

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM No.16622 of 2015 and/in
CRA No.D-778-DB of 2015
DATE OF DECISION: March 14,2016

Rajinder Kumar

...Appellant

versus

State of Haryana and another

...Respondents

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

Present: Mr.Shailender Kashyap, Advocate for the
appellant.

RAMENDRA JAIN, J.

CRM No.16622 of 2015

Sufficient cause has been shown to condone the
delay in filing the appeal.

Therefore, the application is allowed. The delay of
105 days in filing the appeal is condoned.

CRA No.D-778-DB of 2015

The judgment of acquittal of respondent No.2-Rakesh
Kumar is challenged before this Court by way of the present
appeal.

Briefly stated, on 18.6.2013, Rajender Kumar
(appellant) moved an application before the police for initiating
legal action against Pawan Kumar, Ved Parkash, Jagdish Sudhar
and Prem Sudhar. According to him, his daughter aged
sixteen and half years had studied upto 12th class. He was on
visiting terms with the above named persons. On 17.6.2013,

around 9.30/10.00 p.m. Ved Parkash along with his mother came to his house to take his daughter to their home to look after his mother in the night on the pretext that he and others were to go for irrigating their fields. Consequently, he sent his daughter to the house of Ved Parkash. In the next morning, when his daughter did not return home till 8.00/9.00 a.m., he along with his wife went to the house of Ved Parkash and came to know that in the morning, his daughter was taken away by convict-Pawan Kumar, Prem and his wife. They in conspiracy with each other had kidnapped his daughter.

On the above application of the appellant, case was registered. The police machinery was set into motion. The prosecutrix was recovered on 23.6.2013. Her statement Ex.D4 under Section 164 CrPC was got recorded. The respondent No.2 Rakesh Kumar and Pawan Kumar were arrested. On completion of investigation, final report under Section 173 CrPC was presented before the concerned Magistrate.

Finding a prima facie case, respondent No.2 was charge sheeted under Section 120-B IPC, whereas, the accomplice of respondent No.2, namely, Pawan Kumar was charge sheeted under Sections 120-B, 363,365,366,376(2)(n) IPC and Section 6 of the Protection of Children from Sexual Offences Act, 2012.

In order to prove its case, the prosecution examined as many as ten witnesses.

The entire incriminating evidence was put to respondent No.2 and accomplice Pawan Kumar. They pleaded their false implication.

In defence, Hari Ram was examined as DW1.

After hearing learned counsel for both the parties, the trial Court acquitted respondent No.2 of the charge framed against him and convicted his co-accused Pawan Kumar under various sections, as detailed above in the judgment.

Learned counsel for the appellant has strenuously argued that when PW1-Rajender Kumar and his daughter (PW2) have fully supported the prosecution version, discrediting their testimonies only on the premise that the same lacked credence and resulted in acquittal of respondent No.2, is not legally justifiable. The trial Court was not justified in rejecting ocular version of the occurrence. Thus, the respondent No.2 is liable to be convicted for the offence under Section 120-B IPC.

We have given our thoughtful consideration to the arguments advanced by learned counsel for the appellant.

The prosecution examined Rajinder Kumar (PW1) and his daughter (PW2) to give an ocular version of the incident. The allegation against respondent No.2 was that he had arranged the car and money for convict-Pawan Kumar and

forced the prosecutrix to sit in it. Thereafter, convict Pawan Kumar took the prosecutrix at different places. Respondent No.2 hatched the conspiracy regarding her kidnapping.

The prosecution has cited Hari Ram as a witness who was allegedly arranged by respondent No.2 for driving the taxi bearing registration No.HR20-1398. This witness was given up by the prosecution being won over by respondent No.2. However, Hari Ram was examined as DW1. He specifically deposed that he did not see respondent No.2, nor he had hired his taxi. The appellant has admitted in his cross-examination that his brother had got lodged an FIR under section 382 IPC against respondent No.2 prior to the alleged incident. Their relations with each other were not cordial. The role of respondent No.2 was introduced by the daughter of the appellant. Thus, it is established on record that the deposition of the appellant was hearsay. Consequently, no reliance can be placed on his testimony. This evidence suggests that respondent No.2 had no role in the crime and he had been falsely implicated in the case to settle the score as criminal litigation was already pending in between the parties.

In view of the aforesaid discussion, we find no merit in the present appeal and the same is hereby dismissed.

(T.P.S.MANN)
JUDGE
March 14,2016
KD

(RAMENDRA JAIN)
JUDGE