

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. CRA No. D-314-DB of 2014 (O&M)

Date of decision: 11.2.2016

Randhir Singh Appellant

Versus

State of Haryana & Ors. Respondents

2. CRA No. S- 767-SB of 2014 (O&M)

Date of decision : 11.2.2016

Labh Singh Appellant

Versus

State of Haryana Respondent

CORAM: HON'BLE MR. JUSTICE S.S. SARON.
HON'BLE MR. JUSTICE GURMIT RAM.

Present: Mr. S.N. Yadav, Advocate for the appellant –
Randhir Singh in (CRA No.D-314-DB of 2014).

Ms. Tanisha Peshawaria, DAG, Haryana.

Mr. Rakesh Nehra, Advocate for respondent No.2 –
Labh Singh (in CRA No. D-314-DB of 2014) and for the
appellant – Labh Singh (in CRA No.S-767-SB of 2014).

Mr. Vijay Singh, Advocate with the prosecutrix.

S.S. Saron, J.

This order will dispose of CRA No.D-314-DB of 2014 titled
Randhir Singh v. State of Haryana and others, as also CRA No. S-767-SB
of 2014 titled Labh Singh and State of Haryana.

CRA No.S-767-SB of 2014 was admitted by a co-ordinate
Bench on 14.5.2014 and ordered to be listed along with CRA No. D-314
-DB of 2014. With the consent of learned counsel for the parties, both
the appeals are taken up for final hearing as they arise out of the same
judgment and order.

Labh Singh (respondent No.2 in CRA No.D-314-DB of 2014 and appellant in CRA No.S-767-SB of 2014) has been held guilty and convicted by the learned Additional Sessions Judge, Bhiwani for the commission of offences punishable under Sections 363 and 366-A Indian Penal Code ('IPC' – for short). He has, however, been acquitted of the charge for the commission of offence punishable under Section 376 IPC. He was sentenced to the period already undergone i.e. for the period he remained in custody from 21.7.2012 to 31.1.2013 and he was released.

CRA No. D-314-DB of 2014 has been filed by Randhir Singh who is the husband of the prosecutrix.

During pendency of the appeal, the prosecutrix filed CRM No.34848 of 2015 in CRA No.D-314-DB of 2014 for being impleaded as an appellant to the appeal. The said criminal misc. application was allowed on 11.1.2015 and the prosecutrix was impleaded as an appellant in the appeal (CRA No.D-314-DB of 2014).

The prosecutrix in her criminal misc. application submitted that her marriage was solemnized with Randhir Singh (appellant in CRA No.D-314-DB of 2014) on 18.6.2012. She was at that time less than 15 years of age as her date of birth is 12.9.1997. In support of her date of birth, the prosecutrix has submitted a copy of the duplicate Secondary Examination Certificate (Annexure A1) issued by the Board of Education Haryana in which her said date of birth is mentioned. CRM No.34847 of 2015 has been filed supported by her affidavit seeking exemption from filing certified copy of the said certificate Annexure A1. Therefore, being a minor at the time of her marriage with Randhir Singh, she repudiated her marriage with him after attaining the age of 15 years and before the age of 18 years. She filed petition under Section 13 (2) (iv) of the Hindu Marriage Act, 1955 seeking dissolution of the said marriage by a decree

of divorce. It is submitted by her learned counsel, on instructions from her that the said petition is fixed before the learned District Court (Family Court), Gurgaon for 11.4.2016. According to the prosecutrix, Randhir Singh (appellant in CRA No.D-314-DB of 2014) had got the FIR registered against Labh Singh (respondent No.2 in CRA No.D-314-DB of 2014) for the offences punishable under Sections 363, 366-A and 376 IPC alleging that he had kidnapped the prosecutrix. She in her statement Ex.PA under Section 164 of the Code of Criminal Procedure ('CrPC' – for short) before the Magistrate and in her evidence as PW-1 stated that she had gone to Haridwar on her own and was not kidnapped by anyone.

