

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

1. CRA-S-1710-SB-2009

Prem Singh Appellant

Versus

State of Punjab Respondent

2. CRR-145-2010

Sumitra Devi Petitioner

Versus

Prem Singh Respondent

Date of Decision : September 15th , 2016

CORAM : HON'BLE MR. JUSTICE DR. SHEKHER DHAWAN

Present: Mr. R.S.Athwal, Advocate,
for the appellant (in CRA-S-1710-SB-2009).
and for the respondent in CRR No. 145-2010

None for the petitioner (in CRR-145-2010).

Mr. Yogesh Kumar Gupta, AAG, Punjab
for the respondent-State (in CRA-S-1710-SB-2009).

SHEKHER DHAWAN, J.

This order shall dispose of Criminal Appeal No. CRA-S-1710-SB-
2009 filed by appellant Prem Singh and CRR No. 145-2010 filed by
complainant Sumitra Devi as both arise out of the same judgment of

conviction and order of sentence.

Appellant – Prem Singh has preferred CRA-S-1710-SB-2009 against the judgment of conviction dated 13.06.2009 and order of sentence dated 15.06.2009 passed by learned Sessions Judge, Kapurthala whereby the he was convicted under Section 364 IPC and was sentenced as under:-

Under Section	Sentence	In default
364 IPC	to undergo Rigorous Imprisonment for a period of 10 years and to pay a fine of Rs.50,000/-	to further undergo Rigorous Imprisonment for a period of 2 years

Sumitra Devi, complainant has preferred CRR No. 145 of 2010 seeking enhancement of quantum of sentence awarded to appellant-Prem Singh.

2. Relevant facts for the purpose of decision of these cases; that on 26.04.2008 complainant Sumitra Devi reported the matter to the police that she used to reside in House No.564, Urban Estate Phagwara, which was owned by Bihari Lal. She was deputed to look after the safety of that house for the last three months. Thereafter an agreement of sale of said house was entered into between the owner of the said house and appellant-Prem Singh. Because of that reason Prem Singh had been visiting the house in question. On 05.12.2007, the accused-appellant visited her house and took the youngest son of the complainant, named, Shera in his arms and remarked that the child was very endearing. Since then her son Shera was not traceable. The complainant suspected that the accused-appellant had kidnapped her son with the intention of committing his murder. She searched her son who could not be traced out and as such, she reported the

matter to the police. On this, police started investigation on 14.12.2007.

3. On receipt of a message from police of Hoshiarpur, Investigating Officer visited there and took the boy-Shera who was earlier recovered from the accused-appellant in the State of Gujarat. The appellant was arrested in this case. The proof of age of Shera was taken into police custody apart from recording of statements of witnesses including Shera. It had come in the investigation that accused had escaped in his car bearing registration No.PB-09H-3404 (make Santro) (hereinafter referred to be as 'the car') and he was chased in the town of Palanpur in Gujarat.

4. During the process of trial, learned trial Judge completed various proceedings of trial including framing of charge against the accused under Section 364 IPC to which the accused pleaded not guilty and claimed trial. After recording of evidence of the prosecution witnesses, examination of accused under Section 313 Cr.P.C and after considering the prosecution evidence and the defence version, held the appellant guilty and convicted him for commission of offence under Section 364 IPC on 13.06.2009 and sentenced him on 15.06.2009, as detailed in para No.1 above.

5. Aggrieved of passing of judgment of conviction and order of sentence, the appellant is before this Court by way of present appeal. The revisionist being dissatisfied with quantum of sentence awarded to the appellant, has preferred CRR No. 145 of 2010.

6. Prosecution has examined PW-1 Jagdeep Singh, driver who took the accused in the car from Batala to Bombay via Abohar. On his way to Gujarat at Palanpur, the driver received a message on his mobile phone that

the accused was wanted in a murder case by the Punjab Police and the driver had taken the accused and the child to the nearest police station. PW-2 Dwaraka Dass, Principal, G.R.D.Public School, Hoshiarpur proved the age of boy - Shera on the basis of document, Ex. PA and he was reported to be less than 16 years of age. PW-3 SI Jewan Kumar deposed about the background of the murder case initially registered against the appellant. Sumitra Devi, complainant appeared as PW-4 and reiterated her statement as set up in her complaint Ex. PC. Shera himself appeared as PW-5 and corroborated the version of his mother. PW-6 Bihari Lal, owner of the house in question proved the factum of execution of agreement of sale, entered into between him and the accused-appellant, in respect of the house where the complainant Sumitra Devi was caretaker. SI Baldev Singh had investigated the matter and appeared as PW-7.

