

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

**CRA-S-2178-SB-2004
Date of decision:-23.8.2018**

Suraj Singh

....Appellant

Versus

State of Haryana

....Respondent

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

Present : Mr.S.R. Hooda, Advocate
for the appellant.

Ms.Aditi Girdhar, AAG, Haryana.

H.S. MADAAN, J.

Accused Suraj Singh faced trial by learned Additional Sessions Judge, Panchkula, who vide judgment dated 7.10.2004 convicted him for an offence under Section 363 IPC and vide order of sentence dated 8.10.2004 sentenced him to undergo rigorous imprisonment for a period of two years and to pay a fine of Rs.1,000/- and in default thereof, to further undergo simple imprisonment for two months.

The accused-convict – Suraj Singh, who is appellant before this Court prays that the appeal be accepted, the impugned judgment of conviction and order of sentence be set aside and he be acquitted of the charge framed against him.

Briefly stated, the facts of the case as per the prosecution

story are that criminal machinery in this case was set into motion by complainant Smt.Kusum, resident of Rajiv Colony, Panchkula, who in her statement made to Incharge, Police Post, Sector 16, Panchkula on 9.2.2004 at about 5:00 p.m. stated that she has four children, eldest being a daughter (daughter name not being mentioned to conceal her identity and referred to as '*the prosecutrix*') having date of birth 22.2.1988; that the prosecutrix had failed in 8th class and had left studies; that she used to go to Ritu Beauty Parlour, Mauli Jagran, Chandigarh to learn the art of beautician; that on 5.2.2004, she had gone to beauty parlour at about 2:00 p.m. but did not return home; that the complainant searched for her but she could not be located, subsequently, it came out that accused Suraj Singh living in neighbourhood of the complainant was also missing and he had kidnapped the prosecutrix, who was minor at that time.

After registration of the formal FIR, the investigation in the case started. The prosecutrix was recovered on the same day on which the FIR was registered, from the back side road of Rajiv Colony while she was in custody of the accused. Accused was arrested. Necessary documents at that time were prepared. The custody of the prosecutrix was handed over to her parents. The prosecutrix was got medically examined from General Hospital, Sector-6, Panchkula. Accused was also got medically examined from the said hospital. School leaving certificate of the prosecutrix was taken into police possession, which showed her date of birth to be 3.4.1988. The statements of witnesses were recorded. Clothes of the prosecutrix, pubic hair etc. taken into possession by the doctor had been handed over to the police in the form

of sealed parcel, which were sent to FSL, Madhuban and report therefrom was received.

Statement of the prosecutrix was also recorded, wherein she stated that on 5.2.2004, accused previously known to her met her on the way, he took her for outing to Sector 17, Mansa Devi, and then he took her to Lucknow by train and thereafter she was taken to Partapgarh (UP), then to in-laws of Pappu, brother of accused; that on 8.2.2004, father of the accused brought the prosecutrix and accused back to Panchkula; that while they had reached Railway Station, Chandigarh on 9.2.2004 and father of the accused had gone to take tea, the accused forcibly took the prosecutrix to Panchkula side, where the police recovered her.

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

On presentation of challan in the Court of learned Chief Judicial Magistrate, Panchkula, 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 366 IPC is exclusively triable by Court of Sessions, learned Chief Judicial Magistrate, Panchkula committed the case to the Court of learned Additional Sessions Judge-I, Panchkula vide order dated 7.4.2004.

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

During the course of its evidence, the prosecution examined as many as seven witnesses i.e. PW1 Smt.Kusum, PW2 prosecutrix, PW3 Balinder Singh, PW4 Constable Ved Parkash, PW5 ASI Ram Chander, PW6 Constable Ram Saran and PW7 SI Ramphal.

With that the prosecution evidence got concluded.

Statement of accused was recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing against him were put to him but he denied the allegations contending that he is innocent and has been falsely implicated in the case.

Accused did not lead any evidence in his defence.

