

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

CRA-S-702-SB-2005

DECIDED ON: November 18, 2017

RAMESH

....APPELLANT

VERSUS

STATE OF PUNJAB

....RESPONDENT

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Ms. Sumanjeet Kaur, Advocate,
for the appellant.

Mr. Sandeep Kumar, DAG, Punjab.

JASPAL SINGH, J.

Disheartened with his conviction and sentence awarded vide judgment of conviction and order of sentence dated 22.01.2005, in case bearing FIR No.57, dated 03.07.2004, under Section 364 IPC, Police Station Amargarh whereby he was sentenced to undergo rigorous imprisonment for a period of 4 years and to pay a fine of Rs.1000/- and in default of payment of fine, to further undergo rigorous imprisonment for a period of two months, appellant-accused Ramesh has preferred the instant appeal.

2. In nutshell, case of prosecution as unfolded by Darshan Singh PW-2 is that his son Achhra Singh, aged about 10 years, a student of 4th class was kidnapped by appellant-Ramesh, his domestic servant on 03.07.2004 at about 5:00 p.m. by putting him under fear of death in order to

compel him (Darshan Singh) to pay ransom of Rs.2 lacs. On the basis of statement of aforesaid Darshan Singh, FIR No.57, dated 03.07.2004 was registered under Section 364 IPC and after investigation of the case, police presented the report under Section 173 (2) of the Code of Criminal Procedure (*for short, "Code"*) in the Court of Id. Jurisdictional Magistrate and an offence under Section 364 IPC being exclusively triable by the Court of Sessions was committed to the Court of Sessions after having complied with all requirements contained under Section 207 of the Code and ultimately, it was entrusted to the Court of Additional Sessions Judge (Adhoc) Fast Track Court, Sangrur.

3. There being prima facie evidence appearing in the report under Section 173 (2) of the Code and documents annexed with it, accused was charged to face trial under Section 364 IPC, to which, he did not plead guilty to the charge and claimed trial.

4. In order to prove the charge, prosecution examined as many as 7 witnesses i.e. PW1-Jarnail Singh- Patwari, PW-2 Darshan Singh, complainant, PW-3 Achhra Singh-victim, PW-4 Mrs. Poonam Sharma, PW-5 Ranjit Singh, PW-6 Jagtar Singh and PW-7 Inspector Rattan Lal besides placing on record certain documents and, thereafter, closed its evidence.

5. When the incriminating circumstances, appearing in prosecution evidence were put to accused for eliciting his explanation as required under Section 313 Cr.P.C., he denied all of them and pleaded innocence. However, he did not lead any evidence in defence.

6. After hearing learned counsel for the public prosecutor as well

as defence counsel and perusal of evidence available on file, accused-Ramesh was convicted and sentenced under Section 364 IPC vide judgment and order dated 22.01.2005 as reflected in para No.1 of this judgment.

7. Aggrieved against his conviction and sentence, appellant has preferred instant appeal.

8. While assailing the impugned judgment of conviction and order of sentence dated 22.01.2005, it has been ebulliently argued by learned counsel for the appellant that ld. trial court acted illegally and with material irregularity while passing the impugned judgment of conviction and order of sentence. In fact, ld. trial court has misread and misinterpreted the evidence, which has resulted into miscarriage of justice. She further submits that prosecution has not only failed to prove the motive attributable to the appellant but has also failed to establish the ingredient which constitute an offence under Section 364 IPC.

9. As per the allegations unfolded by the prosecution, Achhra Singh son of complainant-Darshan Singh was kidnapped by accused-Ramesh on 03.07.2004, who was subsequently recovered from the area near canal of Bhanbaura after conducting the raid on the same day by the police. Further allegation is that aforesaid Achhra Singh (PW3) was kidnapped for extracting ransom to the tune of Rs.2 lacs but to the utter surprise, none of the aforesaid allegations are established.

