

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

CRM A-960-MA of 2017

Date of Decision: August 29, 2017

Simranjit Kaur and another	Versus	Applicants
State of Punjab and others		 Respondents

**CORAM : HON'BLE MR. JUSTICE T.P.S.MANN
HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU**

Present : Mr. Jaideep Verma, Advocate
for the applicants.

T.P.S.MANN, J.

The prosecutrix and her father have filed the present application under Section 378(3) of the Code of Criminal Procedure for grant of leave to appeal against the judgment dated 9.2.2017 passed by Sessions Judge, Rupnagar, whereby the accused, i.e. respondents No. 2 to 5 stood acquitted of the charges under Sections 120-B, 363, 366 and 376 IPC read with Section 6 of the Protection of Children from Sexual Offences Act 2012.

According to the prosecution, the prosecutrix who

was aged about 17 years was kidnapped by Gurtej Singh and Manpreet Singh @ Mani accused after inducing her for marriage. Gagandeep Kaur accused was also having hand in the kidnapping. While going from her house, the prosecutrix had taken one gold kara and one gold ring with her. Despite intensive search, she could not be traced. Accordingly, on the basis of statement made by the father of the prosecutrix, FIR No. 39 dated 9.3.2013 was registered under Sections 363, 366 and 120-B IPC at Police Station Chamkaur Sahib. During the investigation of the case, Gagandeep Kaur accused was formally arrested on 5.5.2013. On 26.11.2013, the prosecutrix was traced and produced before the Judicial Magistrate where she made a statement that in December 2011, she went to the house of Gagandeep Kaur in village Bhadla, near Khanna who was her maternal aunt. Gurtej Singh accused who was cousin of Gagandeep Kaur came there to meet her. Gagandeep Kaur proposed to the prosecutrix to marry Gurtej Singh. The prosecutrix wanted to consult her parents first. Gagandeep Kaur used to arrange conversation of the prosecutrix with Gurtej Singh on many occasions. In August 2012, Gagandeep Kaur came to the house of the prosecutrix and proposed her marriage with Gurtej Singh to her mother on the ground that the prosecutrix was willing and inclined to marry him. At that time, only the mother of

the prosecutrix was in the house. Hot words were exchanged between Gagandeep Kaur and the mother of the prosecutrix. In January 2013, Gagandeep Kaur again contacted the prosecutrix and starting conversing with her on telephone. In March 2013, when the prosecutrix was going to the fields, Gagandeep kaur alongwith Sukhjit Singh @ Sukha came there in a car and forcibly bundled her into the same. She was made to sniff some sedative due to which she became unconscious. When she regained consciousness, she found herself in a room. She was kept there for many days. Gagandeep Kaur forced her to have sexual intercourse with Sukhjit Singh @ Sukha and Gurtej Singh but she refused. Then Sukhjit Singh @ Sukha raped her when she was under the effect of intoxication. She was kept in captivity for 7/8 months. Gurtej Singh raped her many a time during that period. In June 2013, Gagandeep Kaur told her that she had completed the age of eighteen years and, thus, she would arrange her marriage with Gurtej Singh but she refused. Gagandeep Kaur threatened to eliminate her when she refused to marry Gurtej Singh. Her signatures were obtained on blank papers on the pretext that it would facilitate her return to her parents but she was kept confined in the room. Gagandeep Kaur informed her that her marriage stood performed with Gurtej Singh. Even photographs and documents of the High Court were shown to her. She was

amazed to see her photographs. On 17.10.2013, she was taken to village Dhadewali alongwith Gurtej Singh. She was confined there for one month in the house of Gurtej Singh and mercilessly beaten. She was served food laced with intoxicants. When she insisted for going to her house, she was threatened with elimination. Gurtej Singh used to rape her during that period. She was reminded that she was wife of Gurtej Singh and had to obey him. On 24.11.2013, she escaped from there and reached her parents' house. She narrated the entire story to her parents. She was taken to Civil Hospital, Chamkaur Sahib for treatment as she was having headache and pain in the chest. Thereafter, she went to Police Station Chamkaur Sahib for getting her statement recorded but the police refused to record her statement and wanted that she should first make a statement before the Magistrate as the matter was pending in the High Court. She also claimed that she never performed marriage with Gurtej Singh. She apprehended her kidnapping again at the hands of Gagandeep Kaur. She wanted to go with her parents and dissolution of her forcible marriage by way of divorce. On 27.11.2013, she was examined in Civil Hospital, Chamkaur Sahib. On the same day, on the basis of statement made by the prosecutrix, offences under Section 376 IPC and Section 6 of the Protection of Children from Sexual Offences Act were added.

Sukhjot Singh @ Sukha was also nominated as an accused.