The learned Additional Sessions Judge, Bhiwani, has held Labh Singh (respondent No.2) to be guilty of the offences punishable under Sections 363 and 366-A IPC.

Mr. S.N. Yadav, Advocate for the appellant Randhir Singh has submitted that the primary challenge in the appeal is to the inadequate sentence awarded by the learned Additional Sessions Judge to Labh Singh (respondent No.2).

It is to be noticed that the prosecutrix by order passed on 11.1.2016 has been impleaded as an appellant in the appeal as she had attained the age of majority and was a 'victim' within the meaning of Section 2 (wa) CrPC. Mr. S.N. Yadav, Advocate for Randhir Singh (appellant) submits that the said order has not been assailed and he has no intention to assail the same, as the prosecutrix has now attained the age of majority.

Mr. Vijay Saini, Advocate for the prosecutrix who is present with the prosecutrix has submitted that the prosecutrix does not wish to pursue the appeal.

It is to be noticed that in terms of the proviso to Section 372 CrPC a 'victim' has a right to prefer an appeal against any order passed by the Court acquitting the accused or convicting for a lesser offence or imposing inadequate compensation. There is no provision for filing an appeal against the inadequate sentence. Besides, the prosecutrix who has been impleaded as an appellant does not wish to pursue the appeal.

In the circumstances, CRA No.D-314-DB of 2014 is liable to be dismissed as not maintainable, besides, being dismissed as withdrawn.

Mr. Rakesh Nehra, Advocate for Labh Singh (appellant in CRA No. S-767-SB of 2014) submits that Labh Singh (appellant) has applied for a Govt. job and even the prosecutrix has not supported the prosecution case. Therefore, Labh Singh (appellant) is liable to be acquitted.

Mr. Vijay Saini, Advocate for the prosecutrix appearing with the prosecutrix accepts the said stand of Labh Singh (appellant in CRA No. S-767-SB of 2014).

Ms. Tanisha Peshawaira, DAG, Haryana, however, has opposed the prayer. It is submitted by her that the learned trial Court has recorded cogent and convincing reasons for convicting and sentencing Labh Singh (appellant in CRA No.S-767-SB of 2014) as he had taken the prosecutrix who was less than 16 years of age and had kidnapped her. Therefore, the order of the learned Additional Sessions Judge, Bhiwani it is submitted is liable to be maintained.

We have given our thoughtful consideration to the matter.

The FIR in the case was registered on the basis of an application (Ex.PB) submitted by Randhir Singh son of Ram Kumar resident of village Saunf before ASI Satbir Singh who along with Constable Raj Pal was present at the Bus Stand of village Rankauli on

20.07.2012 in connection with patrolling. Randhir Singh stated that his marriage was solemnized with the prosecutrix on 18.6.2012 at village Dubaldhan Panna Kirman. After marriage, he cohabited with his wife in village Saunf. During the intervening night of 14/15.7.2012, he woke up at about 2.00 p.m. and found that the prosecutrix was not there. He searched for her in the house and also in the village. Ram Kisan, father and Jagwanti, mother of the prosecutrix were informed regarding the prosecutrix being not traceable. They informed him that Labh Singh (appellant in CRA No.S-767-SB of 2014) son of Rajpal Singh resident of village Dubaldhan had earlier also enticed away their daughter (prosecutrix). At that time also she was enticed away by him in connivance with his father Raj Pal Singh, mother and brother. The age of the prosecutrix was stated to be 15-16 years. A report with regard to the prosecutrix being not traceable was already lodged on 14.7.2012 at Police Station Baund Kalan. On the basis of the application submitted by Randhir Singh (appellant), FIR for the offences under Sections 363 and 366 IPC was registered.

Investigations in the case were conducted. The place of occurrence was inspected and a scaled site plan was prepared. Labh Singh (appellant in CRA No. S-767-SB of 2014) and the prosecutrix were recovered on 21.7.2012. They were got medico-legally examined. The statement (Ex.PA) of the prosecutrix under Section 164 CrPC was recorded by Sh. Sudhir Kumar, learned Judicial Magistrate Ist Class, Charkhi Dadri on 21.07.2012.

