

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

CRA-S-1553-SB of 2004

Date of Decision: Dec. 11,2018

Sarwan Singh and another..... Appellants

Versus

State of Punjab Respondent

Coram: Hon'ble Mrs. Justice Manjari Nehru Kaul

1.To be referred to the Reporters or not?

2. Whether the judgment should be reported in the Digest?

Present: Mr. D.S.Sandhu, Advocate and
Mr. Ankur Sharma, Amicus Curiae
for the appellants.

Mr. Pankaj Gupta, Addl. A.G. Punjab.

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Manjari Nehru Kaul, J.

This criminal appeal is directed against the judgment of conviction and order of sentence dated 29.07.2004 passed by the Additional Sessions Judge (Fast Track Court), Kapurthala, whereby appellants-Sarwan Singh and Surjit Kaur have been convicted for offence punishable under Section 363 IPC and sentenced to undergo rigorous imprisonment for a period of three years each and to pay a fine of ₹1000/- each and in default of payment of fine, to further undergo rigorous imprisonment for two months each.

The prosecution case in brief as it emerges from the evidence on record is that on 16.02.2004 at about 03:00 P.M. complainant-Balbir Kaur PW2 noticed that Gagandip Singh aged about 1-1/2 years, who had

been playing in the street, was missing. The complainant-Balbir Kaur, who

was the grand aunt of Gagandip Singh, searched for the missing boy in the neighbourhood and the locality but in vain. At about 6:30 P.M., on the very same day, the complainant Balbir Kaur and a few other persons were attracted to the house of the appellants by some sobs which were coming from their house. On going closer, they found that the noise of sobs was coming from inside an iron box which was lying in the room of appellant-Sarwan Singh. Thereafter, the iron box was opened and Gagandip Singh was found bundled inside. On the statement of complainant-Balbir Kaur to ASI Iqbal Singh on 17.02.2004, the instant case was registered vide FIR No. 28 dated 17.02.2004 in Police Station Sultanpur Lodhi (Ex.PW1/C).

After presentation of challan, charges were framed against the appellants for having committed offence punishable under Section 364 read with Section 120-B IPC to which they pleaded not guilty and claimed trial.

The prosecution examined four witnesses i.e. PW1 SI Swaran Singh, PW2 Balbir Kaur, PW3 Jagtar Singh (eye-witness) and PW4 ASI Sukhdev Singh and thereafter closed the evidence. The incriminating evidence appearing against the accused was put to them to which they pleaded innocence and pleaded that the complainant along with Kulwinder Singh, father of Gagandip Singh, had fabricated the entire occurrence as there was a dispute between them pertaining to the house where the appellants were residing.

In defence, the appellants examined DW1 Gurmej Singh and DW2 Satpal and thereafter closed the evidence.

I have heard the learned counsel for the appellants as well as the learned counsel for the State. I have also gone through the evidence and other material on record.

The learned counsel for the appellants has challenged the judgment of the learned trial Court broadly on the following grounds:-

- i) that there was an abnormal delay in lodging of the FIR which was used to falsely implicate the appellants as there was a long pending dispute between the parties pertaining to a house;
- ii) the parents of Gagandip Singh never lodged any complaint qua the alleged abduction of their son nor did they step into the witness box to support the prosecution case;
- iii) the iron box in which Gagandip Singh was kept was never produced before the learned trial Court nor was it taken into possession by the police;
- iv) the investigation in the case was tainted and biased.

I have given my anxious consideration to the arguments put forth by the learned counsel for the appellants.

The complainant-Balbir Kaur PW2 has corroborated the prosecution version on each and every material aspect right from the moment when Gagandip Singh went missing till the time he was finally recovered from the iron box lying in the room of the appellants. It has come in the deposition of the complainant Balbir Kaur that after the child was recovered from the iron box, the appellants were trying to prevail upon the complainant party to hush up the matter and effect a compromise. As the complainant party did not agree to the same, it was on the next day i.e. 17.02.2004 that the instant FIR was lodged. The complainant-Balbir Kaur, who is none other than the grand aunt of Gagandip Singh, was extensively examined by the defence but her testimony withstood the test of cross-

examination without any dent being created. It is also pertinent to point out that it has gone unchallenged and no suggestion whatsoever was put by the defence to PW2 Balbir Kaur that the appellants were not pressurising the complainant party to effect a compromise. The delay, if any, in lodging the FIR thus stands completely explained.

The contention of the learned counsel for the appellants that the parents of the child did not lodge any report is without any merit. It has come on record that at the time when the child went missing and till his subsequent recovery from the iron box, the parents of the child were not at home. In any case, PW2 Balbir Kaur being the grand aunt of the little boy would have been as much concerned about him as any other family member including the parents. Hence, it does not in any manner create any infirmity in the case of the prosecution.

The next submission of the learned counsel for the appellants that the delay was used to fabricate a false case to implicate the appellants as there was a long pending dispute between the complainant and the appellants qua the house in which the appellants were residing is also devoid of any merit. A suggestion was indeed put to the complainant-Balbir Kaur PW2 that Kulwinder Singh, father of Gagandip Singh, had sold the house to appellant-Sarwan Singh but the defence could not substantiate the same with any evidence on record in support of any dispute qua the house.

Learned counsel for the appellants has further argued that the trial Court gravely erred in ignoring the fact that the iron box in which Gagandip Singh was found bundled was never taken into possession by the Investigating Agency nor was the same produced before the learned trial Court. I, however, do not agree with the submission made by the learned

counsel for the appellants. It has come in evidence that the sketch of the iron box with all its measurements was prepared by the police and also exhibited as Ex.PE. Hence, the factum of not taking into possession of the iron box by the police cannot be a ground to discredit the prosecution case. Moreover, a perusal of the sworn testimony of PW3 Jagtar Singh reveals that he has given a very lucid detail of all the material aspects of the case including a detailed description of the iron box in question. The Investigating Agency was no doubt a little lax during the investigation but the complainant party cannot be made to suffer for the lapse on the part of the Investigating Agency for not taking into possession the said iron box. The testimony of complainant Balbir Kaur PW2 stands fully corroborated with the testimony of PW3 Jagtar Singh who is not only an independent witness and a resident of the same locality but also in whose presence Gagandip Singh was recovered from the iron box.

In the light of the aforementioned discussion, I do not find any infirmity in the impugned judgment and order of sentence dated 29.07.2004 passed by the Additional Sessions Judge (Fast Track Court), Kapurthala and thus the same is upheld.

The appeal is accordingly dismissed.

The accused appellants are on bail. Their bail bonds/surety bonds stand cancelled. Necessary steps be taken to secure their custody.

(Manjari Nehru Kaul)
Judge

11.12.2018
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