dharamvir Singh DW-2, Constable Sukhvinder Singh DW-3, Dr. S.K.Khurana DW-4, C. Rajinder Kumar DW-5 in their defence.

7. The trial Court, after hearing the learned counsel for the parties convicted and sentenced the accused vide judgment dated 24.09.2002 and order dated 25.09.2002, as aforesaid.

8. Feeling dissatisfied with the aforesaid judgment dated 24.09.2002 and order dated 25.09.2002, accused have directed the present appeals, as aforesaid.

9. I have heard learned counsel for the parties and have gone through the records of the case with their able assistance.

10. Learned counsel for the accused-appellants have not challenged the order of conviction but have submitted that accused-appellants Kedar and Manoj have mentioned his age as 18 years in the custody certificate itself at the time of admission in the jail. Bony accused/appellant has mentioned his age as 20 years at the time of admission in the jail. The

occurrence relates to the year 1999 i.e. 16 years back. Accused Manoj and Bony have undergone incarceration for a period of two months and five days. So, prayer has been made for taking lenient view regarding quantum of sentence.

11. The State counsel has opposed the prayer.

12. I have considered the submissions made by both the sides.

13. Since this is the first appeal, I have myself perused the record.

The testimony of the prosecution witnesses inspire confidence and as such learned trial Court has rightly recorded the conviction and sentence of the accused/appellants and no ground for their acquittal is made out. So, the conviction recorded by the trial Court is affirmed.

14. Now reverting to the quantum of sentence.

15. Accused-appellants have been convicted under Section 365 of the IPC, which carries imprisonment upto seven years. However, they have been awarded incarceration for a period of three years by the trial Court. All the accused were below 21 years at the time of their admission in the jail. The occurrence relates about sixteen years back. So, considering all the circumstances, the sentence of accused-appellants imposed under Section 365 of the IPC stands reduced to the period already undergone. However, their sentence of fine stands affirmed. The said amount of fine, if not deposited earlier, be deposited within two months from today failing which appellants have to undergo the imprisonment imposed under default clause.

16. In the manner indicated above, the appeals stand disposed of accordingly.

17. A copy of this order be conveyed to the trial Court for strict compliance.

February 20 , 2015

SV

**(K. C. PURI)
JUDGE**