

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

CRA-S- No.503-SBA OF 1999
DATE OF DECISION : 7th DECEMBER, 2016

State of Punjab

.... Appellant

Versus

Rajinder Sahni

.... Respondent

CORAM : HON'BLE MR. JUSTICE A. B. CHAUDHARI

* * * *

Present : Mr. Shilesh Gupta, Additional Advocate General, Punjab.

Mr. Akshay Jain, Advocate,
Amicus Curiae/Legal Aid Counsel for the respondent.

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A. B. CHAUDHARI, J. (ORAL)

Registry has put this case for interim orders due to the non-completion of service despite the fact that the appeal has been admitted on 19.05.1999. The appeal has not been fixed on regular board of this Bench. Therefore, rule heard forthwith with consent of counsel for the parties.

State of Punjab has challenged the judgment and order dated 26.10.1998 passed by JMIC, Fatehgarh Sahib, in Police Challan No.101/7.01.1998 for offence punishable under Section 363 IPC.

Heard learned counsel for the State as well as the learned Amicus Curiae for the respondent.

The trial Judge has found that there is no satisfactory evidence to come to the conclusion that there was any *mens rea* on the

part of the accused to commit the offence for which he was charged under Section 363 IPC. The trial Court recorded in para 10 of its judgment as follows:

“10. One of the necessary ingredients of the Section 361 which defines the offence of kidnapping which is punishable u/s 363 IPC is that there must be taking or enticing of the minor or of a person of unsound mind. In the present case there is no evidence on record that the child was taken by the accused. The only evidence available is that the child was seen with the accused on his cycle. The main material witness/es who have deposed that they had seen the child going on the cycle of the accused are PW3 and PW4 and who have deposed that they had apprehended the accused. PW3 in his cross-examination has stated that there is a boundary wall of the school and certain hawkers stand outside the school but they do not allow them to stand and that nobody goes outside the gate during recess hours. However, he states that on the day of occurrence 4-5 children had gone outside the gate. However I find force in the contention of Ld. Defence counsel that no reason has been stated as to why on that particular date some children had gone outside the school gate when they were not allowed to do so during recess. Further this witness has stated during his cross-examination that he had seen the senior children going outside the gate but he had not seen the junior children going outside and that he had not seen this girl outside the school. Further the has

stated that he did not see the accused taking the girl from the school and that he had neither sent the child walking away from the school nor the accused taking her on the cycle. He had seen the accused with the child only at the place where he apprehends the accused. Therefore, in the deposition of this witness it is clearly proved that the taking away of the child has not been proved. Further he has stated that he had asked the children of village Rauni as to whether they were aware of where the child was and these children had told him that they saw Ravina Begum going with the hawker who was selling pappars. On this point I find force in the contention of Ld. Defence counsel that neither any of these children have been named by this witness nor the same have been examined as prosecution witnesses because it was these children who could prove that the accused had taken away the child from the school premises. Further PW4 has stated in his cross-examination that no hawker stands outside the gate to sell things to the children. Further that they do not allow the children to go outside the school. Again this witness has not explained the reason as to how could the accused take away the child when they are neither allowed to stand outside the gate nor any of the children goes outside the school. Further this witness has also stated that the office of the Principal is near the gate in which there is a window towards the gate and the principal can see certain portion outside the school from this window.

Again I find force in the contention of Ld. Defence counsel that as per deposition of PW1 and pW2 when no child goes outside the school then how it went unnoticed by the principal from whose office the outer portion is seen that any child had gone outside the school.”

That apart, it is seen that the girl is said to have found at distance of 1 furlong (220 yards) and thereafter there is no allegation against the accused about he having any intention to commit the crime for which he was charged. In my opinion, the offence is said to have taken place in the year 1997 and in the light of the principles stated in the case of *Darshan Singh versus State of Punjab & another, 2010 AIR (SC) 1212*, it would not be possible to interfere with the order of acquittal since the order of acquittal is based on evidence inconsistency formed by the trial Court and no perversity is seen.

In that view of the matter, the present appeal against acquittal is summarily rejected.

7th DECEMBER, 2016
'raj'

(A. B. CHAUDHARI)
JUDGE

Whether speaking/reasoned:	Yes	No
Whether Reportable:	Yes	No