

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

**Criminal Appeal S-335-SB of 2005
Date of Decision: February 2, 2018**

Naresh Kumar and others

.....Appellants

Versus

State of Haryana

.....Respondent

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

Present : Mr. Aman Chaudhary, Advocate
for the appellants.

Mr. Pramjeet Singh, Asstt. A.G., Haryana.

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

The appellants, nine in number, alongwith Naresh Kumar son of Dhani Ram were tried for committing offences punishable under Sections 147/323/364/149 IPC. Vide judgment and order dated 21/27.1.2005, learned Additional Sessions Judge (Fast Track Court), Bhiwani acquitted Naresh Kumar son of Dhani Ram of the charges against him. The appellants were also acquitted under Section 364 IPC. Instead, they were convicted under Sections 363/149 IPC and sentenced to undergo rigorous

imprisonment for three years and to pay a fine of Rs.1,000/- each and in default of payment of fine, to further undergo simple imprisonment for six months. They were also convicted under Section 147 IPC and sentenced to undergo rigorous imprisonment for one year and to pay a fine of Rs.500/- each and in default of payment of fine, to further undergo simple imprisonment for three months. They were further convicted under Sections 323/149 IPC and sentenced to undergo rigorous imprisonment for six months and to pay a fine of Rs.500/- each and in default of payment of fine, to further undergo simple imprisonment for three months. All the sentences were ordered to run concurrently. The period already undergone by them was ordered to be set off against the sentences awarded to them. The fine amount was deposited by them there and then.

Aggrieved of their conviction and sentence, the appellants filed the present appeal, which stands admitted and the appellants are presently on bail.

According to the prosecution, on 27.10.1998 at about 11.00 p.m., SI Dalip Singh alongwith other police officials was present at Bus Stand of village Behal where complainant Jag Roshan appeared and submitted application that on 27.10.1998 at about 6.15 p.m., he was coming from village Isharwal to his village Rodha. His cousin Naresh alongwith his two friends,

namely, Suresh and Roshan were going from village to Pulia situated at Loharu road. A blue coloured Mahendera Jeep wherein 7/8 boys were sitting, came and kidnapped his cousin Naresh. When the friends of Naresh raised hue and cry, he alongwith 5/7 persons, who were present at the bus stand, reached at the place of occurrence. In the meantime, a jeep which was driven by Dalip Singh came from the village side. They followed the jeep of assailants but could not trace it out. There was a quarrel between his cousin Naresh and Ramesh son of Dariya Singh, resident of village Sahalewal. So, complainant suspected that Naresh had been kidnapped by Ramesh and his associates.

It is also the case of the prosecution that on the basis of aforementioned written complaint submitted by the complainant, FIR No. 112 dated 28.10.1998 under Sections 147/323/364/149 IPC was registered at Police Station Behal. During the investigation of the case, SI Dalip Singh recorded the statements of the witnesses under Section 161 Cr.P.C. The accused were arrested. Upon completion of investigation and presentation of challan followed by commitment of the case to the Court of Sessions, the appellants and their co-accused Naresh Kumar son of Dhani Ram were charged for the aforementioned offences, to which, they pleaded not guilty and claimed trial.

In support of its case, the prosecution examined Dr. N.C. Gaba as PW1, Dr. Krishan Kumar as PW2, Veer Shakti Singh, Draftsman as PW3, Constable Amar Singh as PW4, ASI Randhir Singh as PW5, SI Jagdish Parsad as PW6, Naresh as PW7, Jag Roshan complainant as PW8, SI Kartar Singh as PW9, Vinod Kumar as PW10 and Suresh Kumar as PW11.

When examined under Section 313 Cr.P.C., the appellants and their co-accused denied all the allegations levelled against them. However, in their defence, they did not examine any evidence.

As mentioned above, the learned trial Court convicted and sentenced the appellants whereas their co-accused Naresh Kumar son of Dhani Ram was acquitted of the charges against him.

After hearing learned counsel for the parties and on going through the record, this Court finds that PW7 Naresh who was the one kidnapped by the accused, has testified about the minute details of the occurrence. His testimony is fully corroborated by PW8 complainant Jag Roshan. Both of them were cross-examined at length but the defence could not bring any material on the record from which it could be said that the appellants have been falsely implicated in the case. The ocular account of the occurrence is duly corroborated by PW2

Dr. Krishan Kumar, who had medico-legally examined injured Naresh. PW1 Dr. N.C. Gaba, who had radiologically examined Naresh, proved x-ray report Ex.PA, as per which, all the injuries found on the person of Naresh were found to be simple in nature. In view of the above, no case is made out for any interference in the impugned judgment of conviction passed by the learned trial Court.

As regards the quantum of sentence, it may be noticed that the appellants have been facing the agony of criminal prosecution for the last more nineteen years. All of them were in the age group of 19 to 24 years at the time of the occurrence. The injuries caused by them to PW7 Naresh were found to be simple in nature. As per the custody certificates already brought on record by the learned State counsel, none of the appellants is either involved or convicted in any other case. The offence under Section 363 IPC entails punishment upto seven years though in the present case, learned trial Court has awarded a sentence of three years. The Court has also been informed by learned counsel for the appellants that some of them are in government service.

Taking into consideration the totality of the circumstances, this Court is of the view that the substantive sentence of imprisonment imposed upon the appellants can be

set aside. Instead, they can be ordered to be released on probation.

Resultantly, the conviction of the appellants for the various offences, as recorded by the learned trial Court, is upheld. Their substantive sentences of imprisonment are set-aside. Instead, the appellants be released on probation subject to their furnishing of bonds to the satisfaction of the Chief Judicial Magistrate, Bhiwani to keep peace and be of good behaviour for a period of three years and to receive sentence as and when called upon to do so. The fine imposed upon the appellants which they have already deposited, shall be treated as compensation to be disbursed in favour of complainant Jag Roshan.

The appeal is, accordingly, disposed of.

February 2, 2018

amit rana

(T.P.S. MANN)
JUDGE

Whether reasoned/speaking	Yes/No
Whether reportable	Yes/No