

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

CRA-S-2890-SB-2016

Date of Decision:20.01.2018

Munish Kumar

.....APPELLANT

Vs.

State of Punjab

.....RESPONDENT

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr.Anand Vardhan Khanna, Advocate for
Mr.Amaninder Preet, Advocate for the appellant.

Ms.Anju Arora, Addl. Advocate General, Punjab.

RITU BAHRI J. (ORAL)

This appeal has been preferred against the judgment of conviction and order of sentence dated 02.06.2016, vide which the appellant has been held guilty under Sections 363, 366 of Indian Penal Code (for short, IPC). He was sentenced to undergo RI for 05 years under Section 363 IPC and to pay fine of Rs.50,000/- and in default of payment of fine to further undergo RI for 06 months. He was further sentenced to undergo RI for 05 years under Section 366 IPC and to pay fine of Rs.50,000/- and in default of payment of fine to further undergo RI for 06 months. However, he was ordered to be acquitted of the charges framed against him under Section 366-A IPC and Section 4 of the Protection of Children from Sexual Offences Act, 2012. Both the sentences were ordered to run concurrently.

Brief facts of the case are that on 02.07.2015, ASI Malwinder Singh along with other police officials was present in the areas of village Karheri in connection with Patrolling, where complainant Veena along with her relative met the police party and got recorded her statement narrating therein that she used to perform work in the houses of the people. She was two daughters and a

son. She saw Munish Kumar roaming around her house many times. She stopped him and informed that father of Munish Kumar in this regard. On 25.06.2015, she along with her son had gone to her in laws village Hassi Haryana while both her daughters were at home. She returned home in the evening at about 5.30 PM and asked her younger daughter to bring milk. Her daughter brought the milk and after consuming it, they all went to sleep. The complainant further narrated that her daughters had gone some where and did not return home. She searched for them but could not succeed. She has an apprehension that her daughters were abducted by Munish Kumar by alluring them.

On the basis of his statement, an FIR for offences punishable under Section 363/366-A IPC was registered and investigation commenced. ASI Malwinder Singh during the course of investigation, visited the house of the complainant and prepared the rough site plan. Statements of the witnesses under Section 161 Cr.P.C were also recorded. Search of the accused was conducted but he could not be traced. On 10.07.2015, ASI Malwinder Singh along with his companions reached in front of District Courts, Patiala for search of the accused. There one Kulwant Singh, a relative of complainant Veena joined the police party. Accused Munish Kumar along with both the girls were found in Baradari Garden near Kali Mata Mandir, Patiala. Accused was arrested and his arrest memo and personal search memo were prepared. The recovery memo of both the girls was also prepared and they were produced before the SHO, Police Station, Sadar, Patiala. The complainant was called to the police station and the girls and the girls were handed over to her. Accused was got medically examined and on the next dated i.e. on 11.07.2015, both the girls were got medically examined. On 13.07.2015, Lady Constable Sarabjit Kaur handed over

two sealed boxes and tow sealed envelops to SI Balwinder Kaur, which were taken into police Station through recovery memo. On 15.07.2015, the girls were produced before the learned Area Magistrate, where their statements under Section 164 Cr.P.C. were recorded. On 28.07.2015, opinion from the concerned medical officer regarding commission of rape was obtained. Further, investigation was carried out and on completion of the investigation, challan against the accused was prepared in the Court.

On appearance of the accused in the Court, copies of documents as envisaged under Section 207 Cr.P.C. were supplied to the accused, free of costs. As the offences punishable under Section 376 IPC and Section 4 of the Protection of Children from Sexual Offences Act, 2012 were exclusively triable by the court of Sessions, the case was committed for trial by the learned Area Magistrate to the Court of the learned Sessions Judge, Patiala.

After hearing the learned Addl. PP for the State, learned defence counsel and after going through the documents on the file, a prima facie case under Sections 363, 366-A, 376 of the Indian Penal Code and Section 4 of the protection of Children from Sexual Offences Act, 2012 was made out against the accused and he was charge sheeted. Accordingly, to which he pleaded not guilty and claimed trial.

In order to prove its case, the prosecution examined the prosecutrix as PW1, her sister as PW2, complainant Veena, mother of the prosecutrix as PW-2, Kulwant Singh as PW-4, HC inderjit Singh as PW-5, Dr. Amit Singla as PW-6, Dr. Amita as PW-7, Dr. Neha Bansal as PW-8, Dr. Santosh as PW-9, Bhupinder Singh, Lab Assistant from Government Senior Secondary School, Bahadurgarh as PW 10, SI Balwinder Kaur as PW-11, ASI Malwinder Singh, Investigating Officer as PW 12, HC Rajesh Kumar as PW13, HC Sarabjit Kaur

as PW14 and thereafter learned Additional Public Prosecutor closed the prosecution evidence after tendering into evidence report of chemical examiner.

After closure of the prosecution evidence, the incriminating evidence appearing in the prosecution evidence was put to the accused in his statement recorded under Section 313 Cr.P.C. which he denied and pleaded false implication.

