

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

**CRA S-56-SB of 2004
Date of Decision: January 29, 2019.**

Lakhwinder Singh @ Lakha

.....Petitioner

Versus

State of Punjab

.... Respondent

CORAM : HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present : Mr. Gurveer Sidhu, Advocate
as amicus curiae for the appellant.

Mr. Rakeshinder Singh Sidhu, AAG, Punjab.

FATEH DEEP SINGH, J. (Oral)

The appellant/convict Lakhwinder Singh @ Lakha was tried in case bearing FIR 109 dated 16.08.2002 under Sections 363, 366 and 376 IPC pertaining to Police Station Civil Lines, Batala. The Court of learned Addipotional Sessions Judge (Adhoc) Fast Tract Court, Gurdaspur through the impugned judgment and order of sentence dated 09/10.12.2003 though acquitted the appellant for the offence under Section 376 IPC and found him guilty for the commission of offence under Section 366 IPC and sentenced to undergo following

sentence:-

<i>Lakhwinder Singh @ Lakha U/s 366 IPC</i>	<i>To undergo rigorous imprisonment for a period of 3 years and to pay a fine of Rs.1000/- or in default to undergo further R.I. for a period of two months.</i>
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The same are being assailed and impugned before this Court in this appeal.

Heard Mr. Gurveer Sidhu, Advocate, as amicus curiae for the appellant and Mr. Rakeshinder Singh Sidhu, AAG, Punjab for the respondent-State and perused the records.

The necessary facts that need to be highlighted for adjudication of the case are that the present case was got registered by Salamat Masih complainant, who works as priest in Salvation Church. He has alleged that his daughter who was student of 10+1 class was studying and residing in hostel of the Salvation Army School Batala and was then aged around 17 ½ years . The complainant states further that he was living in Dera Baba Nanak and when on 21.07.2002 his daughter did not return, he tried to trace her and came to know that the accused induced his daughter with a bad intention and has taken her away. On the basis of which a complaint was made leading to the registration of the present FIR. It was through the course of investigation on 19.08.2002, the accused left the girl at the bus stand and she returned to her parents. The complainant disclosed that on 21.07.2002 accused had come to her hostel at Batala and told her that

her mother was unwell and asked her to accompany him to Gurdaspur and instead of taking her to Gurdaspur, it is alleged that the accused took her to Amritsar and, thereafter, to Bombay in a train. It is further stated by the girl that after a day at Bombay, they returned back to Amritsar where they stayed and then came to Batala where the accused defiled against her wishes. The girl was also medically examined.

Upon gathering of essential evidence, recording of statements and completion of investigation, challan against the accused was presented in the Court. The accused was charge sheeted for commission of offence under Sections 366 and 376 IPC to which he pleaded not guilty and claimed trial.

At the trial, the prosecution to romp home the charges examined PW1 Dr. Arvinder Singh, who conducted ossification examination of the girl to prove her age and on the basis of documents Ex.PA to Ex.PA/4 found her to be between 18 to 19 years. PW2 Dr. Tajinder Kaur, Medical Officer who conducted medico legal examination of the girl and proved the same as Ex.PB, report of chemical examination as Ex.PC and her opinion Ex.PC/1 based on application Ex.PD and opined that the possibility of sexual intercourse cannot be ruled out.

The prosecutrix/victim testified as PW2 and she reiterated the allegations. The prosecution further examined PW3 Salamat Masih complainant/father of the girl, who brought about the allegations

against the accused. PW4 Constable Amarjit Singh tendered his affidavit Ex.PW4/A followed by PW5 MHC Surjan Singh and PW6 Constable Sawinder Singh also tendered their affidavits as Ex.PW5/A and Ex.PW6/A, respectively. Thereafter, ASI Balraj Singh as PW7 proved the statement of the complainant Ex.PE on the basis of which after endorsement Ex.PE/1, FIR Ex.PE/2 was got registered as well as the rough site plan of the hostel from where the girl had disappeared as PW7/A and lastly PW8 SI Surinder Kumar, the Investigating Officer detailed his investigation and in the process proved documents, such as recovery memo Ex.PW8/A and arrest memo Ex.PW8/B and recovery of articles, such as, shirt as Ex.P1, Salwar as Ex.P2, Chunni as Ex.P3 and Bra as Ex.P4.

After tendering the chemical examination report Ex. PX, the prosecution closed its evidence.

The accused was put the entire incriminating evidence oral as well as documentary at the trial under Section 313 of the Code of Criminal Procedure, wherein he denied the allegations and in his defence did not lead any evidence. That is how the impugned findings have come about.

