

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

Criminal Appeal-S No. 1207-SB of 2014(O&M)

Date of Decision: May 01 , 2017.

Ram Gopal Srivastava

..... APPELLANT (s)

Versus

State of Punjab and others

..... RESPONDENT (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. N.S.Swaitch, Advocate
for the applicant/appellant.

1. Whether reporters of 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?

LISA GILL, J.

The appellant is aggrieved of the acquittal of respondents No.3 to 5 (accused Dharminder Singh and Manoj Kumar are both mentioned as respondents No.5 in the array of respondents in the memo of parties of the appeal thus for sake of convenience Dharambir Singh is mentioned as respondent No.5 and Manoj Kumar as respondent No.5A) of the charges under Sections 363/366/120B IPC as well as the acquittal of respondent No.2 under Section 366 IPC by the learned Additional Sessions Judge, Ludhiana vide judgment dated 26.11.2013.

Brief facts of the case are that, the appellant Ram Gopal Srivastava

recorded his statement before ASI Joginder Singh, Police Station Division No.7, Ludhiana on 04.06.2009 to the effect that his daughter aged about 15 years was studying in Class 10th in Sacred Heart School. The complainant dropped his daughter at her school on 03.06.2009 at about 7.30 a.m. He received a telephonic call at 8.00 a.m. from the Class Incharge, Narinder Pal Singh from his mobile number 9815022566 informing him that his daughter had not reached school. The complainant went to the school where one Dilraj Singh who is studying with his daughter informed that before the school started, the complainant's daughter was seen with respondent No.2 – Sunny Sharma on his Activa Honda scooter. They were going towards Jamalpur. Respondent No.2 was earlier roaming near the school. The complainant stated that the date of birth of his daughter is 01.08.1993 and respondent No.2 had abducted his daughter with an intention to marry her. His daughter was still in school uniform. The complainant expressed an apprehension that respondent No.2 had abducted his daughter in order to grab the complainant's property because the victim is his only daughter. FIR No. 114 dated 04.06.2009 under Sections 363/366A/120B IPC was registered on the basis of abovesaid statement. The victim was recovered from the company of respondent No.2. Medical examination of the victim as well as respondent No.2 was conducted. Final report under Section 173 Cr.P.C. was presented against all the accused persons after completion of investigation. Charges under Sections 363/366/120B IPC were framed against the accused. Accused-respondents No.2 to 5A pleaded not guilty and claimed trial.

Prosecution examined six witnesses to prove its case. All the

accused persons in their statements under Section 313 Cr.P.C. while denying incriminating evidence put to them pleaded innocence and false implication at the behest of the complainant as he was stated to be a very influential person. However, no evidence was led in defence.

The learned trial court while taking into consideration the facts and circumstances of the case acquitted respondents No.3 to 5A of the charges against them. It was held by the learned trial court that there is no direct or circumstantial evidence on record to show complicity of respondents No.3 to 5A in the commission of offence. Respondent No.2 was held guilty of the offence punishable under Section 363 IPC and was sentenced to undergo rigorous imprisonment for two years, besides, pay a fine of ₹5,000/- and in default thereof, to undergo further simple imprisonment for two months. The victim in this case was held to be minor therefore, respondent No.2 was convicted for the offence punishable under Section 363 IPC but acquitted of the charge under Section 366 IPC. Aggrieved therefrom, the appellant/complainant has filed the present appeal.

Learned counsel for the appellant has vehemently argued that despite there being clear and cogent evidence on record, the learned trial court has grossly erred in acquitting respondents No.3 to 5A for the offences punishable under Sections 363/366/120B IPC and respondent No.2 has been convicted merely for the offence punishable under Section 363 IPC while wrongly acquitting him for the offence punishable under Sections 366 IPC. It is submitted that the complainant as well as the victim have fully supported the prosecution version. It is proved on record that all the accused in conspiracy

with each other committed the offence in question. The evidence of the victim herself is enough for convicting all the accused in question. Learned counsel for the applicant/appellant vehemently argues that there is in fact no need for any corroboration of the oral evidence. It is thus prayed that respondents No.3 to 5A be convicted for the offences punishable under Sections 363/366/120B IPC and respondent No.2 be convicted for the offence punishable under Sections 366 IPC as well.

I have learned counsel for the appellant and have gone through the file/record with his able assistance

The complainant (PW3) has reiterated his initial statement before the learned trial court. He revealed the date of birth of his daughter to be 01.08.1993. PW2 the victim deposed that respondent No.2 had taken her away on 03.06.2009. She was in a semi-conscious condition when marriage was performed with respondent No.2 in connivance with all the accused persons. She testified that the photographs of the alleged marriage were taken. She was recovered on 25.06.2009 from the company of respondent No.2. PW4 ASI Joginder Singh testified regarding the investigation in the present case. PW6 Inspector Harjinder Singh who partly conducted the investigation has deposed regarding the arrest of the accused and recovery of the victim. PW5 Narinder Pal Singh, a teacher at Sacred Heart Higher Secondary Convent School brought the original admission record pertaining to the victim. It is the case of the defence that marriage of the victim with respondent No.2 took place nearly one and half month prior to the date of the alleged incident i.e., 03.06.2009.