After hearing learned counsel for the parties and going through the record as well as the judgment passed by the trial Court, the appeal deserves to be allowed.

As per deposition of elder prosecutrix PW-1 She had an altercation with her mother, who threw her and her sister out of the house. They kept sitting outside till 11.25 P.M, but their mother did not call them inside. They they went to the house of her friend Raj Kamal and spent the night there. Next day, they went to the house of a friend of Munish Kumar at Bahadurgarh. Munish Kumar came there and they they along with Munish Kumar went to house of his sister at Factory Area, Patiala. As the landlord did not let them stay there, they also went to railway station, Patiala from where they went to Rajpura. They spent the night at railway station, Rajpura, Next day, they boarded the train for Anandpur Sahib. They stayed in the Gurudwara Sahib at Anandpur for one day and thereafter they went to Naina Devi and stayed there for 2/3 days and she performed marriage with Munish Kumar at Naina Devi. Then they returned to Anandpur Sahib.

The testimony of the younger prosecutrix i.e. PW-2 is almost on the same lines. Trial Court has taken the statement of mother of the prosecutrix Veena as PW-3. She deposed that she have three children, the elder one is her daughter Kajal and her date of birth is 29.05.1998 and next to her is Sakshi

(second prosecutrix), she was born in May 2003. Next to her is her son Shamneet Kumar who was born in the year 2009. PW-3 Veena further deposed that on 25.06.2015 when she returned from Hansi after doing her work, she had sent to her daughters to bring milk. When they came back after taking milk, she told them to provide milk so that after consuming the milk. Then after drinking the milk which was given by her daughters, her mother fell asleep. Thereafter both the prosecutrix, namely, Kajal and Sakshi went away with Munish according to their plan. Earlier Munish Kumar was seen roaming in the street and she had asked him not to roam in the street. She had also approached Harpreet Kaur, MLA of Ghanaur who had rebuked Munish Kumar. She had also approached PP Incharge Bhupinder Singh to take action against Munish Kumar who had made a call to Munish Kumar and rebuked him and assured her that he will not harass to her daughter in future. Then she alongwith Kulwant Singh and her relative searched for my daughter but her daughters were not traced. The she informed the police party. In her cross-version, she admitted that on 25.06.2015, she did not report regarding the missing of her daughters to Gram Panchayat of Vidya Nagar from 25.06.2015 to 02.07.2015.

From the deposition of PW-1 i.e Kajal and PW-2, one thing is more clear after 25.06.2015 till 02.07.2015 almost 08 days, she had not reported the matter to the police. It is further clear from the deposition of PW-1-Kajal that she had solemnized marriage with Munish Kumar at Naina Devi where they stayed for two/three days. PW-1 Kajal has also stated in detail that after solemnizing marriage they returned to Ananapur Sahib where Munish Kumar worked at Gurudwara Sahib and with the money they bought clothes. Then they went to Patiala where relatives saw them and call the police.

In her cross-examination, PW-1 stated that she had passed martic examination in the year 2014 from Sr. Secondary School, Bahaudurgarh and her younger sister Sakshi PW-2 was studying in Class 8th as per her deposition when she appeared.

The statement was given in the year 2016 and, therefore, the age of Kajal can be taken as 17 years, as stated by her and in her entire evidence, examination in chief and cross-examination, she has not stated anything that appellant-Munish Kumar had physically exploited her. Hence, the charges were rightly framed only for abduction under Sections 363 and 366 IPC. However, keeping in view that she was 17 years of age and had admitted that she has solemnized marriage with Munish Kumar, the intention of the appellant of abduction is not made out. Since she was below 18 years of age, he has been convicted as under:-

<i>Offence</i>	<i>Imprisonment</i>	<i>Fine</i>	<i>In default of payment of fine</i>
363 IPC	Rigorous imprisonment for five years	Rs.50,000/-	To further undergo RI for 6 months
366 IPC	Rigorous imprisonment for five years	Rs.50,000/-	To further undergo RI for 6 months

Dr. Amita, Sr. Resident, Department of Radiodiagnosis, Rajindra, Rajindra, Hospital, Patiala while appearing as PW-7 has also deposed that there were nothing abnormal was found on the examination of both the prosecutrix and as per the deposition of PW-8 Dr. Neha Bansal, Jr. Resident, Department of Radiodiagnosis, Rajindra, Rajindra, Hospital, Patiala, the age of the Kajal was between 17 to 19 years of age and that of Sakshi, her age was between 12 to 14 years of age.

Keeping in view the doctors' opinion, the age of Kajal was between 17 to 19 years and also keeping in view her deposition as PW-1, she had accompanied with the appellant-Munish Kumar with her own sweet will and solemnized marriage with him, the appeal is allowed and giving the benefit of 17 to 19 years age of Kajal, no case for abduction is made out. Accordingly, the appellant-Munish Kumar is acquitted of the charges framed against him.

(RITU BAHRI)
JUDGE

20.01.2018
Anjal

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