

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

CRA-S-97-SB-2014

Date of decision:-19.7.2018

Yogesh @ Vikki and another

....Appellants

Versus

State of Haryana

....Respondent

CORAM : HON' BLE MR. JUSTICE H.S. MADAAN

Present : Mr.Ankit Gautam, Advocate
for the appellants.

Mr.Gaurav Bansal, AAG, Haryana.

H.S. MADAAN, J.

Accused Yogesh alias Vikki and Mamta faced trial by learned Additional Sessions Judge, Karnal, who vide judgment dated 11.12.2013 convicted them for an offence under Section 363 IPC and vide order of the even date they were sentenced to undergo rigorous imprisonment for a period of three years and to pay a fine of Rs.2,000/- each and in default thereof, to further undergo rigorous imprisonment for a period of one month each, whereas, they were acquitted for the offences punishable under Sections 366, 366-A, 120-B IPC and 7 of Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as *the Act*).

The accused-convicts – Yogesh alias Vikki and Mamta, who are appellants before this Court pray that the appeal be accepted,

the impugned judgment of conviction and order of sentence passed against them be set aside and they be acquitted of the charge framed against them.

Briefly stated, the facts of the case are that criminal machinery was set into motion by the complainant Satpal, who submitted an application at Police Station City, Karnal stating therein that on 13.2.2013 at about 9:00 a.m., his daughter (daughter name not being mentioned to conceal her identity and referred to as '*the victim*'), a student of 4th Class in Arya Samaj School situated near Police Station City, Karnal had gone to school for study but she did not return home after school hours were over; that they searched for her, but could not find her. On the basis of that application, formal FIR was registered for an offence under Section 365 IPC. The matter was investigated, during the course of which, the date of birth of the victim was found to be 4.8.2000. On 24.2.2013, accused Yogesh @ Vikki was arrested from the house of Ms.Sabina wife of Fateh Mohammad, resident of Jogiwala Mohalla, Kharthal Town, District Alwar (Rajasthan). Such accused had taken a portion of that house on rent. The victim was recovered from his possession. The offences under Sections 363 and 366-A IPC were added and offence under Section 365 IPC was deleted. The statement of victim was recorded under Section 164 Cr.P.C. by the Area Magistrate, wherein she stated that accused Mamta instigated her to contract a Court marriage with accused Yogesh alias Vikky. Accused Mamta was arrested in this case on 25.2.2013.

After completion of investigation and other formalities, challan against the accused was prepared and filed in the Court of

learned Chief Judicial Magistrate, Karnal.

On presentation of challan in the Court of learned Chief Judicial Magistrate, Karnal, he supplied copies of documents relied upon in the challan to the accused free of costs as provided under Section 207 Cr.P.C. Then finding that the offence under Section 366-A IPC is exclusively triable by Court of Sessions, learned Chief Judicial Magistrate, Karnal committed the case to the Court of learned Sessions Judge, Karnal vide order dated 6.4.2013 from where it was entrusted to the Court of learned Additional Sessions Judge, Karnal.

On receipt of case in the Court, learned Additional Sessions Judge, Karnal, observing that prima facie charge for offences under Sections 120-B, 363, 366 and 366-A read with Section 120-B IPC and Section 7 of the Act was disclosed against accused, they were charge-sheeted accordingly, to which, they pleaded not guilty and claimed trial.

During the course of its evidence, the prosecution examined as many as thirteen witnesses as per details below:

PW1 prosecutrix – victim deposed that on 13.2.2013 at about 9:00 a.m. while she was going to her school at Choura Bazar, Karnal and reached near Ram Dev Temple, Karnal then accused Yogesh @ Vikki met her telling that he would take her to his wife Mamta near Namaste Chowk, Karnal and then he after enticing her giving her allurements of providing new clothes and other articles, took her to Gharaunda in a tempo from there to Railway Station Gharaunda and then to Rajasthan by a train, where he took a room on rent and confined her there. She stated that Vikki provided her food to her in that room and on the next day, her father along with the police reached there and took

her and accused to Karnal. She stated that Mamta was with her when accused took her to Rajasthan. She further deposed regarding making statement under Section 164 Cr.P.C.

