

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRA-AD-87-2015

DATE OF DECISION: February 02, 2016

Sarabjit Kaur

...Appellant

Versus

State of Punjab and others

...Respondents

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

Present: Mr. Avtar Singh Bhatti, Advocate for the appellant

RAMENDRA JAIN, J.

The appellant has assailed the judgment dated 26.08.2015 passed by the Additional Sessions Judge, Ludhiana, acquitting respondent Nos.2 to 5 of the charges under Sections 363, 366, 366-A, 376, 120-B IPC.

Brief facts of the case are that on 08.04.2012 appellant/complainant Sarabjit Kaur recorded the statement that she along with her family including a son and a daughter,

aged about 13 years 9 months, was living at village Matour, District Mohali. After the exams, her children had gone to the house of their maternal grand parents at Ludhiana. One Satpal Singh, foster son of complainant, used to visit the house of complainant along with his neighbour Gurwinder Singh @ Babbal. Gurwinder Singh started troubling the daughter of the complainant. Complainant shifted to Ludhiana. On 05.04.2012, Gurwinder Singh kidnapped the daughter of the complainant on the pretext of marrying her.

Initially, a formal FIR under Sections 363,366-A IPC was registered. Since the daughter of the complainant could not be traced, the appellant approached the High Court and investigation was transferred to ACP, Atam Nagar. Pursuant thereto, supplementary statement of complainant was recorded. On the basis thereof, Satpal Singh (respondent No.2), Harjinder Kaur (respondent No.3), Balbir Singh (respondent No.4) and Ravinder Singh were implicated in the FIR and offence under Section 120-B IPC was added. On 19.3.2013, accused Gurwinder Singh was arrested and daughter of the appellant was recovered. On the basis of statement of daughter of complainant, offence under Section 376 IPC was added. Subsequently, statements of the appellant's daughter were recorded under Sections 161 and 164 Cr.P.C. and challan was presented against the accused under Sections 363,366-A,120B and 376 IPC.

On finding a prima facie case under Sections 363, 366, 366A, 376, 120B IPC, the case was committed to the Court of Sessions. Before the Sessions Court, charge was framed against accused Gurwinder Singh Babbal, Satpal Singh, Harjinder Kaur and Balbir Singh under the above said Sections, to which they pleaded not guilty and claimed trial, whereas, accused Ravinder Singh was discharged. During her cross-examination, the daughter of complainant named Harjinder Kaur wife of Gurdeep Singh (respondent No.5) for having taken her forcibly to Gurdwara and compelling her to talk to Gurwinder Singh, therefore, respondent No.5 was also summoned to face trial on an application under Section 319 Cr.P.C. Thereafter the amended charges were framed against all the accused under Sections 363, 366, 366-A, 376, 120-B IPC.

The prosecution in order to prove its case, examined as many as 12 witnesses. Statements of accused persons were recorded under Section 313 Cr.P.C. putting the entire incriminating evidence which they denied and pleaded false implication. In defence, 12 witnesses were examined.

On appreciation of evidence, the trial Court acquitted respondents No.2 to 5 and convicted Gurwinder Singh Babbal under Sections 363, 366 and 376 IPC and sentenced him to undergo life imprisonment with default clauses.

Learned counsel for the appellant has argued that the impugned judgment of the trial Court is based on surmises and conjectures. The crime could not have been committed without the active involvement of respondents No.2 to 5.

After giving thoughtful consideration to the submissions made by learned counsel for the appellant, we find no merit in the present appeal and the same is liable to be dismissed for the following reasons.

The conduct of the prosecutrix i.e. daughter of the complainant in making no effort to escape from the clutches of Gurwinder Singh Babbal during her stay with him from 5.4.2012 to 19.3.2013, particularly when they initially spent a night at Golden Temple, leaves no room for doubt that she was a consenting party. Though the question of consent of the girl loses significance in view of her being found to be less than 14 years of age as on 05.04.2012 when she was allegedly enticed away by accused Gurwinder Singh Babbal, yet it is not proved by any convincing and cogent evidence that Satpal Singh, respondent No.2, had kidnapped the prosecutrix with an intention that she would be subjected to illicit intercourse by Gurwinder Singh Babbal. It has been the constant version of the prosecutrix including in her statement under Section 164 Cr.P.C., that it was Gurwinder Singh Babbal who took her on motorcycle in the early morning of 5.4.2012. There is not a

single word with regard to presence of respondent No.2 Satpal Singh at that time or at any time during the period when prosecutrix and Gurwinder Singh Babbal travelled from Ludhiana to Jayanti Devi Temple and then to Golden Temple and thereafter to Balongi. Moreover, qua respondent No.2-Satpal Singh, the stand of daughter of the appellant has been contradictory. On one hand, she alleged that Satpal Singh wanted her to marry accused Gurwinder Singh being a good boy while on the other hand, she stated that respondent No.2 wanted to marry her with his brother Laddi. Respondent No.2 at the most can be said to be in favour of marriage of Gurwinder Singh Babbal with the daughter of appellant but with the consent of appellant and her husband who used to encourage her daughter to be on friendly terms with Gurwinder Singh Babbal with a view to marry him. Respondent No.2, thus, cannot be said to be having any knowledge about the plan of elopement of daughter of appellant with Gurwinder Singh Babbal.

As far as the allegations against respondents No.3 to 5 are concerned, the daughter of appellant in her statement under Section 164 Cr.P.C. shifted the responsibility on her parents for becoming friendly with accused Gurwinder Singh Babbal with a consideration to tie nuptial knot with him. She did not attribute any specific role to respondents No.3 and 4 in her kidnapping. The prosecutrix also could not satisfy the court why

she did not raise alarm when she was allegedly being taken by her Maami Harjinder Kaur to meet the accused Gurwinder Singh Babbal forcibly. It is also important to note that the parental family of appellant itself deposed before the Court that the complainant wanted to usurp the property of her father Mehar Singh and for this reason she roped in Harjinder Kaur as an accomplice.

No other point has been urged.

In these circumstances, the appreciation of evidence and conclusion recorded thereupon by the trial Court cannot be said to be suffering from any illegality, manifest error or perversity nor it appears to have overlooked or wrongly discarded any vital piece of evidence. Learned counsel for the appellant could not point out any serious infirmity in the appreciation of evidence by the trial Court.

In view of the aforesaid discussion, we find no merit in the appeal.

Dismissed.

(T.P.S.MANN)
JUDGE

(RAMENDRA JAIN)
JUDGE

February 02, 2016
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