

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

CRA-S-578-SB-2014 (O&M)

Date of decision : 04.08.2018

Bikram Singh

...Appellant

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Lokesh Sharma, Advocate
for the appellant (Legal Aid Counsel)

Ms. Anju Arora, Addl. A.G. Punjab.

ANIL KSHETARPAL, J. (ORAL)

The appellant was convicted under Section 363 of the Indian Penal Code for enticing away a minor girl aged about 17 years and one month.

Although, the prosecution presented a charge under Sections 363, 366-A and 376 of the Indian Penal Code, however, the learned trial Court after examining the evidence and after noticing that the prosecutrix had been repeatedly changing her stand, acquitted the appellant under Sections 366-A and 376 of IPC. However, convicted the appellant only under Section 363 IPC.

The facts as noticed by the trial Court are extracted as under:-

“2. Brief fact of the prosecution case are that the present FIR was registered on the complaint of one Madan Singh

with the allegations that the complainant had one son and two daughters. His younger daughter i.e. prosecutrix (Name with-held) was aged about 17 years and her date of birth was 26.3.1994 and she was minor on 8.5.2011 (date when the statement of complainant was recorded by police). On 5.5.2011 at about 9.00 pm, he along with his family had gone to sleep after taking meal. At about 11.00 pm, when he and his wife woke up, they found that their daughter prosecutrix was not on her bed. He, his family members and relations tried to locate her but did not get any clue. On their enquiry, it came to their knowledge that Bikram Singh alias Vicky son of Rabbi Singh of their village had enticed away prosecutrix, on the pretext of marrying her. Earlier also said Bikram Singh had been chasing the prosecutrix. Due to prestige of their family, they themselves searched for the prosecutrix but they could not search her. With these allegations, FIR No.52 dated 8.5.2011 under Sections 363 and 366 IPC was registered against accused Bikram Singh. Subsequently, prosecutrix was found with accused Bikram Singh on 13.5.2011 at bus-stand, Nabha and her statement under Section 161 Cr.P.C. was recorded. On the basis of her statement offence punishable under Section 376 IPC was added to the list of offences.”

Learned trial Court after appreciating the evidence recorded as

under:-

“25. I have considered this argument advanced by learned counsel for accused and find merit in the same. On all the three occasions, prosecutrix had given a different account I of things which had happened to her. In her statement to the police under Section 161 Cr.P.C., she had stated that she had acquaintance with accused Bikram Singh for the last about one year and he had been asking her to get married to

him, thereby she was enticed by him and she met him on the Phirni of the Village on 5.5.2011. He asked her to run away from the house to solemnize Court marriage and on his asking, she herself went near his house at about 10.00 pm and from there he took her to his room where he had sex with her. Thereafter he took her to Nabha-Malerkotla road on the pretext of marrying her and thereafter they went to Gobindgarh via Rothi Bridge where she was kept in a room by accused Bikram Singh. On the other hand, in her statement under Section 164 Cr.P.C. recorded by Mrs. Manjinder Kaur, learned Judicial Magistrate Ist Class, Nabha on 14.5.2011, she had stated that she was known to accused for the last 1 ½ years. She used to call her on phone and he used to take her to his house. She used to go to his house during night and used to come back after an hour or two hour. About one month back accused Bikram Singh had called her to his house where he had sex with her for the first time. Parents of Bikram were interested in getting him married to some other girl but he disclosed these facts to her and asked her that he wanted to marry her. Thereafter she went with him on 5.5.2011 and they stayed in a room at Gobindgarh, where they had sexual relations. She had further stated that she had sexual relations with accused Bikram with her own free will and Bikram Singh had never forced her to enter into sexual relations with him. However, during her statement in the court and her further cross-examination, she had stated that said statement was given by her due to fear of accused Bikram Singh but it cannot be believed that she had given that statement due to force in the presence of Magistrate particularly in view of certificate issued by learned Magistrate in this regard. Moreover, it is not the case of prosecution that accused Bikram Singh was also present in the Court on 14.5.2011 when her statement

was recorded by the Magistrate.

26. *Further more, in her statement in the Court, she again completely changed her version and stated that she had no acquaintance with accused Bikram Singh but for the last about one year prior to occurrence accused Bikram Singh had been extending threats to her that he would kill her brother and father in case she did not accompany him and marry him. On 5.5.2011, accused came to her house and asked her to accompany him for getting married and also extended threats that in case she did not accompany him he would kill her brother and father. There upon she was taken to the house of accused where he committed rape upon her against her wish. Thereafter they went to Malerkotla road on foot from where they went to Gobindgarh via Rothi Bridge. In Gobindgarh, accused kept her in a room and had sex with her without her consent and against her will. Ultimately, accused Bikram Singh was arrested on 13.5.2011 from bus-stand, Nabha and she was recovered from his possession.”*

Learned counsel for the appellant has pointed out that the appellant was young man of 22 years and as per the findings arrived at by the trial Court which has not been challenged, prosecutrix and the appellant were known to each other. It has also come in evidence that both had run away from the house to solemnize the Court marriage. The prosecutrix remained with the appellant for 9 days. The appellant is stated to have undergone more than 1 year and 6 months of actual sentence.

Learned State Counsel has produced a old custody certificate dated 09.05.2014 which supports the arguments of the learned counsel for the appellant. The appellant was ordered to be released on bail vide order

dated 09.05.2014.

Keeping in view the age of the appellant and the findings arrived at by the learned trial Court which has not been challenged, this Court is of the considered view that the appellant has already suffered sufficiently for the offence committed by him. He has been convicted only on account of fact that the girl was below 18 years.

Keeping in view the totality of the facts and particularly noticing that the appellant is already on bail for more than 4 years, no useful purpose would be served in sending the appellant back to jail. Hence, while upholding the judgment of conviction and the sentence, the sentence awarded is reduced to already undergone.

The bail bonds submitted by the appellant shall stands discharged.

In view of the above, the present appeal stands allowed.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

04.08.2018

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No