

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

CRA-S-1747-SB-2004

Date of decision:-3.10.2018

Pritam Kaur

....Appellant

Versus

State of Punjab

....Respondent

CORAM : HON' BLE MR. JUSTICE H.S. MADAAN

Present : Mr.B.S. Thind, Advocate
for the appellant.

Mr.Dhruv Dayal, Sr.DAG, Punjab.

H.S. MADAAN, J.

Accused Pritam Kaur and her son Major Singh faced trial by learned Additional Sessions Judge (Ad hoc) – cum – Presiding Officer, Fast Track Court, Rupnagar on the allegations that on 11.7.2002, the prosecutrix daughter of complainant Didar Singh, resident of Chamkaur Sahib was kidnapped by them, giving her allurements of marriage with Major Singh and while leaving home, the prosecutrix had taken away some ornaments, documents and cash amount of Rs.20,000/- from her house.

On the basis of statement of complainant Didar Singh, formal FIR was recorded. Involvement of Pritam Kaur and her son Major Singh having connived with Bahadur Singh in kidnapping the prosecutrix was found to be there.

After completion of investigation and other formalities, challan against the accused was prepared and filed in the Court of learned Additional Chief Judicial Magistrate, Rupnagar.

On presentation of challan in the Court of learned Additional Chief Judicial Magistrate, Rupnagar, he supplied copies of documents relied upon in the challan to the accused free of costs as provided under Section 207 Cr.P.C. Then finding that the offence under Section 363 and 366 IPC are exclusively triable by Court of Sessions, learned Additional Chief Judicial Magistrate, Rupnagar committed the case to the Court of learned Sessions Judge, Rupnagar vide order dated 28.8.2003, from where it was entrusted to the Court of learned Additional Sessions Judge, Rupnagar.

On receipt of case in the Court, learned Additional Sessions Judge, Rupnagar observing that prima facie charge for offences under Sections 363, 366, 120-B IPC was disclosed against the accused, they were charge-sheeted accordingly. The accused pleaded not guilty and claimed trial.

During the course of its evidence, the prosecution examined as many as 7 witnesses i.e. PW1 Didar Singh – complainant, PW2 Sarwan Singh, PW3 ASI Sadhu Singh, PW4 Surmukh Singh, PW5 Amarjit Kaur(mother of prosecutrix), PW6 Amarjit Kaur(school teacher) and PW7 ASI Prem Chand.

With that the prosecution evidence got concluded.

Statements of the accused was recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing against such accused were put to them, but he denied the allegations contending that they are innocent and have been falsely implicated in the case.

In defence evidence accused examined the prosecutrix as DW1.

After hearing arguments, learned trial Court acquitted accused Major Singh of the charge framed against him, whereas convicted accused Pritam Kaur vide judgment dated 12.8.2004 for the offences under Section 363 read with Section 120-B IPC and vide order of the said date, sentenced her to undergo rigorous imprisonment for one year and to pay a fine of Rs.500/- and in default thereof, to further undergo rigorous imprisonment for a period of two months, which left her aggrieved and she has filed the present appeal.

I have heard learned counsel for the appellant – accused - convict, learned Senior Deputy Advocate General for the State of Punjab besides going through the record.

The cardinal principles of criminal jurisprudence are that the prosecution must prove its charge against the accused beyond a shadow of reasonable doubt. Such onus to prove guilt of the accused to the hilt is stationary on the prosecution and it never shifts. The accused is not expected to prove his defence with some exactness and rigor, with which the prosecution is required to prove guilt of the accused. The accused is required to render only a reasonable and plausible explanation, which may cast a doubt in the mind about the truthfulness

of the prosecution story. Furthermore, as per our jurisprudence, hundreds of guilty persons may go scot-free but even one innocent should not be punished.

If examined on touchstone of those principles, it comes out that the prosecution had miserably failed to prove its charge against the accused conclusively and affirmatively. However, the trial Court by misappraisal of evidence and wrong interpretation of law came to the conclusion that the prosecution had successfully proved its charge against the accused beyond a shadow of doubt.

It has to be taken note of that complainant Didar Singh, who had set the criminal machinery in motion had not supported the prosecution story and was declared a hostile witness. In his examination-in-chief itself, he stated that Bahadur Singh son of Sadhu Singh, resident of his colony used to come to his grocery shop and purchase articles but he had never misbehaved with his daughter, the prosecutrix, rather he stated that her said daughter had gone with Bahadur Singh. He was declared a hostile witness at the instance of learned Additional Public Prosecutor, who was allowed to put questions to him in the form of his cross-examination but to no effect. PW2 Sarwan Singh, father-in-law of complainant though stated that Bahadur Singh son of Sadhu Singh had taken away the prosecutrix in conspiracy of accused persons (Pritam Kaur and Major Singh) and Pritam Kaur misguided them that the prosecutrix was there towards Khanna side when as a matter of fact it was not so and he further stated that both the accused were talking on telephone with Bahadur Singh. However, these facts do not go to show that Pritam Kaur and Major Singh had a prior

meeting of mind with Bahadur Singh and in pursuance of that Bahadur Singh had kidnapped the prosecutrix. Merely because Pritam Kaur stated that the couple had gone towards a particular side when it was not so does not go to show her involvement in the incident. She might have stated so out of ignorance or wrong information. Furthermore, talking with his son Bahadur Singh on telephone does not establish any offence on the part of accused Pritam Kaur. For the similar reasons, the testimony of PW5 Amarjeet Kaur, the mother of the prosecutrix does not support the prosecution much in proving its charge. It has to be taken note of that the main accused in this case, namely, Bahadur Singh has since been acquitted by the Court. Copy of judgment dated 31.1.2005 passed by Additional Sessions Judge (Ad hoc)-cum-Presiding Officer, Fast Track Court, Ropar in that regard Annexure P3 has been placed on record. There is nothing on the file to show that this judgment has been challenged by the prosecution by way of filing of appeal or its operation has been stayed by any superior Court. The basic law is that if the main accused is acquitted, then conviction of other accused on the allegations of having entered into conspiracy with such accused cannot be sustained. Therefore, on account of enough cogent, convincing, reliable evidence being missing to show the involvement of the appellant/accused in the incident and main accused having been acquitted by the Court, the conviction and sentence of the present appellant cannot survive.

Thus, I find that the judgment of conviction and order of sentence passed by the Court below are not sustainable. The same are set aside by way of acceptance of this appeal. The appellant is acquitted

of the charge for which she has been held guilty and convicted vide the impugned judgment.

Necessary intimation be sent to the quarter concerned.

3.10.2018
Brij

(H.S.MADAAN)
JUDGE

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