

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRM-8551-2016 and
CRA-D-938-DB-2015

Date of decision: 12.05.2016

Vijay Shankar Jha

..... Applicant-Appellant

Versus

State of Punjab and another

..... 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. H.S. Jugait, Advocate
for the applicant-appellant.

RAMENDRA JAIN, J.

On the complaint of applicant-appellant, respondent No. 2- Amit Kumar Jha was booked and tried under Section 364 of the Indian Penal Code (IPC) on the allegations that Pushpa, daughter of the applicant and married to respondent No. 2 on 29.02.2012 missing since 06.05.2012 was kidnapped by respondent No. 2 along with his sister Madhvi and brother-in-law Sham Kishore 7-8 days ago.

2. On appraisal of evidence brought on record by the prosecution and hearing learned counsel for both the sides, the learned

trial Court did not find itself convinced with the prosecution story and, thus, acquitted respondent No. 2 vide impugned judgment dated 30.04.2015.

3. Being aggrieved, the applicant has filed the present application under Section 378(4) Cr.P.C. seeking leave to file the accompanying appeal.

4. Learned counsel for the applicant contended that the impugned judgment is based on surmises and conjectures. The trial Court ought not to have given the benefit of doubt to respondent No. 2 on account of defective investigation. The statement of applicant as PW-1 was well convincing to record the conviction of respondent No. 2.

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

- (i) In cross-examination, the applicant-appellant as PW-1 had admitted that there used to remain a dispute between his daughter-Pushpa and respondent No. 2 residing in a rented accommodation of Avtar Singh. He had met said Avtar Singh on 07.05.2012, but did not lodge any missing report of his daughter. Admittedly, Pushpa was missing since 07.05.2012, but the FIR was lodged very belatedly on 13.03.2014 i.e. after around 1 year and 10 months and that too, merely on suspicion. Admittedly, till date the whereabouts of

- Pushpa are not known. Even the police could not trace her whereabouts till the conclusion of trial. There is no evidence on the record about the alleged kidnapping or abduction of Pushpa by respondent No. 2 who is none else, but her husband. Hence, on mere suspicion, conviction of respondent No. 2 could not have been recorded by the Court below.
- (ii) PW-2 Jasbir Kaur, star witness of the prosecution has testified that she does not remember the date, month and time when she had seen a girl, who was hale and hearty and was going alone, while she was present on the main door of her house. Her above deposition clearly speaks that respondent No. 2 was not accompanying any lady seen by her.
- (iii) The entire prosecution case is based on circumstantial evidence. It was the bounden duty of the prosecution to prove its case beyond any doubt to draw conclusion about the guilt of respondent No. 2. In the instant case, there is no conclusive evidence what to talk of cogent and convincing to prove the guilt of accused. There is nothing on the record to indicate that respondent No. 2 had any intention to abduct his own wife-Pushpa in order to murder her.

6. We have gone through the impugned judgment and found no illegality or perversity in the same.

7. The instant application, being completely devoid of any merit is dismissed. Leave to appeal is declined and resultantly, the appeal is dismissed.

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

**(RAMENDRA JAIN)
JUDGE**

May 12, 2016
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