Having heard learned counsel for the applicants and on going through the impugned judgment of acquittal, this Court finds that Gurtej Singh accused had filed petition in the High Court under Section 482 Cr.P.C. in order to seek quashing of the FIR, which stood registered initially under Sections 363, 366 and 120-B IPC on the ground that he and the prosecutrix had solemnized marriage on 5.6.2013 at Gurudwara Baba Deep Singh Ji Shaheed, Sanori Adda, Patiala with their own sweet will and they were living happily. In that petition, the prosecutrix filed affidavit Ex.D2 dated 21.8.2013 admitting her marriage with Gurtej Singh accused. Subsequently, she filed another petition Ex.D3 dated 1.10.2013 for quashing of the FIR against the accused. The prosecutrix also filed criminal complaint Ex.D4 against her father, mother and another relative under Sections 323, 504 and 506 IPC on 6.6.2013, with the allegations that after she got married with Gurtej Singh accused, they had threatened her. Her statement Ex.D5 to this effect was also recorded by the Magistrate on 6.6.2013. While stepping into the witness box as PW2, she admitted her signatures on Ex.D2 to Ex.D5. Though she claimed that the documents were fabricated after obtaining her signatures on blank papers and she had never appeared before any Court or authority to execute such documents but

DW1 Harjit Singh, Advocate, who represented the prosecutrix in the Court of Judicial Magistrate 1st Class, Fatehgarh Sahib in complaint Ex.D4 testified that he was engaged by the prosecutrix to file such a complaint and her signatures obtained in his presence. He also deposed that the contents of the complaint were read over to the prosecutrix and, accordingly, she admitted the same as correct. He further deposed that statement Ex.D5 was made by the prosecutrix in the Court of Judicial Magistrate in his presence and she had signed the same after admitting its contents to be true. Though DW1 Harjit Singh deposed that he did not know the complainant personally but once the prosecutrix admitted her signatures, her identity could not be doubted. Similarly, DW3 Gitish Bhardwaj, Advocate deposed that he represented the prosecutrix on 21.8.2013 in the petition under Section 482 Cr.P.C. for protection of her life and liberty at the hands of her father Karam Singh. The petition Ex.DW3/A was drafted by him at the instance of the prosecutrix and Gurtej Singh accused. They had signed the petition after admitting its contents as correct. Affidavit Ex.DW3/B was also sworn by the prosecutrix in support of such pleadings. He also testified that when the prosecutrix and Gurtej Singh accused came to him they were not under any fear or pressure of anyone. They were produced before the High Court at the time of hearing and passing of the

order of protection. By that time, the prosecutrix had attained the age of 18 years.

While in the witness box, the prosecutrix stated that on 4.3.2013 at about 4/5 p.m. she was kidnapped by the accused in a car when she went to her fields and before that a telephonic message was received by her from Gagandeep Kaur accused to come there for accompanying them. She also deposed that the cell phone was provided to her by Gagandeep Kaur in January 2013, and since then she started conversing with Gurtej Singh accused through that cell phone. She also admitted that conversation between her and Gurtej Singh accused went on from January 2012 to March 2013. She had been receiving calls from Gurtej Singh accused once in a week in routine. On 4.3.2013 when he called her she was in the fields whereas her mother and grand-mother were in the house. The accused came after about one hour of receiving the call and it had taken about ten minutes to reach her house on foot from her fields. She also stated that she took her school certificate with her while accompanying the accused. All this indicates that the prosecutrix was having an affair with Gurtej Singh accused and she accompanied him voluntarily without disclosing anything to her parents despite having an occasion to do so. Even otherwise, the incident of kidnapping on 4.3.2013 at 5.00 p.m. is not

established. What is established is the prosecutrix eloping with Gurtej Singh accused. Even if it is taken that the prosecutrix was kidnapped on 4.3.2013 yet the father of the prosecutrix did not inform the matter to the police immediately. It was only on 9.3.2013 that he lodged the report with the police. There is no explanation of delay in registration of FIR.

According to the prosecution, she escaped from the custody of the accused on 24.11.2013 and reached her parents' house on the same day. However, the police approached her only on 26.11.2013 when she was taken before the Judicial Magistrate. There is no explanation from the side of prosecution as to why the action regarding forcible captivity of the prosecutrix and rape by the accused was held up for two days. Possibility of the prosecutrix being pressurized and tutored by her parents so as to take revenge from the accused for her love marriage with Gurtej Singh accused against the wishes of the parents cannot be ruled out.

According to the prosecutrix, she was less than 18 years of age and more than seventeen years when she voluntarily accompanied Gurtej Singh accused. Therefore, it cannot be said that she was kidnapped by any of the accused forcibly.

The prosecutrix had deposed that when she was kept

in room, she was raped by Gurtej Singh accused as well as Sukhjit Singh accused. It is difficult to reconcile that Gurtej Singh accused, who voluntarily solemnized marriage with the prosecutrix would allow his co-accused to ravish her and, that too, in his presence.

In view of the above, no fault can be found with the impugned judgment of acquittal passed by the learned trial Court. The application is without any merit and, therefore, dismissed. Leave to appeal is declined.

(T.P.S. MANN)
JUDGE

August 29, 2017
amit rana

(MAHABIR SINGH SINDHU)
JUDGE

Whether reasoned/speaking	Yes/No
Whether reportable	Yes/No