

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRA-D-1467-DB of 2015(O&M)
DATE OF DECISION: February 2, 2016

Anil Kumar

...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.H.S.Brar, Advocate for the appellant.

RAMENDRA JAIN, J.

In the present appeal, the appellant made two fold prayers i.e. (i) to enhance the sentence of respondent No.2 convicted under Section 366-A IPC and Section 4 of Protection of Children from Sexual Offences Act, 2012 and of respondents Nos.2 to 4, 6 to 9 convicted under Section 120-B IPC and also of respondents Nos.3, 4 and 6 to 9 convicted under Section 366-A read with Section 120-B IPC, and, (ii) to convict respondent Nos.5 and 10 under Sections 120-B, 366-A read

with Section 120-B IPC who were acquitted vide judgment dated 28.10.2014.

The facts material for the purpose of this appeal may shortly be stated. On the fateful day i.e. 8.12.2013, the appellant made a statement to ASI Satnam Singh regarding enticing away and kidnapping of his daughter, a student of 12th class, by respondent Nos.2 to 5 in a car bearing registration No.HR-29S-0900 driven by respondent No.10 (Ram Kishan). An FIR No.382 dated 8.12.2013 under Sections 120-B, 363, 366-A,376 IPC and Section 6 of Protection of Children from Sexual Offences Act, 2012 was recorded in Police Station City Sangrur. The police swung into action. Respondent Nos.2 to 6 were arrested. The daughter of the appellant was recovered from the custody of respondent Nos.2 and 6 on 15.12.2013. On 16.12.2013, she was medico legally examined at Civil Hospital, Sangrur. On the same day, her statement under Section 164 CrPC was got recorded before JMIC, Sangrur. On 17.12.2013, respondent No.2 was also medico legally examined. Statements of relevant witnesses were recorded. After conclusion of the investigation, report under Section 173 CrPC was filed against respondent Nos.2 to 4 and 6. Respondent No.5 was declared as innocent. The Investigating Agency also filed an application for discharge from the custody of respondent No.5 as innocent. However, the said application was rejected by the learned trial Court vide order dated 15.12.2014. On

finding a prima facie case, respondent Nos.7 to 10 for having conspired with respondent Nos.2 to 6 in kidnapping the daughter of the appellant with an intent to perform her marriage illegally with respondent No.2 were also ordered to be summoned vide order dated 1.3.2014 to face trial along with the accused already before it.

On appearance of respondent Nos.7 to 10, all the respondents Nos.2 to 10 were charge sheeted under Sections 120-B,363,366-A of IPC and Section 6 of the Protection of Children from Sexual Offences Act, 2012 to which they pleaded not guilty and claimed trial.

In order to substantiate its charge against the respondents Nos.2 to 10, the prosecution examined as many as eight witnesses. Thereafter, statements of respondent Nos.2 to 10 under section 313 CrPC were recorded putting incriminating evidence brought against them.

On appreciation of evidence, the trial Court convicted/acquitted the respondents, as detailed out in the opening part of the judgment. The maximum sentence awarded is rigorous imprisonment for ten years to respondent No.2.

Being not satisfied, the appellant has preferred the present appeal making the aforesaid two fold prayer.

At the outset, learned counsel for the appellant submitted that the appellant wishes to withdraw his appeal qua

enhancement of sentence of respondent Nos.2 to 4, 6 to 9 with liberty to the appellant to avail any other remedy available to him under law.

Dismissed as withdrawn qua enhancement of sentence of respondent Nos.2 to 4 and 6 to 9 with the aforesaid liberty.

Arguing the case qua acquittal of respondent Nos.5 and 10, learned counsel for the appellant contended that the impugned judgment of trial Court is based on surmises and conjectures. It was argued that respondent No.5 had actively participated in kidnapping of the daughter of the appellant as he facilitated respondent No.2 with money to entice away his daughter. The role of respondent No.10 in kidnapping of the daughter of the complainant was also proved beyond shadow of doubt, because the car in which she was kidnapped was being driven by him. It was also proved that respondent No.10 had also conspired in kidnapping the daughter of the appellant.

After giving our thoughtful consideration to the rival submissions of learned counsel for the appellant, we find that the present appeal qua acquittal of respondent Nos.5 and 10 being devoid of merit is liable to be dismissed.

A perusal of the judgment shows that the learned trial Court has specifically recorded that the prosecutrix in her statements under Section 161 CrPC and Section 164 CrPC, mark D1 and Ex.PW6/A, did not ascribe any role of respondent

No.5 Harnek Singh. The prosecution case that respondent No.5 Harnek Singh facilitated with money to entice away was founded to be meritless and substanceless by the trial Court on the premise that subsequent improvement does not hold water, inasmuch as, she did not come with this version in her earlier aforesaid two statements.

Similar position prevails in the case of respondent No.10-Ram Krishan. Initially, in her statement Mark D1, the prosecutrix did not name respondent No.10 that he was driver of the car. The only evidence came on record suggests that respondent No.10 Ram Krishan was driving the car. Except this evidence, no role of his participation in conspiracy or kidnapping has been brought on record to convict respondent No.10 Ram Krishan. Moreover, the car allegedly driven by respondent no.10 was not taken into custody by the Investigating Officer.

The logical conclusion in acquitting respondent Nos.5 and 10 by the trial Court does not need any interference, inasmuch as, it is a detailed and thorough scrutiny of evidence negating the version of prosecution ascribing any role to them.

In view of the aforesaid discussion, we find no merit in the present appeal challenging the judgment of acquittal dated 28.10.2014 qua respondent Nos.5 and 10. Accordingly, it is dismissed.

Since the present appeal is meritless, we think it appropriate not to pass any order on the application bearing CRM No.33739 of 2015 for condonation of delay of 278 days in filing the appeal, being academic in nature.

(T.P.S.MANN)
JUDGE

(RAMENDRA JAIN)
JUDGE

February 02,2016
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