10. Learned counsel for the appellant further contends that in fact, accused-appellant has been falsely implicated in the instant case. It is an undisputed fact that appellant-accused Ramesh was working as a domestic servant with the complainant and there was some dispute with regard to the

wages to be paid by complainant to appellant and on that account, Darshan Singh falsely implicated the appellant-accused, who is a poor person and had come to Punjab to earn his livelihood. She further contends that Achhra Singh (PW-3), who can be termed to be a victim as per the prosecution story while subjected to cross-examination has deposed that his father i.e. complainant-Darshan Singh brought him back from the shop at Nabha, which is absolutely contradictory to the prosecution version which discloses that Achhra Singh was brought/recovered from area near canal of Bhanbaura while sitting under the Date Tree (Khajoor). Moreover, there is also nothing to establish that a demand of Rs.2 lacs was raised by appellant-accused to Darshan Singh (complainant) as ransom to release Achhra Singh (PW-3). She further stressed that as per the case of prosecution, Achhra Singh (PW3) was found sitting under the Date Tree (Khajoor) and it is highly improbable that if a person is kidnapped, that too, for extracting ransom, he would be allowed to sit freely. Moreover, he was not tied with any rope or confined at any secluded place, so, it creates a serious doubt in the case of prosecution.

11. While concluding her arguments, learned counsel for the appellant has argued that since none of the ingredients which constitute an offence under Section 364 IPC is established, the conviction and sentence imposed upon him vide impugned judgment of conviction and order of sentence dated 22.01.2005 are no sustainable in the eyes of law and are liable to be quashed.

12. Per contra, learned State counsel has argued with vehemence that prosecution has examined as many as 7 witnesses. Witnesses PW-2 Darshan Singh and PW-3 Achhra Singh, who is none else but a victim of

kidnapping, are the star witnesses. They have categorically deposed that Achhra Singh was kidnapped by appellant-accused on 03.07.2004, who raised a demand of Rs.2 lac as ransom for the release of PW-3 Achhra Singh and further that Achhra Singh was released from the custody of appellant by the police and was set free. Moreover, ld. trial court has taken into consideration all the aspects of the matter and discussed the entire evidence as well as various contentions raised by the defence counsel and, it was only thereafter, came to the conclusion that prosecution has been successful to establish the case under Section 364 IPC against appellant-accused and subsequent thereto, he was sentenced accordingly. Thus, there is no material irregularity, infirmity and illegality and, as such, instant appeal deserves to be dismissed.

13. After bestowing due consideration to the rival submissions made by learned counsel for the parties and scanning the evidence available on record meticulously, this Court comes to the conclusion that conviction and sentence imposed upon appellant-accused vide judgment of conviction and order of sentence dated 22.01.2005 are not sustainable in the eyes of law. In fact, from the perusal of the aforesaid record, it emerges that there is no cogent and convincing evidence to establish the charge framed against appellant-accused under Section 364 IPC.

14. Before proceeding further to decide instant appeal on merits on the basis of evidence available and securitization thereof with a view to determine whether offence under Section 364 IPC is made out or established, it would be appropriate to reproduce Section 364 IPC, which reads as under:-

“Section 364:- *Kidnapping or abducting in order to murder:- Whoever kidnaps or abducts any person in order that such person may be murdered or may be so disposed off as to be put in danger of being murdered, shall be punished with (imprisonment for life) or rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.”*

15. A glance at the aforesaid provision transpires that in order to bring home the guilt of accused for the commission of the aforesaid offence, the prosecution is obliged to prove (i) that the accused-appellant kidnapped or abducted Achhra Singh (PW3) and (ii) that he did so in order to commit murdered and raise the demand of a sum of Rs.2 lacs as ransom for the release of the kidnapped or the abducted person.

16. In order to establish the aforesaid facts, no doubt, prosecution has examined as many as 7 witnesses and has proved various documents Annexures P-1 to P-8 but PW-3 Achhra Singh, who was allegedly kidnapped; Ranjit Singh PW-5 and Jagtar Singh PW-6 can be termed to be material witnesses but their testimonies does not inspire confidence and as such their statements, if any, are not reliable and sufficient to hold the conviction of the appellant-accused to be legal and genuine.

17. No doubt, the instant case was registered by Darshan Singh PW2 but while appearing in the witness box, he has deposed that he employed accused-appellant as servant. On 02.07.2004, he along with his wife had gone to attend the cremation of Paramjit Singh in the village and when returned in the evening at about 5:00 p.m., he found that his only son Achhra Singh and servant Ramesh were missing from the house. He was told by Ranjit Singh PW-5 that his son as well as servant Ramesh were seen

by him while going towards village Amargarh. He has further taken a stand that he received a call from accused-appellant while raising a demand of Rs.2 lac to be paid by him at the canal of village Mahorana failing which, his son would be killed. He reported the matter to the police by making his statement Ex.P-2 and subsequent thereto, his son was found sitting under a Date Tree (Khajoor).

