

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRM-11515-2016 and
CRA-AD-72-2015

Date of decision: 08.04.2016

Makhan Deen

..... Applicant-Appellant

Versus

State of Punjab and others

..... Respondents

**CORAM: HON'BLE MR. JUSTICE T.P.S. MANN
HON'BLE MR. JUSTICE RAMENDRA JAIN**

1. *Whether Reporters of the local papers may be allowed to see the judgment?*
2. *To be referred to the Reporters or not?*
3. *Whether the judgment should be reported in the digest?*

PRESENT: Mr. Sanjeev Manhas, Advocate
for the applicant-appellant.

RAMENDRA JAIN, J.

Complainant-Makhan Deen has filed the present application under Section 378 Cr.P.C. and appeal against the acquittal of respondents No. 2 to 9, vide impugned judgment dated 25.08.2015, passed by the learned Additional Sessions Judge, SBS Nagar.

2. Put pithily, applicant has given his daughter Mano (since deceased) to one Bhau son of Bashir resident of Machhiwara in the year 2012 in exchange of marriage of his son Ranjha with Rano daughter of Bashir. His daughter-in-law Rano once had gone to her parental home, but did not return thereafter. It was learnt that she had left her parental

home with some other person. Resultantly, Mano-daughter of the applicant also returned to her parental house having pregnancy of about 5 months. However, in the night of 17.01.2013, respondent No. 2-Masoom Ali and one Liaqat Ali (declared as proclaimed offender and not tried yet) got abducted Mano and another minor daughter of the applicant namely Juna aged about 9 years from their house.

3. Resultantly, a case of abduction and criminal conspiracy was registered. During investigation, dead body of Mano was found lying in a room of a farm house of one Maninder Singh, Section 302 IPC was added. Inquest proceedings and post-mortem examination of the dead body of Mano were got conducted. Juna was medico-legally examined and on the basis thereof offence under Section 376 IPC was added while deleting Section 363-A IPC. After completion of investigation, final report under Section 173 Cr.P.C. against respondents No. 2 to 9 and Liaqat Ali was presented before the Area Magistrate.

4. On commitment of the case, learned trial Court charge-sheeted respondents No. 2 to 9 under Sections 363, 302 and 120-B IPC to which they pleaded not guilty and claimed trial.

5. The prosecution in support of its case examined as many as 12 witnesses.

6. After hearing learned counsel for both the sides and perusing the evidence brought on record, the learned trial Court acquitted respondents No. 2 to 9 vide the impugned judgment dated 25.08.2015.

7. Learned counsel for the applicant contended that the impugned judgment is based on surmises and conjectures. PW-11 minor

Juna had categorically named respondents No. 2 to 9 for her abduction along with her deceased sister Mano and her rape by them. Learned trial Court has failed to appreciate that respondents No. 2 to 9 were the close relatives of Liaqat Ali (proclaimed offender), abductor of Mano and minor Juna as they had played active role in the commission of crime.

8. After giving our thoughtful consideration to the submissions made by learned counsel for the applicant, we find no merit in the instant application.

9. The entire prosecution story revolves around the depositions of PW-1 Makhan Deen-applicant, PW-2 Ranja and PW-11 Juna, son and minor daughter, respectively, of the applicant. Rest of the witnesses are formal in nature as their role came into play after the occurrence.

10. The applicant in his statement as PW-1 specifically named respondents No. 2 to 9 and deposed that they had abducted his daughter Mano (deceased) and his another minor daughter PW-11 Juna aged about 9 years in the night of 17.01.2013. He also deposed that he requested respondents No. 2 to 9 to return his daughters, but they refused to do so. Thus, finally he reported the matter to the police vide his statement Ex. PA. On 01.02.2013, a telephonic message was received about the recovery of dead body of a girl from the farm house of Maninder Singh which he identified as of his daughter Mano. He also deposed about the recovery of his minor daughter PW-11 Juna on 04.02.2013 from the canal of village Bakhlaur.

11. PW-2 Ranjha son of the applicant also fully corroborated the testimony of his father.

12. PW-11 minor Juna testified that on 17.01.2013, she along with her brothers, sisters and parents was sleeping in the house. She was sleeping with her sister Mano in a separate room. Around 12 O' clock in the night, respondent No. 2 and aforesaid Liaqat Ali trespassed their house and abducted them. They were taken to an unknown place and were kept in the house of respondent No. 9-Barkat Ali during that night. Respondents No. 2 to 9 gave beatings to her and her sister and then she was separated from her sister Mano. After giving beatings and threatening that in case, she would disclose to anyone about their abduction, the entire family would be killed and finally they left her at the canal of village Bakhaur.

