

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.**

Crl. Appeal No.S-2108-SB of 2003

Date of Decision: 06.01.2016

Joginder Singh

....Appellant

Versus

The State of Haryana

....Respondent

BEFORE :- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

- 1. Whether reporters of local newspapers may be allowed to see the judgment ? (Yes/No)**
- 2. To be referred to reporters or not ? (Yes/No)**
- 3. Whether the judgment should be reported in the Digest ? (Yes/No)**

Present:- Mr. Ashok Kaushik, Advocate
for the appellant.

Mr. B.S. Virk, D.A.G., Haryana
for the respondent-State.

DAYA CHAUDHARY, J.

The present appeal has been filed to challenge the judgment of conviction and order of sentence dated 06/07.11.2003 passed by the Additional Sessions Judge, Faridabad, whereby, the accused-appellant Joginder Singh, has been convicted and sentenced for commission of offence punishable under Section 363 IPC.

Initially, FIR No.402 dated 04.08.1997 was registered under Sections 363, 366, 376, 506 and 120-B IPC at Police Station Hodal against the appellant and he faced trial for the said offences. The appellant was acquitted of the charges framed under Sections 366, 376, 506 and 120-B IPC but was convicted under Section 363 IPC. He was sentenced to

undergo rigorous imprisonment for a period of three years with fine of ₹ 3,000/-.

The appeal was admitted and thereafter, the sentence of the appellant was suspended vide order dated 03.12.2004.

Learned counsel for the appellant submits that the appellant is having good case on merits and the judgment of trial Court is not based on proper appreciation of evidence. There are serious contradictions and inconsistencies in the statements of prosecution witnesses, which makes the case of the prosecution doubtful. As per complaint (Exhibit PG/1), it was suspected that the accused-appellant along with other two accused enticed away the minor girl/prosecutrix, whereas, none had seen the prosecutrix/victim, being taken away by the accused. As per prosecution version, the minor girl was kidnapped during day time at about 3.30 p.m from a busy place but the incident was not noticed by anyone and even a single person was not joined in investigation. The prosecution has failed to prove the offence under Sections 366 and 376 IPC and the appellant was acquitted of the charge of said offences but he was wrongly convicted and sentenced for offence punishable under Section 363 IPC, whereas, there was no evidence on record to prove that the accused had conspired with other co-accused to kidnap the prosecutrix.

In the end, learned counsel for the appellant submits that the appellant has undergone actual custody of more than 01 year and 11½ months against the total sentence of three years and after conviction, he has undergone total sentence of approximately 01 year and 5½ months; the appeal is of the year, 2003; the appellant is not having any criminal background; he is the only bread winner of his family and no other male member is there in his family to look after the children, his sentence be reduced to the period already undergone.

Learned counsel for the respondent-State has filed the custody certificate in the Court and the same is taken on record.

Custody period has not been disputed by learned counsel for the respondent-State.

As per custody certificate, the appellant has undergone actual sentence of 01 year 11 months and 17 days as on 30.12.2015, which comes to approximately two years against the total sentence of three years and in case, the remission is included, the custody period would be more than two years.

Keeping in view the submissions made by learned counsel for the appellant and considering the actual custody of approximately two years against the total sentence of three years and also the fact that the appellant is facing the agony of trial since lodging of FIR i.e 04.08.1997 and is the sole bread winner of the family, his conviction is upheld and the sentence is reduced to the period already undergone by him. The appellant is already on bail as his sentence has been suspended.

Accordingly, the present appeal is disposed of with the said modification of sentence.

06.01.2016
gurpreet

(DAYA CHAUDHARY)
JUDGE