7. Against the above evidence, defence version is just a plea of denial. Accused-appellant had taken the plea that Shera was sent voluntarily by the complainant with him and later on false allegation was levelled against him. However, no defence evidence was led by the accused-appellant.

8. Learned counsel for the appellant contended that learned trial Judge has not considered the entire evidence because even the basic ingredients of Section 364 are not proved against the appellant. In fact, Shera was sent by her mother and Shera himself had gone with his consent. Later on, the complainant turned dishonest and levelled false allegations against him. More so, Shera himself had not uttered even a single word

before the Gujarat police or the police of Hoshiarpur that he was kidnapped by the appellant. The prosecution case is based on improved version by way of statements of witnesses including PW-4 Sumitra Devi. It had come in the statement of Shera himself that he had been roaming at different places including Golden Temple where there was availability of so many persons. He has also admitted that his family was not having any enmity with the appellant-accused. So, there was no question of kidnapping and the basic ingredients of Section 364 IPC have not been proved against the accused-appellant. Learned counsel for the appellant has further contended that there was no motive with the appellant to kidnap Shera. He had not advanced any threat to Shera nor there was any such allegation. Learned Court below has completely ignored these facts while recording judgment of conviction and order of sentence and the same is liable to be set aside and the appeal deserves to be accepted.

9. Learned State counsel submitted that the prosecution case has been duly proved on the file that Shera was minor at the time of commission of alleged offence as he had been proved to be less than 16 years of age. There was no question of having given consent lawfully by a person under age of 16 years. The kidnapping of Shera was from the lawful guardianship of her mother, complainant-Sumitra Devi and she had reported the matter to the police that the appellant had kidnapped her son and later on, Shera was recovered from the possession of appellant in the area of Gujarat State when he was being taken in a car. The motive of commission of offence for kidnapping is proved on the file because the appellant had entered into an

agreement of sale of house owned by Bihari Lal PW-6 and the house was in possession of complainant Sumitra Devi. The Court below has rightly considered the entire evidence and the judgment of conviction and order of sentence are perfectly valid and the present appeal is liable to be dismissed.

10. Having considered the submissions made by learned counsel for the parties and appraisal of the record, this Court is of the considered view that most of the facts are not disputed that Shera, minor son of Sumitra Devi [PW-5] had gone missing on 5.12.2007. Thereafter, Sumitra Devi tried to search Shera at her own level, but could not trace him and then she had reported the matter to the Police on 9.12.2007. Later on, Shera was recovered from the possession of the accused as he was taking the minor child to Gujarat. The motive to commit the alleged offence is also established on the file because Sumitra Devi, complainant was in possession of House No. 564, Urban Estate, Phagwara and the agreement for sale of the said house was entered into between the appellant and Behari Lal [PW-6]. The contention raised by learned counsel for the appellant that the basic ingredients of Section 364 IPC are not met is without any force because in this case Shera has been proved to be of the age of 15-16 years on the basis of School Certificate, Ex. PA which has been duly proved on the file as per statement of PW-2, Dwaraka Dass, Principal of GRD Public School, Hoshiarpur. No contrary evidence has come on the file to suggest that the age of Shera was more than 16 years on the date of alleged occurrence. The delay in reporting the matter has been duly explained by Sumitra Devi, complainant that she had been searching for Shera amongst

her relations and when she could not trace him out, the matter was reported to the police. The kidnapping of Shera was from the lawful guardianship of his mother, Sumitra Devi. The recovery of child was at the instance of PW-1 Jagdeep singh, driver of the Car, who took the accused in the said car from Batala to Bombay via Abohar. Later on, when he reached at Palanpur, he came to know that the accused was involved in a murder case and was wanted by Punjab Police and then he took the child as well as the accused to the nearest Police Station. Against the above prosecution evidence, the defence version is just a plea of denial which has rightly been discarded by the Court below.

11. In view of the above, this Court does not find any merit in any of the submissions made by learned counsel for the appellant. Consequently, the present appeal bearing No. CRA-S-1710-SB-2009 is without any merit and stands dismissed.

12 No one has put in appearance on behalf of the revisionist. More so, this Court is of the considered view that the judgment of conviction and order of sentence passed by the trial Court are perfectly valid and do not call for any interference. Resultantly, finding no merit in the present revision petition, CRR No.145 of 2010 also stands dismissed.

(SHEKHER DHAWAN)
JUDGE

September 15th, 2016
som

Whether speaking/reasoned	:	Yes
Whether Reportable	:	Yes