PW2 Satpal also deposed on those lines stating that on 13.2.2013, his daughter (victim) was aged about 12 ½ years; that she had gone to school but did not return; that they traced for her but in vain. That accused Vikki and his wife Mamta were residing in their neighbourhood and they were also missing from their house from 13.2.2013; then he informed the police and on 23.2.2013 accompanied the police to Rewari from where his daughter was recovered from the possession of accused; that the police had got the victim medico legally examined and got her statement under Section 164 Cr.P.C. recorded; that the custody of his daughter was handed over to him thereafter.

PW3 Constable Sushila, who on 25.2.2013 was the member of the police party deposed regarding her part.

PW4 Constable Dharambir, who was member of the police party on 24.2.2013 testified regarding what had been done by the Investigating Officer in his presence.

PW5 Ms.Suresh Rani, Headmistress, R.D. Aarya Girls High School, Karnal proved school certificate of the victim and photocopy of attendance register.

PW6 Dr.Nipun Kalra, who on 25.2.2013 on police request had medico legally examined the accused Yogesh @ Vikki proved carbon copy of MLR giving opinion that there was nothing to suggest that he was incapable to perform intercourse.

PW7 Lady Constable Beero Devi, in whose presence the

victim had been recovered from the accused deposed in that regard besides the other facts within her knowledge.

PW8 Inspector/SHO Naib Singh, who had filed the challan in the Court on completion of investigation on 15.3.2013 deposed about the same.

PW9 SI Dalip Singh, who on 14.2.2013 was working as SHO of Police Station City, Karnal deposed regarding complainant Satpal submitting an application regarding missing of his daughter, the victim, on the basis of which formal FIR was recorded.

PW10 Dr.Prem Lata testified that on 24.2.2013 on a police applicaiton, she had medico legally examined the victim vide MLR, copy of which being Ex.P14.

PW11 ASI Gurnam Singh tendered in evidence his affidavit Ex.P15.

PW12 SI Satwinder Singh, who had carried out the investigation in this case after registration of the FIR deposed in that regard. He testified regarding what had been done by him with regard to investigation of the case.

PW13 Ms.Rekha, the then learned Judicial Magistrate Ist Class, Karnal, who had recorded statement of the victim under Section 164 Cr.P.C. deposed about that.

With that the prosecution evidence got concluded.

Statements of accused were recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing against them were put to them but they denied the allegations contending that they are innocent and had been falsely involved in this case.

Accused did not lead any evidence in defence.

After hearing arguments, learned trial Court convicted and sentenced accused Yogesh alias Vikki and Mamta as mentioned above, which left them aggrieved and they have filed the present appeal.

I have heard learned counsel for the appellants – accused - convicts, learned Assistant Advocate General for the State of Haryana besides going through the record.

The prosecution had successfully proved its charge against the accused for the offence under Section 363 IPC to the effect that they had kidnapped the victim, who was aged about 12 ½ years taking her to Rajasthan by removing her from lawful guardianship of her father Satpal on 13.2.2013. It needs to be mentioned here that the accused had in fact kidnapped the victim and she was got recovered from their possession. The witnesses examined by the prosecution had no motive to depose falsely in favour of prosecution and against the accused. They stood their cross-examination well and their credibility could not be shaken on any point.

The judgment of conviction and order of sentence passed by the trial Court are well reasoned one, based upon proper appraisal and appreciation of evidence and correct interpretation of law. There is no illegality or infirmity therein. Further, the appellants/accused have been sentenced to undergo rigorous imprisonment for a period of three years, which cannot be said to be on higher side keeping in view the gravity of the offence. The said judgment of conviction and order of sentence are upheld whereas appeal is found to be without any merit and the same is dismissed accordingly.

It is stated that appellants – accused namely Yogesh @ Vikki and Mamta are on bail in terms of the orders passed by this Court. The bail order is cancelled. They are ordered to be taken into custody and made to undergo the remaining sentence. Necessary direction in that regard be issued to Chief Judicial Magistrate, Karnal.

19.7.2018
Brij

(H.S.MADAAN)
JUDGE

Whether speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No