Dr. Anita Gulia (PW-11) tendered in evidence her affidavit (Ex.PQ/1). She stated that on police request vide MLR (Ex.PQ) she on 21.07.2012 had medico-legally examined the prosecutrix. At the time of examination, she was conscious and well-oriented to person, place and

time. On general physical examination, no fresh external mark of injuries was seen on her body. She was referred to general hospital for exact age determination by a Radiologist. Hymen, it was stated, was present in the form of small tags of tissues. Vagina introitus admitted two fingers. No fresh injury was seen in the area. On P/s examination, no fresh injury on vagina walls and cervix was seen. On seeing the FSL report (Ex.PF), she opined that there was evidence of recent sexual activity.

The prosecutrix in her statement (Ex.PA) recorded by Sh. Sudhir Kumar, learned Judicial Magistrate Ist Class, Charkhi-Dadri (PW-9) on 21.7.2012, stated that she was not enticed by the accused (Labh Singh). She rather stated that on 14.7.2012 she had gone to Haridwar at around 4.30 a.m. She also stated that in the morning of 20.7.2012 she had gone to Anand Vihar, Delhi from Haridwar and from there, she had gone to HUDA City Centre, Gurgaon. She was apprehended by the police from there. While deposing in Court as PW-1, she again stated that on 14.7.2012 at about 4.00 a.m. she had left her house and gone on foot to Dadri. From there she went to Rohtak by bus and from Rohtak she had gone to Haridwar via Delhi by bus. She stated that no one had kidnapped her. She was got declared hostile by the Public Prosecutor.

Randhir Singh, complainant (PW-2) husband of the prosecutrix stated that he was married with the prosecutrix, resident of village Dubaldhan on 18.06.2012. Thereafter, she remained with him in his house at village Saunf. During the intervening night of 14/15.07.2012 at about 2.00 a.m. when he woke up, he found that his wife (prosecutrix) was not there. He searched for her in the village but she was not found. Then he informed his parents-in-law on phone. They told him that earlier also Labh Singh (appellant in CRA No.S-767-SB of 2014) had allured her on two-three occasions. They had an apprehension that this time also he

had taken the prosecutrix by alluring her. He submitted an application Ex.PB for registration of an FIR. He identified his signatures at point 'A' of the application. He also lodged a report with the police on 14.7.2012. He stated that at the time of occurrence, the age of the prosecutrix was 18½ years. He was declared hostile on the request of the learned Public Prosecutor. Therefore, he did not support the prosecution case.

The learned Additional Sessions Judge in her impugned judgment observed that the prosecutrix while making her statement under Section 164 CrPC had not stated that she was not kidnapped by the accused. Rather she stated that she had on her own gone to Haridwar and then to Delhi. She was apprehended by the Police at Gurgaon. While deposing as PW-1 she did not state that she was kidnapped by the accused. However, it was observed that she was got recovered from the custody of accused Labh Singh on 21.07.2012 from the gate outside Bus Stand, Kalanaur. Besides, her age for Section 363 IPC has to be taken as 18 years. In view of her being recovered from Labh Singh, the charge under Section 363 IPC was held to be proved.

As regards the charge under Section 366-A IPC, it was held that since it had been observed that the prosecutrix who was a minor below 16 years (sic. 18 years) of age was kidnapped by the accused and as per medical opinion, she was subjected to sexual assault, it was proved on record that she was enticed away by the accused with a view to seduce her to illicit intercourse. Therefore, the prosecution had succeeded in proving the charge under Section 366-A IPC.