Appreciating the submissions of the counsel for the appellant Mr. Gurveer Sidhu and learned State counsel Mr. Rakeshinder Singh Sidhu, AAG, Punjab and on perusal of the records. It is the case of the prosecution that the girl has disappeared

from the hostel in Batala, District Gurdaspur on 21.07.2002 and came back on her own to her home on 19.08.2002. Thus, for almost one month had remained away. The girl in her examination-in-chief states that her date of birth as per the certificate was 20.08.1984 and, thus, on the day of the occurrence, i.e. 21.07.2002, she is almost 18 years of age and, therefore, few days from being a major. Further in the light of what has been submitted by the learned amicus curiae for the appellant accepts that from Batala they had gone to Amritsar where they did not stay and, thereafter, had gone to Bombay by train. She further admits in the cross-examination that there were several other passengers including police guard, thus, the conduct of the girl in not raising any alarm in not informing the police, who was present in the train are matters which have an ill effect on the prosecution version and stand. Furthermore, as has been the case of the girl that from Bombay they came back to Amritsar on the same day does not appear to be plausible keeping in view the relative distance between the two places and the fact that the girl claims to have travelled by train and her studied silence throughout this period rather puts her credibility at stake. The further cross-examination of the girl shows that she accepts that for 2/3 days she stayed at the house of the accused in Maan Nagar Batala and rather her stand in her cross-examination that she did not make any statement to the police but the police had written her statement at their own rather upsets the apple cart on which the prosecution has tried to

take a ride. The most distressing feature for the prosecutrix as argued is that when she admits in her cross-examination that she was got recovered by her parents with the help of the police at Amritsar on 18.08.2002, when it is the stand of the prosecution that she returned on 19.08.2002 and that her statement was never recorded by the police and further the cross-examination of the complainant as PW3 shows that when he was confronted with subsequent improvements in his cross-examination, he has stated that he has not got recorded such a thing to the police who might have written it on their own and it was on the basis of suspicion the name of the accused was written. The learned State counsel with all fairness concedes at bar that there is no proved document on the record that the girl was a minor at the time of her elopement. It is the stand of the prosecution that the girl disappeared from the hostel at Batala where she was staying. The Court below in the impugned finding did not concur with the allegations of rape and acquitted the accused for commission of offence under Section 376 IPC. The Court below has convicted the appellant for the commission of offence under Section 366 IPC which proviso is reproduced below to lay emphasis:-

366. Kidnapping, abducting or inducing woman to compel her marriage, etc.—Whoever kidnaps or abducts any woman with intent that she may be compelled, or knowing it to be likely that she will be compelled, to

marry any person against her will, or in order that she may be forced or seduced to illicit intercourse, or knowing it to be likely that she will be forced or seduced to illicit intercourse, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; [and whoever, by means of criminal intimidation as defined in this Code or of abuse of authority or any other method of compulsion, induces any woman to go from any place with intent that she may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall be punishable as aforesaid].

From what has been detailed and discussed above, apparently the girl at the time of the commission of this offence was almost major. The onus to prove that the girl at the time of this occurrence was a minor does not come about in the evidence of the prosecution. To the specific query of this Court, learned State counsel could not convince this Court how a girl of such an age was kidnapped/abducted and for almost one month had remained with the accused at different places in Batala, Amritsar and Bombay and travelled in public transport and places throughout this period and she did not raise even a murmur to this effect when it is her own case that there was a police guard in the

train and she never complained. From the conduct of the girl what one can deduce is that the prosecutrix was in a relationship with the accused and which is the observation that has come about in the impugned judgment and, therefore, having reached the conclusion has held that the victim was a consenting party in the physical relationship between them and did not raise any hue and cry throughout this one month long adventure and further the conclusion that after the return of the couple due to pressure from her parents to save the honour of the family, the girl has been compelled to blame the accused to save her skin. It has been observed that the victim as PW2 is not a reliable witness and rather is a consenting party to this illicit intercourse and in view of the categoric findings that have come about for the commission of offence under Section 366 IPC certainly is not made out as the very necessary ingredients of this offence are not prima facie made out by any means. Counsel for the appellant Mr. Gurveer Sidhu has placed reliance on Naravan @ Naran Vs. State of Rajasthan 2007(2) Crimes 284, Sadashiv Ramrao Hadbe Vs. State of Maharashtra and another and Shamsher Alam @ Sheru and another Vs. State of U.P. and others 2002(4) R.C.R. (Criminal) 16.

In the light of what has been detailed and discussed above since the onus to lay heavily on the prosecution who has failed to establish its case against the accused and, thus, finding that impugned finding are not correct appreciation of the evidence certainly needs to

be set aside by way of acceptance of the appeal.

Resultantly, the present appeal is allowed and the impugned judgment and order is set-aside.

January 29, 2019
amit rana

(FATEH DEEP SINGH)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No