At this stage, it is necessary to note that respondent No.5 –

Dharminder Singh is the father of respondent No.2. Accused-respondent No.5A – Manoj Kumar is a driver employed by the complainant himself. Respondent No.3 – Shashi Bala is attributed to have carried out those ceremonies at marriage which are performed by the mother of a bride. Respondent No.4 – Vishnu Kumar is the Pandit who carried out the marriage ceremony. It is alleged that respondent No.5 – Dharminder Singh brought the wedding dress and conspired in getting the victim forcibly married with respondent No.2. The learned trial court on proper appreciation of evidence concluded that the victim was not forced or compelled to marry respondent No.2. PW2 the victim stated that respondent No.2 – Sunny Sharma met her outside the school on 03.06.2009 and took her to Sarpanch Colony on an Activa Honda scooter. However, PW3 Ram Goptal Srivastava i.e., the complainant and father of the victim, stated that Ravinder Pal Kaur daughter of Jasbir Singh used to drive the said Activa scooter. Ravinder Pal Kaur is a friend of the victim. The victim had borrowed Ravinder Pal Kaur's scooter and gone with Sunny Sharma. The complainant stated that this was revealed to him by Ravinder Pal Kaur. The Activa Honda scooter was stated to be recovered by the complainant from Chacha Cycle Stand Samrala Chowk, Ludhiana vide memo Ex.PW3/B. Copy of the Registration Certificate of the scooter was handed over to the police by Jasbir Singh (father of Ravinder Pal Kaur). The alleged victim however does not disclose anything about borrowing of a scooter from her friend, Ravinder Pal Kaur.

There is a dispute regarding the date of marriage. As per the statement (Ex.DA) of the victim recorded on 18.09.2009 before the police it is stated that marriage was performed with respondent No.2 in a temple and it is

thereafter that she was enticed away on 03.06.2009 by respondent No.2. However, before the learned trial court it is stated by the victim that she was enticed by respondent No.2 on 03.06.2009 and marriage was performed thereafter.

Respondent No.2 in his statement under Section 313 Cr.P.C. has specifically stated that marriage was solemnized on 07.04.2009. PW4 ASI Joginder Singh, the Investigating Officer admitted that statements Ex.DB and Ex.DC of Gursewak Singh and Gurdeep Singh, respectively, were recorded on 03.06.2009. They have stated that marriage in question was performed one and half month prior to the said date. It is rightly observed by the learned trial court that in case marriage was performed on 03.06.2009 or 04.06.2009, it was not possible that a Compact Disc (CD) of the marriage could be prepared and thereafter recovered on 04.06.2009 itself. It is relevant to note at this stage that the room rented by respondent No.2 was admittedly raided on 04.06.2009 at about 6.30. p.m. where the Investigating Officer took in possession a Compact Disc (CD) of marriage of the victim with respondent No.2.

The said CD was admittedly not produced before the learned trial court for the reasons best known to the prosecution.

It is relevant to note that the victim who went missing on 03.06.2009 was recovered on 25.06.2009 but her statement was not recorded immediately thereafter, neither was she produced before the Magistrate for recording of her statement under Section 164 Cr.P.C. She was not medically examined immediately after she was recovered. The victim's statement (Ex.DA) was recorded on 18.07.2009 before the police.

It is thus apparent that the alleged marriage of the victim with respondent No.2 is not proved to be solemnized after she was alleged to be taken away by him on 03.06.2009. A definite doubt is created in regard to the date of the said marriage. It is not proved beyond reasonable doubt that marriage of respondent No.2 and the victim was solemnized on 03.06.2009 or thereafter. There is a distinct possibility of the same being performed prior to 03.06.2009 i.e. about one and half month prior to the occurrence in question. Moreover, the learned trial court has rightly observed that the victim in her statement (Ex.DA) has not uttered even a single word regarding her being in an unconscious or semi-conscious condition at the time of the performance of marriage ceremony. A perusal of the photographs of marriage (Ex.D1 to Ex.D21) reveals that the marriage ceremony was conducted while following elaborate rituals and ceremonies. The victim is clearly conscious and happy in the said photographs. One of the photographs (Ex.D7) reflects the ritual of drawing and removing the lines as well. It is rightly observed by the learned trial court that it is not a case where the marriage ceremony has been performed in a hurried manner by a simple exchange of garlands or putting Sindoor (vermillion) on the forehead of the victim. Elaborate ceremonies were performed which do not reveal the use of any kind of force or compulsion to perform marriage. An apparent improvement has been made by the victim while testifying before the learned trial court inasmuch as it is stated that she was in a semi-conscious or unconscious condition at the time of performance of marriage. In these circumstances, the learned trial court has rightly held that no offence punishable under Section 366 IPC is made out against respondent No.2.

