IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Criminal Appeal S-1331-SB of 2005
Date of Decision: May 22, 2018

Hardeep Singh and another .....Appellants

Versus

State of Punjab ..... Respondent

CORAM : HON'BLE MR. JUSTICE T.P.S.MANN

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Present : Ms. G.K. Mann, Advocate
for the appellants.

Mr. Sarabjit Singh Cheema, Asstt. A.G., Punjab.

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T.P.S.MANN, J. (ORAL)

The appellants, namely, Hardeep Singh and Baldev Raj, alongwith Tarsem Singh, Chanan Singh, Roshan Lal and Ram Pal were tried for committing offences punishable under Sections 120-B, 364 and 368 IPC. Vide judgment and order dated 16.7.2005, learned Additional Sessions Judge (Adhoc) acquitted the co-accused of the appellants of all the charges against them. The appellants were also acquitted under Sections 368 and 120-B IPC. However, they were convicted under Section 364 IPC and sentenced to undergo rigorous imprisonment for seven years and to pay a fine of Rs.2,000/- each and in default of payment of fine, to undergo rigorous imprisonment for two months.

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Aggrieved of their conviction and sentence, the appellants filed the present appeal, which was admitted on 9.8.2005. Subsequently, vide order dated 20.4.2007, this Court suspended their sentences of imprisonment and ordered their release on bail during the pendency of the appeal.

The case of the prosecution, as has been noticed by the learned trial Court, is that complainant Radha Krishan, who originally belonged to Uttar Pradesh, had been residing at Amritsar for the last 3/4 years before the occurrence. He was working as Pujari in Sri Durga Mandir, Hussainpura. Duli Chand, who also hailed from Uttar Pradesh is husband of sister of wife of Radha Krishan, who too had been a Pujari in the same Mandir. On 27.1.2004 at 10.00 p.m., Duli Chand told complainant Radha Krishan that he was contacted by two persons in connection with Mahurat of factory and he was given Rs.100/- for the same. On 30.1.2004 at 4.00 pm., he came to know from Duli Chand that he had received telephone call from the person concerned with the Mahurat and he was to go with them and after doing Garur Path, he would come back. On that day at 6.00 p.m., he and Duli Chand were present in the Mandir, when two persons came in a car of white colour. The driver remained in the car and second person, who was wearing trouser, Bushirt and was Sikh gentleman of the age of 55 years came to the Mandir and requested Duli Chand to accompany him for the Mahurat of the

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factory. Duli Chand handed over keys of the Mandir to Radha Krishan, took Havan Kund with him and accompanied the men in the car. Duli Chand did not come back and he could not be traced out by Radha Krishan. Therefore, on 4.2.2004, Radha Krishan met SI Hardev Singh, who recorded his statement Ex.PA which was signed by him in token of its correctness. Ex.PA with endorsement Ex.PA/1 was sent to Police Station, where the FIR Ex.PA/2 was registered. SI Hardev Singh went to the Mandir and prepared site plan Ex.PB. Radha Krishan produced photo of Duli Chand, which was taken into possession vide memo Ex.PC. Duli Chand joined investigation on 16.3.2004 and statement made by him was recorded. It was revealed by Duli Chand that both the persons had taken him along on 30.1.2004 in a car. When the car was passing from near Bhandari Bridge, the accused took out revolver, placed its muzzle on his left flank, tied a cloth on his eyes and took him to some house, which was in a field. He was kept detained in a room and one of those persons was Baldev Raj. Two persons with covered faces used to come to him to serve meals and make him answer the call of nature. They used to say that Duli Chand and his brother had made enough money. He was having mobile No. 98156-41627 on which he was made by the persons to talk with his mother and husband of the sister of his wife in connection with their demand of Rs.10,00,000/-. He was kept detained there for ten days. On 10.2.2004, he was

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taken out of the room and his abductors had some discussions and made him to sit on the scooter and he was left near Fatehgarh Churian and they took from him his mobile. He came to Amritsar in a bus and went to Civil Hospital and after taking medicines, he went to his village in Uttar Pradesh to see his family members, who had been informed about his abduction. He came back from Uttar Pradesh on 15.3.2004. On 18.3.2004 SI Nirlep Singh took up the investigation. On 12.4.2004, IMEI number of mobile of Pandit Duli Chand through SSP Amritsar was sent to the concerned company through I.G., Intelligence to know as to where mobile set could be at that time. On 25.8.2004, reply was received that two mobile numbers 98147-79817 and 98148-81829 were used on the mobile of Pandit Duli Chand and mobile which was used was in the house of Roor Singh of Ugarail. Roor Singh and his son Ranjit Singh were joined in the investigation. SI Nirlep Singh came to know that mobile number 98147-79817 was of Chanan Singh son of Tarsem Singh of village Panjgarhian. On 26.8.2004, he went to the Behak of Chanan Singh where he and Tarsem Singh were hauled up. On 27.8.2004, Baldev Raj accused was arrested from village Bhuragil. Hardeep Singh was also arrested on that day when he was going in car No. PB-02-3637. The car was taken into possession. When Tarsem Singh was interrogated, he suffered disclosure statement that he had kept concealed mobile of Duli Chand in an iron trunk

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at his house and offered to get it recovered. His statement Ex.PG was recorded in the presence of Constable Malkiat Singh, which was thumb marked by him and, thereafter, he got recovered mobile phone Ex.P1, which was seized vide memo Ex.PH. On 31.8.2004, Mukhtiar Singh son of Chuhar Singh owner of the car was joined in the investigation and registration certificate Ex.P2 was produced by him was taken into possession. His statement was recorded. Roshan Lal and Ram Pal were also arrested. After the completion of his investigation, the challan was presented in the Court of Ilaqa Magistrate. Copies of the documents were supplied to the accused.