After hearing arguments, learned trial Court convicted and sentenced accused Suraj Singh as mentioned above, which left him aggrieved and he has filed the present appeal.

I have heard learned counsel for the appellant – accused - convict, learned Assistant Advocate General for the State of Haryana besides going through the record and I find that there is no merit in the present appeal.

Admittedly, the prosecutrix was a minor at that time having date of birth 22.2.1988 when the incident had taken place on 5.2.2004, that means she was aged about 16 years at that time. PW1 Smt.Kusum-complainant has deposed in that regard. The complainant Kusum further deposed regarding the prosecutrix having gone to beauty parlour on 5.2.2004 but not returning home, they are searching for her for 3-4 days and then informing the police. She further deposed that on 9.2.2004, the prosecutrix was recovered while coming with the accused. The prosecutrix appearing as PW2 toed the line of prosecution and supported

its case on material aspects. Although both these PWs were cross-examined at length on behalf of the accused but they stuck to their guns and could not be shattered on material contents. A few minor contradictions and variations in their statements do not go to the root of matter since those are bound to occur due to difference in power of perception, observation and retention of events in various persons and so also due to lapse of memory due to passage of time etc. The fact cannot be lost sight of that different persons have got variable memorization of the events. Merely because a witness slipped at a few places regarding the minute details does not go to put a question mark over his credibility and truthfulness. These minor variations and contradictions rather go to show that the witnesses have deposed in a natural and truthful manner unlike tutored witnesses who depose in a parrot like manner. I find the account given by both of them to be worthy of reliance.

PW3 Balinder Singh, Teacher from Government High School, Mauli Colony, UT, Chandigarh had brought the summoned record proving the school leaving certificate of the prosecutrix showing her date of birth as 3.4.1988.

PW4 Constable Ved Parkash had deposited the special report to the superior officers, whereas PW5 ASI Ram Chander had scribed the formal FIR on receipt of ruqa sending special reports to the superior officers.

PW6 Constable Ram Saran had prepared the scaled site-plan of the place of occurrence, whereas PW7 ASI Ramphal had carried out the investigation in this case.

The investigation in this case has been conducted in a fair

and impartial manner. The Investigating Officer had no reason to involve the accused in this case wrongly, challan him falsely or to depose against him to secure his conviction.

The plea taken up by the defence that there was a love affair between the prosecutrix and the accused and the prosecutrix had gone with him of her own and as such offence of kidnapping is not borne out from the record. As already observed, the prosecutrix was a minor at the time of incident. The consent of a minor is immaterial, rather it comes out that the prosecutrix, who was a minor girl was taken out from the custody of her parents without their consent. The trial Court on analysis of evidence in light of the facts and circumstances of the case concluded that the guilt of the accused under Section 363 IPC only is proved, whereas it was not so as regards offence under Section 366 IPC. The trial Court came to the conclusion that the charge for the said offence is not proved since in the FIR there is no reference to the effect that kidnapping was for the purpose of compelling the prosecutrix to marry. The prosecutrix appearing as PW2 had stated that during the period she remained with the accused, no bad act was done by the accused, though she stated that the accused had compelled her to marry him, which was found to be a passing reference only. Therefore, accused was convicted for the offence under Section 363 IPC only and not for offence under Section 366 IPC.

The prosecution had successfully proved the charge against the accused beyond shadow of reasonable doubt. The judgment of conviction and order of sentence passed by the trial Court are well reasoned one, based upon proper appraisal and appreciation of evidence

and correct interpretation of law. There is no illegality or infirmity therein. The said judgment of conviction and order of sentence are upheld whereas appeal is found to be without any merit and the same is dismissed accordingly.

It is stated that appellant – accused namely Suraj Singh is on bail in terms of the orders passed by this Court. The bail order is cancelled. He is ordered to be taken into custody and made to undergo the remaining sentence. Necessary direction in that regard be issued to Chief Judicial Magistrate, Panchkula.

23.8.2018
Brij

(H.S.MADAAN)
JUDGE

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