18. Here, it would be pertinent to mention that neither any telephonic call record has been produced by the complainant-Darshan Singh before the police nor the police at its own made any effort to collect such evidence. It was the basic and material document to establish that call was made by accused-appellant calling upon complainant-Darshan Singh to part with a sum of Rs.2 lacs as ransom to get his son Achhra Singh released. The telephonic record could have been easily collected by the investigating officer and also produced by complainant in order to establish the demand of ransom by accused but to the utter surprise, no such effort was made which creates serious dent in the case of prosecution.

19. As far as Ranjit Singh is concerned, he has appeared in the witness box as PW-5 and has deposed that he had seen Achhra Singh while going with accused-Ramesh towards Amargarh and it was only then he came to know when he returned to the village that Achhra Singh as well as servant were missing from the house. There is nothing in his statement that he noticed that Achhra Singh, son of the complainant was being taken by accused-appellant against his will or wish or that he did suspect any foul play. Had Achhra Singh being taken by way of kidnapping and abduction, accused must be using some force but no such thing was disclosed by Ranjit

Singh. The mere fact that Achhra Singh was going in the company of appellant-accused does not *ipso facto* mean that he was taken with an intention to commit his murder or to put him in danger of his life for extracting any amount from his father. As regards the deposition of Jagtar Singh PW-6, he accompanied Darshan Singh to report the missing of Achhra Singh to the police. However, the police met on the way near Maharaja Palace on the Moolabadha road where Darshan Singh got recorded his statement. His further deposition is that subsequent thereto, he accompanied the police and went to the place where Achhra Singh was found sitting under the Date Tree (Khajoor). Meaning thereby, accused was not present by the side of Achhra Singh and the question of either kidnapping or abduction or putting Achhra Singh in danger to his life are not at all established.

20. Coming to the testimony of PW-3 Achhra Singh, it would be pertinent to mention that cross-examination of aforesaid prosecution witness is relevant which clinches the entire controversy. It is his statement that his parents were not in the house on the date whereas he alongwith servant Ramesh was present in the house. At the time, Ramesh had asked him that he would provide eatables and show film to him in the cinema and took him to the village Amargarh. However, when he was subjected to cross-examination, it was stated by him that on the day of occurrence, he was taken to Nabha at about 7:00 p.m. in the Jeep by the person, who had installed bore in the fields of his father. His father also came at their shop at Nabha and at that time, the police was with him. Even, it has been stated by him that accused was also with them when they were taken to Nabha and particularly stated that on that date, they had not gone to Amargarh. Rather,

they were going to village Kaveri from their village Kheri Sodhian and from Kaveri, they had gone to Nabha. In the subsequent lines of his cross-examination, he is categoric in saying that from his village, he and Ramesh had gone to Nabha from where, he was taken back to the village and he never went anywhere else. Here, it would also be pertinent to mention that on re-examination of PW-3 Achhra Singh by Additional P.P. for the State, he is very categoric ***“my version of going to Nabha is correct”***. The testimony of PW-3, a star witness falsifies the entire story propounded by the prosecution on the basis of statement unfolded by Darshan Singh-complainant and supported by Ranjit Singh PW-5 and PW-6 Jagtar Singh to some extent. Thus, from the aforesaid discussion, it can be safely concluded that Achhra Singh PW-3 was neither abducted nor kidnapped by the accused nor appellant-accused put forth any demand of Rs.2 lacs as ransom.

21. In the light of what has been discussed above, this Court is of the considered view that impugned judgment of conviction and order of sentence dated 22.01.2005 are not sustainable in the eyes of law rather, the entire evidence put forth by the prosecution suffers from material infirmities and illegalities. As such, appellant-accused is entitled to the benefit of doubt.

22. As an upshot of the aforesaid discussion, the appeal is allowed. Resultantly, the conviction and sentence imposed vide judgment and order dated 22.01.2005 is set aside and the appellant-accused stands acquitted of the charge.

November 18, 2017
sonika

(JASPAL SINGH)
JUDGE

whether speaking/reasoned: Yes

whether reportable: Yes/No