After commitment of the case to the Court of Sessions, the appellants and their co-accused were charged for the various offences, as mentioned above, to which, they pleaded not guilty and claimed trial.

In support of its case, the prosecution examined nine witnesses.

Radha Krishan PW1 had unfolded the detailed version of the FIR. He further stated that photo Mark A of Pandit Duli Chand was handed over by him to SI Hardev Singh.

Duli Chand appeared as PW2 and had supported the case of his abduction. He also stated that he was abducted by Baldev Raj and Hardeep Singh accused. He further stated that on 30.1.2004 Hardeep Singh remained sitting in the car and Baldev

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Raj came to him. He also deposed that while car was going at Bhandari Bridge, Baldev Raj took out revolver, placed the same on his left flank and closed his eyes with the cloth, which he was carrying. He further stated that he was detained by the accused for ten days and they continued to tell him that he was not to be released until and unless they were paid Rs.10 lacs by his family. He was made to talk to his mother on mobile. He was released on 10.2.2004 and brought on a scooter to Fatehgarh Churian by Tarsem Singh and Chanan Singh, accused.

PW3 Mukhtiar Singh deposed that he owned Maruti car bearing registration No. PB-02M-3635, which was being used by him as Taxi. Hardeep Singh used to take his car on hire from him. On 30.1.2004, his car was taken by Hardeep Singh for one day, which was not returned on 1.2.2004. On 26.8.2004, also he hired his car for 2/3 days and later on he came to know that the same was seized by the police. The registration certificate of the said car was produced by him before the police.

Investigation part of the case was brought on record by the prosecution by examining PW5 ASI Balraj Singh, PW6 ASI Hardev Singh and PW8 Inspector Nirlep Singh. The prosecution also examined PW7 Kulwant Kaur, Clerk to D.T.O., Office, Jalandar who deposed that the car bearing registration No. PB-02-M-3635 was in the name of Mukhtiar Singh. According to the prosecution, Mangal Singh heard the accused talking to

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each other about the abduction of Duli Chand. However, said Mangal Singh stepped into the witness box as PW9 but did not support the prosecution case.

When examined under Section 313 Cr.P.C. all the accused denied the circumstances put to them. Their version was that they were falsely implicated in the case.

As mentioned above, learned trial Court convicted and sentenced the appellants under Section 364 IPC.

After hearing learned counsel for the parties and on going through the record, this Court finds that on 30.1.2004, PW2 Duli Chand was abducted by the accused in a car. When the car was passing the Bhandari bridge, the accused took out a revolver, placed the same on his left flank and closed his eyes with a cloth. They took him to some house, which was in a field, where he was kept detained in a room. One of those persons was Baldev Raj appellant. Two persons with muffled faces were deputed for serving meals to him and to enable him to answer the call of nature. Thinking that Duli Chand had enough money, demand of ransom was also made. Duli Chand was kept confined for ten days. Thereafter, he was left near Fatehgarh Churian. He came to Amritsar in a bus and went to the Civil Hospital. After taking his medicines, he went to his village in Uttar Pradesh to see his family members. From Uttar Pradesh, he returned on 16.3.2004 and his statement was, thereafter, recorded. The

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defence did not challenge the testimony of PW2 Duli Chand regarding his visiting Uttar Pradesh. As such, it cannot be said that there was a long delay in Duli Chand making statement before the police.

The testimony of PW2 Duli Chand is duly corroborated by PW1 Radha Krishan. He was also cross-examined by the defence at length but no material could be brought on record from which it can be inferred that his testimony was not worthy of reliance.

The investigation part of the case further proved the complicity of the appellants. As such, no case is made out for any interference in the conviction of the appellants under Section 364 IPC.

As regards the quantum of sentence, it may be noticed that the appellants are facing the agony of criminal prosecution for the last more than fourteen years. Though Duli Chand was kept in confinement for more than 10 days but no injury was inflicted upon him by any of the accused.

As per the custody certificates produced by the learned State counsel, Hardeep Singh appellant has already undergone total sentence, including remission, of four years and twenty seven days whereas Baldev Raj appellant has undergone four years and two days. None of them is stated to be involved in any other case excepting one case under the Excise Act against

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Baldev Raj appellant. There were two more cases against Baldev Raj appellant but he already stood acquitted in them.

Taking into consideration the totality of the circumstances, this Court is of the view that the appellants, who are on bail for the last more than eleven years need not be sent behind the bars, once again, for undergoing their remaining sentences of imprisonment. Ends of justice shall be suitable met, if their substantive sentences of imprisonment are reduced to the one already undergone by them.

Resultantly, the conviction of the appellants under Section 364 IPC is upheld. Their substantive sentences of imprisonment are reduced to the one already undergone by them. However, the fine of Rs.2,000/- imposed upon each of them is enhanced to Rs.20,000/- each. The entire amount of fine be deposited by them in the Court of Chief Judicial Magistrate, Amritsar within three months from today, failing which, they shall undergo rigorous imprisonment for six months each.

The appeal is, accordingly, disposed of.

May 22, 2018 **(T.P.S. MANN)**
amit rana **JUDGE**

Whether reasoned/speaking Yes/No

Whether reportable Yes/No

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