13. The close scrutiny of depositions of above three star witnesses has not been able to convince us for setting aside the impugned judgment for the reasons to follow.

- (i) The criminal law was set into motion in the instant case on 24.01.2013, after alleged abduction of Mano and minor Juna, daughters of the applicant by respondent No. 2 and Liaqat Ali in the night of 17.01.2013. Hence, it is evident that FIR was lodged belatedly after 7 days for the reasons best known to the applicant. It is pertinent to mention here that prior to 24.01.2013, the applicant had moved an application Ex. DA to Police Post, Aur on 19.01.2013 about the missing of his daughters. As PW-1 he admitted his signatures and mobile number upon the same. When

the appellant was confronted with the contents of above complaint Ex. DA, the names of respondents No. 2 to 9 were not found mentioned therein. More so, the applicant has deposed before the learned trial Court that he had requested respondents No. 2 to 9 to return his daughters, but they did not budge to his request. However, this fact was also not found mentioned in complaint Ex. DA. Contrary to it, the applicant in the above complaint Ex. DA had alleged that his daughter Mano aged about 22 years had left the house in the intervening night of 17.01.2013 without telling them and he had suspicion on one Bhundi S/o Bashir, caste Musalmaan Gujjar, resident of village Bakhaur. While leaving, his daughter had taken away gold ornaments and ₹ 10,000/-. The above major contradiction in the complaint Ex. DA and deposition of applicant as PW-1 has rendered the entire prosecution case completely doubtful.

The things did not rest here. In cross-examination the applicant had admitted that in his statement dated 24.01.2013, he did not mention that in the intervening night of 17.01.2013 his daughter Mano was abducted by Liaqat Ali. However, this fact is very much mentioned in the FIR.

(ii) The deposition of PW-2 Ranjha, son of the applicant is

nothing, but simple repetition of his statement and thus, need not to be discussed. The cross-examination of PW-11 Juna, the alleged minor daughter of the applicant has demolished the entire prosecution case. She admitted that their house consists of two rooms in which 12 members of her family reside. At the time of alleged occurrence in the night of 17.01.2013, all the 12 persons were present in the house. She and her sister Mano used to sleep in one room, whereas remaining family members used to sleep in another room. She had raised alarm for about 5 minutes, but her sister Mano did not raise any voice at the time of their alleged abduction. Her parents and other family members had chased them up to the gate. Her father PW-1 and brother PW-2 were having mobiles. Her sister had raised alarm, when she was being taken in the car, but she did not raise the same. She had disclosed about her kidnapping for the first time in Court on 02.07.2015. Prior to that she did not talk to anybody about the incident. This witness was also confronted with her statement Ex. MO9, wherein she had stated that she was abducted and kidnapped along with her sister Mano in the midnight of 17.01.2013 by respondents No. 2 to 9, but their names were not found mentioned in the same. The above conduct of

applicant, his son PW-2 Ranjha and his minor daughter PW-11 Juna has rendered the prosecution case completely doubtful.

- (iii) In the initial complaint, the applicant only suspected Bhundi son of Bashir and Liaqat Ali, but did not allege about the complicity of respondents No. 2 to 9. The applicant also did not mention about abduction of his minor daughter namely, Juna. Thus, the improved version of prosecution in the depositions of PW-1 and PW-11, contrary to their initial statements Ex. DA and Ex. MO9 have rightly been disbelieved and discarded by the learned trial Court.

More so, it is not believable that 9 persons can kidnap two persons in the presence of 12 persons. It is also not believable that 10 members of the family, who were sleeping in the adjoining room did not awake despite the alarm of PW-11 Juna. In cross-examination, PW-11 Juna, admitted that she had got recorded to the police that on 22.01.2013 her father had sent her with Shahdin brother-in-law of her sister from Bus Stand Bakhaur, who further took her to the house of her elder sister-Ghugi and in the early morning of 04.02.2013, the husband of her sister had left her at that place and that nobody had kidnapped her. From her above deposition, it is evident that she

was never kidnapped, as alleged, with her sister Mano, rather her deposition strengthens the defence version that Mano had eloped with someone from her parental house along with gold ornaments and a cash amount of ₹ 10,000/-. More so, there is no eye-witness account of the alleged murder of Mano.

14. From the discussion above, no case is made out for any interference in the impugned judgment.

15. Consequently, the instant application, being completely devoid of any merit is dismissed. Leave to appeal is declined and the appeal is dismissed.

**(T.P.S. MANN)
JUDGE**

**(RAMENDRA JAIN)
JUDGE**

April 08, 2016

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