In respect to the accused Dharminster Singh respondent No.5, learned counsel for the appellant is unable to point out any infirmity in the finding returned by the learned trial court. It is a matter of record that respondent No.2 was living in a rented house in Sukhdev Nagar, Ludhiana. The only allegation against Dharminster Singh is that he purchased a bridal dress of the victim and was present at the time of marriage ceremony of the victim with respondent No.2. Simply because respondent No.5 – Dharminster Singh is the father of respondent No.2, he cannot be visited with penal consequences in the absence of clear and cogent evidence to show that he conspired in the commission of the offence.

Respondent No.5A – Manoj Kumar is a driver employed by the complainant himself. As per the allegations he used to take the victim to meet the accused-respondent No.2 and for greed of money, he enticed the victim to perform marriage with respondent No.2. It is stated by the victim in her statement (Ex.DA) that respondent No.2 paid accused Manoj Kumar ₹100/- for bringing her to meet him and not disclose the facts to her father. PW2, the victim in her testimony before the court admitted that accused – Manoj Kumar was employed by her father and he used to take her wherever she wanted to go on her asking. It is not the case of the prosecution that respondent – Manoj Kumar used to take the victim to meet respondent No.2 in a forcible manner. In fact, it appears that he would take her on her bidding only. There is nothing on record that accused – Manoj Kumar was present at the time of kidnapping of the victim or that he accepted any money from respondent No.2 to transport her or that he was involved in any conspiracy in the whole affair. Thus, he has rightly been

acquitted of the charges against him.

Respondent No.4 – Vishnu Kumar is the Pandit who solemnized marriage of the victim with respondent No.2. There is nothing on record to show that he had any knowledge about the kidnapping of the victim by respondent No.2 or that he was involved in any conspiracy for her abduction. Furthermore, once the victim was willingly participating in the performance of the rituals of the marriage, there was no occasion for him to be suspicious in any manner. There is nothing on record to show that he was aware of the age of the victim. Therefore, respondent No.4 – Vishnu Kumar has been rightly acquitted by the learned trial court.

Respondent No.3 – Shashi Prabha is alleged to have enticed the victim to perform marriage with respondent No.2. The prosecution yet again woefully failed to prove its case against respondent No.3 – Shashi Prabha. The said respondent is seen to be performing the marriage rituals from the bride side. Once, it is not proved that the marriage took place on 03.06.2009 but probably at an earlier date, there appears to be no reasons as to why the victim had not disclosed the facts to her parents at any point of time. Furthermore, there is nothing on record to show that respondent No.3 – Shashi Prabha was aware of the victim being a minor or that she enticed the victim to perform marriage with respondent No.2. It is reiterated that once the victim was willingly and happily participating in the performance of the rituals of marriage ceremony, respondent No.3 cannot be convicted for the offences in question in the absence of any clear and positive evidence to inculcate her.

It is rightly held by the learned trial court that there is no evidence direct or circumstantial to prove that respondents No.3 to 5A had conspired to kidnap the victim, take her away and entice her into forcible marriage with respondent No.2. They have thus been rightly acquitted by the learned trial court. Clear, cogent and positive evidence on record is not available which can justify the conviction of respondents No.3 to 5A as charged.

Learned counsel for the applicant/appellant is unable to point out any substantial or compelling reasons which may warrant interference with the impugned judgment. Acquittal of an accused is not to be interfered with lightly and merely because another view may be possible.

The Hon'ble Supreme Court in **Mahamad Khan Nathekhan v. State of Gujarat (2014) 14 SCC 589** while reiterating the basic principles has specifically held that in case of acquittal there is a double presumption of innocence in favour of the accused as it stands reinforced, reaffirmed and strengthened by acquittal of the accused, by the trial court.

There is, thus, no perversity, infirmity or illegality in the impugned judgment dated 26.11.2013 passed by the learned Additional Sessions Judge, Ludhiana which calls for any interference by this Court. Accordingly, this appeal is dismissed.

There is a thirty eight (38) days in the filing of this appeal. Keeping in view the fact that the matter has been decided on merits, the question of delay in filing of the appeal has been rendered academic.

It is made clear that none of the observations made here-in-above

are an expression of opinion or shall have any bearing on the appeal, if any,
preferred by respondent No.2 challenging his conviction.

May 01 , 2017.
'om'

(LISA GILL)
JUDGE

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No