

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Criminal Appeal No. S-2021-SB of 2003 (O&M)
Date of decision : July 05, 2019

Sukhwinder Singh alias Chhinda

....Appellant

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. H.S.Grewal, Addl. AG Punjab for the State

Fateh Deep Singh, J. (Oral)

A case by way of FIR No. 326 dated 27.10.2001 under Sections 363, 366, 376, 120-B IPC, Police Station Sadar, Nabha was registered on the statement of complainant Surjit Singh father of a girl claimed to be a minor. The complainant has alleged that his daughter was enticed by their neighbour Ranjit Kaur to facilitate her elopement with the accused-appellant Sukhwinder Singh alias Chhinda. It is alleged that on 16.10.2001 around 3/4 AM, above said

Ranjit Kaur called daughter of the complainant and ensured that the accused-appellant manages to flee with her on a scooter leading to the registration of the present case. Upon investigations, accused was apprehended on 19.10.2002 along with the girl and their minor child. Upon necessary formalities and completion of investigations, challan against the accused was presented.

The prosecution at the trial examined complainant Surjit Singh as PW1; Dr. Pamela Chopra PW2 who examined the girl; PW3 Dr. Parshotam Goel who examined the accused; PW4 ASI Jagdish Chand brought on record the complaint moved by the complainant and thereafter the prosecutrix was examined as PW5 followed by testimony of PW6 Jagseer Singh; PW7 Parkash Wati, Teacher, Government Primary School to prove the age of the girl. Thereafter the Investigating Officer ASI Nirmal Singh testified as PW8 detailing his investigations and lastly SI Dalbir Singh PW9 concluded the evidence of the prosecution as to part of the investigation conducted by him. Thereafter, the prosecution evidence was closed.

When confronted with the incriminating evidence brought at the trial, the accused denied the allegations in his statement recorded under Section 313 Cr.P.C. claiming that he and Devinder

Kaur who was a major had undergone marriage and out of which a child was born to them and neither girl was ever enticed nor she eloped with him. However, the accused did not lead any evidence in defence.

The learned Additional Sessions Judge (Adhoc), Fast Tract Court, Patiala through impugned findings dated 22.10.2003 upheld the story of the prosecution and found the accused now appellant guilty for the offences under Sections 363 and 366 IPC and sentenced him as follows:-

Under Section 363 IPC	To undergo rigorous imprisonment for four years and to pay a fine of Rs 500/-. In default of payment of fine, to further undergo RI for two months.
Under Section 366 IPC	To undergo rigorous imprisonment for four years and to pay a fine of Rs 500/-. In default of payment of fine, to further undergo RI for two months.

That is how the present appeal has come about.

Heard Mr. Gurveer Sidhu, Advocate as Amicus Curiae for the appellant; Mr. H.S.Grewal, Addl. AG Punjab for the State and perused the records.

The victim Devinder Kaur is the crucial witness of this case who herself has been examined by the prosecution as PW5. In her examination-in-chief she claims to be aged around 20 years and states that about five years prior to 20.5.2003 when the present

incident is alleged to have taken place her parents wanted to marry her with an old person and since she was in relationship with the accused she eloped with him and in her cross-examination after being declared hostile has categorically stated that out of this marriage between her and the accused on 26.10.2002 a male child named Yadbir Singh was born to her from the loins of the accused. The learned State counsel could not convince that anything tangible has come up in her cross-examination which could in any manner advance the case of the prosecution. More-so in line with the arguments put forth by the counsel for the appellant Mr. Gurveer Sidhu, the couple after having run away in the year 2001 had been residing together as husband and wife out of which a child has been born to them and as has been stated before this Court, they are living happily and therefore, certainly at this juncture, keeping in view that the convict has only been found guilty for the commission of offence under Section 363 and 366 IPC, certainly would not be of any help to the case of the prosecution. More-so, the girl Devinder Kaur has been confronted with her statement under Section 164 Cr.P.C. recorded by learned Judicial Magistrate Ist Class, Ex. DA and it has been categorically stated therein by the girl that she was major at that time and without any undue influence or pressure, she has

