

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

CRA-S-587-SB-2004 (O&M)
Date of Decision: February 28, 2018

Rakesh Kumar

..Appellant(s)

Versus

State of Punjab

..Respondent(s)

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Ms. Vijay Sharma, Advocate
for the appellant.

Mr. Rahul Rathore, DAG, Punjab.

ANITA CHAUDHRY, J.

This appeal has been filed by the appellant assailing the orders of conviction and sentence vide which he has been sentenced to undergo rigorous imprisonment for a period of 10 years along with a fine of Rs.5,000/-. In default of payment of fine, he was to further undergo rigorous imprisonment for a period of two years.

Briefly stated the facts are that the daughter of Jatinder Singh was missing from the house on 04.03.2002. The complainant mentioned that he suspected that Rakesh Kumar son of Phool Chand who was working as a mechanic in a television shop had kidnapped/allured his daughter. His daughter was stated to be 16 years old. He also mentioned that he was out of station and came to know on his return. The incident was reported on 07.03.2002. The victim returned on 27.03.2002. The accused was also arrested the same day.

The statement of the victim was recorded and Section 376

IPC was added. The girl was medically examined and challan was presented.

Charge was framed under Section 363, 366-A, 376 IPC to which accused pleaded not guilty and claimed trial.

The prosecution examined 11 witnesses.

The trial Court found that the girl was 17 years and 9 months old and since she had been moving alongwith the accused to different places using public transport. Considering the medical record, it recorded acquittal of the accused under Section 376 IPC. As the girl was under 18 years of age the accused was convicted under Section 363, 366-A IPC.

The submission on behalf of the appellant is that there could be no conviction under Section 366-A IPC and a reading of the Section itself would show that there has to be another person involved and only then it would be complete and there are no such accusations or evidence and the trial Court had erred by convicting the appellant under this Section.

Counsel further submits that the girl was mature enough to understand everything and had left the house on her own as she was having an affair with the appellant and it was a case of elopement and not kidnapping, therefore, Section 363 IPC was not made out. It was urged that the prosecution had not led any evidence to show the document produced at the time of admission in the school records and if the ossification test had been done, the true picture would have appeared and the girl was a consenting party. Reliance was placed upon

***Bhagwant Singh Vs. State of Punjab 2004(1) RCR (Criminal) 719,
Balwan Singh Vs. The State of Haryana 2010(3) RCR (Criminal) 734,
Parvati Vs. State of Haryana 2013(3) RCR (Criminal) 315, Subeg
Singh and others Vs. State of Punjab 2015(1) RCR (Criminal) 636,
Dharmender and others vs. State of Haryana 2010(3) RCR (Criminal)
179 and Baldev Kumar Vs. State (Chandigarh Administration)
2014(2) RCR (Criminal) 588.***

The counsel urges that as per the custody certificate the total sentence including remission is 4 years and 9 months though the actual custody undergone was 2 years and 7 months and the accused was 20 years old at that time and if the argument does not find favour then the sentence be reduced to already undergone.

The submission of the State counsel is that the girl was under 18 and though prior to the amendment in Section 376 IPC, the age was 16 and the occurrence in this case had taken place in 2002. The State counsel supports the judgment.

Section 363 of the Indian Penal Code reads as under:-

Section 363 in The Indian Penal Code

363. Punishment for kidnapping.—Whoever kidnaps any person from or from lawful guardianship, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Section 361 IPC defines the offence of kidnapping from lawful guardianship that is the minor below the age of 18, if a female. The provisions of law are clear that when a minor is taken out of the lawful guardianship without the consent of the guardian then the

offence under Section 363 IPC is made out and age is relevant and it has to be seen as to what is the evidence led by the prosecution and the evidence led by the other side to refute it.

The prosecution has examined Manohar Singh PW-7 who had proved the certificate Ex.PW7/A. He had stated that the certificate was issued by the Punjab School Education Board and it was signed by him and the date of birth recorded is 07.05.1984. No suggestion had been given to any of the witnesses that the girl was over 18 years of age. The accused also did not lead any evidence nor had asked for any ossification test probably because the date indicated in the Board certificate was not disputed. The girl was under 18 years of the age and she had been taken out from the lawful guardianship without the consent of the guardian, therefore, the appellant was rightly convicted under Section 363 IPC.

So far as Section 366-A IPC is concerned, the prosecution was required to prove that the girl had been procured/kidnapped knowing that she would be forced to illicit intercourse with another person. No evidence was led by the prosecution nor there was involvement of any other person. The girl had not been handed over to another person, therefore, the trial Court had erred by convicting the appellant under Section 366-A IPC and that finding has to be set aside.

Coming to the quantum of sentence, the appellant had actually undergone 2 years, 7 months and 12 days of custody before he was released on bail. The incident is of 2002. Considering the circumstances, the sentence is modified and is reduced to already undergone.

With this modification alone the appeal is dismissed.

February 28, 2018
Sunil

(ANITA CHAUDHRY)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No