The charge under Section 376-IPC was held to be not proved for want of sufficient evidence. The learned Additional Sessions Judge in her impugned judgment referred to the deposition of Dr. Anita Gulia (PW-11) and her affidavit Ex.PQ/1 which was tendered in evidence by

way examination in chief as also the FSL report (Ex.PF). The doctor (PW-11) stated that on genitalia examination of the patient, her hymen was present in the form of small tags of tissues. Vaginal introitus admitted two fingers. The FSL report should that vaginal swab, pubic hair, 'salwar', shirt of the prosecutrix and underwear of the accused Labh Singh were sent to FSL Madhuban for examination. The report showed that human semen was detected on the 'salwar'. Dr. Anita Gulia (PW-11) after seeing the FSL report opined that there was evidence of recent sexual activity. It was observed that looking at the FSL report in which human semen was detected on the 'salwar' of the prosecutrix and opinion of Dr. Anita Gulia to the effect that there was evidence of recent sexual activity, it was to be worked out as to whether rape was committed by Labh Singh on the prosecutrix or not. A reference was made to the statement of the prosecutrix under Section 164 CrPC in which she stated that she was not subjected to rape by Labh Singh accused. While appearing as PW-1, she did not take the name of Labh Singh as being an accused committing rape on her. Despite lengthy cross-examination, it had not come on record that rape was committed on her by the accused. It was held that though in the FSL report human semen was detected on the 'salwar' of the prosecutrix, yet DNA test of the accused was not conducted and had it been conducted, a report could be there as to whether the human semen detected on the 'salwar' of the prosecutrix was that of a male having its origin to the accused. Therefore, it was held for want of sufficient evidence offence under Section 376 IPC did not stand proved.

Labh Singh (appellant in CRA No. S-767-SB of 2014), as already noticed, has been convicted for the offences under Sections 363 and 366-A IPC. The said convictions have been recorded due to the fact

that the prosecutrix was held to be a minor at the time of incident. It may, however, be noticed that Randhir Singh, complainant while appearing as PW-2 stated that at the time of occurrence the prosecutrix was 18½ years of age.

Section 361 IPC relates to 'kidnapping from lawful guardianship'. It is provided that whoever takes or entices any minor under sixteen years of age if a male, or under eighteen years of age if a female, or any person of unsound mind, out of the keeping of the lawful guardian of such minor or person of unsound mind, without the consent of such guardian, is said to kidnap such minor or person from lawful guardianship. Therefore, in case of female the age for enticing her is 18 years; however, Randhir Singh, complainant (PW-2) stated that the prosecutrix was 18½ years of age at the time of incident. He was, however, got declared hostile and cross-examined. The prosecutrix has now given her date of birth as 12.09.1997. This, however, is not proved or exhibited on the record. From the said date of birth the age of the prosecutrix at the time of incident on 14.07.2012 is about 15 years. In any case, even if it is to be taken that the prosecutrix was a minor, it can safely be said and inferred that she had reached the age of discretion and from the evidence on record had voluntarily gone with the accused.

In S. Varadarajan v. State of Madras, AIR 1965 SC 942 it was held by the Supreme Court that taking or enticing a minor out of the keeping of a lawful guardian is an essential ingredient of the offence of kidnapping. However, when the girl (who though a minor had attained the age of discretion and is on the verge of attaining majority and is a senior college student) from the house of the relative of the father where she is kept, herself telephones the accused to meet her at a certain place, and goes there to meet him and finding him waiting with his car gets into

that car of her own accord, and the accused takes her to various places and ultimately to the Sub-Registrar's Office where they get an agreement to marry registered, and there is no suggestion that this was done by force or blandishment or anything like that on the part of the accused but it is clear from the evidence that the insistence of marriage came from her side, the accused by complying with her wishes can by no stretch of imagination be said to have "taken" her out of the keeping of her lawful guardianship, that is the father in the said case.

In Kamal Singh v. The state of H.P., 1985 (1) Crimes 151, Hon'ble the Himachal Pradesh High Court considered a case where there was some intimacy between the prosecutrix and the appellant in the said case. The prosecutrix was willing and active agent in her enticement. She accompanied the accused of her own accord while her parents were asleep. It was held that even though the prosecutrix was below 18 years would not be material. The accused therein was acquitted.