contracted marriage with the accused is certainly a distressing feature for the prosecution case. The deposition of the complainant Surjit Singh PW1 shows that the entire allegations that have come about from his testimony are based on hear-say and neither he is a witness to this occurrence nor Devinder Kaur has confided in him and it is belatedly that he came across about this occurrence and thus, his testimony could not be of any help to the prosecution. Deposition of PW2 Dr. Pamela Chopra and PW3 Dr. Parshotam Goel who formally examined the girl and the boy respectively is not of much substance for the case of the prosecution and so is the deposition of PW4 ASI Jagdish Chand who is formal in nature and even the other child of the complainant Jagseer Singh PW6, brother of Devinder Kaur does not advance the case of the prosecution who in his cross-examination accepts that he does not know the exact age of Devinder Kaur and therefore, not of material consequence to that effect. Thereafter is the deposition of PW7 Parkash Wati, Teacher, Government Primary School, Village Sadhoheri where the prosecution claimed that Devinder Kaur had studied and who has proved her school certificate Ex. PF and according to which at the time of this occurrence, the approximate age of the girl was 17½ years. However, in her cross-examination as has been pointed out

by counsel for the appellant this date of birth is purely on the particulars furnished by the parents and is not supported by any document to show the age and thus, not a cogent and reliable piece of evidence to establish the age of the girl.

PW8 Nirmal Singh has been the Investigating Officer who had investigated the case and has even shown his ignorance if the girl accompanied the accused on her own without any force or pressure. The last witness of the prosecution is PW9 SI Dalbir Singh, a formal witness.

As has come across in the evidence, Devinder Kaur is elder sister of Ranjodh Singh who both are children of the complainant. As per the proven document Ex. D1, shows that Ranjodh Singh was born on 17.8.1984 and the occurrence has taken place on 16.10.2001 and therefore, at that time Ranjodh Singh is certainly aged around 17 years, 01 month and 29 days and if Devinder Kaur is elder to Ranjodh Singh as admitted by the witness, keeping in view the medical and biological necessitates she must be at least 7 to 8 months senior to him and therefore, by all means must be around 18 years of age at the time of occurrence.

The accused has been convicted under Sections 363 and 366 of the IPC. Section 363 IPC deals with the kidnapping of a

person from lawful guardianship. In the present case the victim herself had categorically stated that since she was in a relationship with the accused and had married him against the wishes of the parents and therefore, the accused being legitimate and legal husband of the girl is supposed to be the guardian of the wife even if it is assumed that Devinder Kaur at the time of marriage was minor. It is fairly conceded by learned State counsel that no case has been instituted to challenge the validity and legality of this marriage between the couple. In the light of the same, the applicability of offence under Section 366 IPC does not comes into play as the girl herself has testified that there is neither any compulsion, inducement, force or pressure or she was ever seduced by the accused to compel her marriage and there is nothing suggestive pointed out by the State counsel that this marriage/physical relationship between the girl and the accused had taken place without the consent of the girl and who certainly is admitted and duly established and proved even by the prosecution to be above 16 years of age at the time of this occurrence. The most important aspect in the present case is that the girl and the boy had entered into a wedlock out of which they have been bestowed with a child and had been residing together since the year 2001 and therefore,

18 years have passed by and it would certainly be traversity of justice. Thus, to meet the ends of justice, from what has been detailed and discussed above in the evidence, the impugned findings certainly do not sustain and are set aside by way of acceptance of this appeal.

The appellant who is already on bail, is discharged from his bail bonds.

Copy of this judgment be also sent to the appellant.

July 05, 2019
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(Fateh Deep Singh)
Judge

Whether speaking/reasoned ?
Whether Reportable ?

Yes/No
Yes/No