The Delhi High Court in Bhagwan Singh and Others v. State and another, 2007 (1) RCR (Criminal) 347 considered a case where a Muslim girl aged 17 years 3 months converted to Hinduism and married the accused. The FIR under Sections 363 and 366 IPC was registered by the father of the girl. It was observed that marriage of such a spouse is neither void nor illegal on account of his or her being less than 18 years but over 15 years of age.

In Rukshana and another v. Govt. of NCT of Delhi and Others, 2007 (3) RCR (Crl.) 542 (Delhi) a minor girl aged 16 years 6 months had a liking for the accused. Both ran away and got married. They had a son out of the marriage. The FIR for the offences under Sections 363, 364-A and 365 IPC was quashed in the interest of accused, prosecutrix and the child.

In Sh. Jitender Kumar Sharma v. State and another, 2010 (4)

RCR (Crl.) 20 (Delhi) (D.B.) was a case where a boy aged 18 years and a girl aged 16 years who had a liking for each other fled away from their home and married according to Hindu rites, it was held that the marriage was not void though it was in contravention of Section 5 (iii) of the Hindu Marriage Act, 1955. It was held that a minor girl marrying a minor boy, her natural guardian is no longer her father but husband and her custody was given to the husband. A minor husband, it was observed, can be the guardian of his minor wife. A minor, it was held, is competent to act as guardian of his own wife or child. Where custody of minor is concerned the prime and often the sole consideration or guiding principle is the welfare of the minor. The girl in the said case was given freedom to go with her husband and reside with him.

Therefore, the prosecutrix evidently did have the age of discretion and she had voluntarily gone of her own accord from her house. In fact while appearing as PW-1 she deposed that on 14.07.2012 at about 4.00 a.m. she left her house and went to Dadri on foot. From Dadri she went by bus to Rohtak. Then from Rohtak, she went by bus to Haridwar via Delhi. Therefore, the prosecutrix having left her home voluntarily in the early hours on 14.07.2012 and then gone to Dadri with Labh Singh, it cannot be said that she had been kidnapped from lawful guardianship or induced with an intent that she may be, or knowing that it was likely that she would be forced or seduced to illicit intercourse with another person. This is more so for the reason that he has not been held guilty for the offence under Section 376 IPC. Besides, after attaining the age of majority, she does not object to the appeal of Labh Singh being allowed. She has also filed a petition for repudiating her marriage with Randhir Singh, which it is stated is pending.

In the circumstances, the appeal filed by Randhir Singh is liable to be dismissed as the prosecutrix who is a 'victim' within the meaning of Section 2 (wa) CrPC has been impleaded as an appellant in the said appeal and has stated that she does not want to pursue the same; besides, Sh. S.N. Yadav, Advocate for the appellant Randhir Singh has stated that the primary challenge in the appeal is against the inadequate sentence that has been imposed. This, as already noticed, is not contemplated by the proviso to Section 372 CrPC. The appeal filed by Labh Singh is liable to be allowed as the offences under Sections 363 and 366-A IPC for which he has been convicted have been held to be not made out inasmuch as Randhir Singh, complainant (PW-2) while deposing in Court stated that the prosecutrix was 18½ years of age at the time of incident, the provisions of Section 361 IPC, however, relating to kidnapping from lawful guardianship can be invoked in the case of a female if she was under the age of eighteen years. In any case, as has already been noticed, she had reached the age of discretion and had voluntarily gone with the accused.

For the foregoing reasons, CRA No.D-314-DB of 2014 is dismissed being not maintainable and also dismissed being withdrawn, and CRA No. S-767-SB of 2014 is allowed and Labh Singh appellant in the said appeal is acquitted of the offences for which he was convicted i.e. Sections 363 and 366-A IPC by setting aside the order of conviction and sentence.

(S.S. Saron)
Judge

11.2.2016
amit

(Gurmit Ram)
Judge