

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

CRA-S-20-SB-2007  
Reserved on: 06.11.2024  
Pronounced on: 08.11.2024

Prabhu Nath

... Appellant

versus

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Vishal Sharda, *amicus curiae* for the appellant.  
Mr. Vikas Bhardwaj, AAG Haryana.  
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HARPREET SINGH BRAR, J.

1. The present appeal is preferred against the judgment of conviction dated 25.09.2006 and order of sentence dated 27.09.2006 passed by the learned Sessions Judge, Faridabad in the case stemming from FIR No. 52 dated 24.03.2005 registered under Sections 363, 366A, 376, 506 of IPC at Police Station Sector 31, Faridabad. The appellant was sentenced as follows:

| Offence under      | Sentence                                                                                                                   |
|--------------------|----------------------------------------------------------------------------------------------------------------------------|
| Section 363 of IPC | Rigorous imprisonment of 3 years and a fine of Rs. 1,000/-, in default of which further rigorous imprisonment of 2 months. |
| Section 366 of IPC | Rigorous imprisonment of 5 years and a fine of Rs. 1,000/-, in default of which further rigorous imprisonment of 2 months. |

It was ordered that both sentences shall run concurrently.

FACTUAL BACKGROUND

2. Succinctly, the facts of the present case are that on 24.03.2005, the complainant, namely, Kailash Babu moved an application before the police to the



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effect that the victim, who was 16 years old, is his daughter. On 19.03.2005, the victim was alone at home in the day. The complainant returned home at about 5.00 PM and learnt that the prosecutrix had gone somewhere. Upon enquiring, the complainant found that the appellant-accused enticed the victim into eloping with him. On the basis of this statement, the FIR (supra) was registered. On 30.03.2005, the victim was recovered from the hut of the appellant-accused. The appellant was not present there but was subsequently arrested on 25.07.2005. The statement of the victim was recorded on the basis of which offence punishable under Sections 376 and 506 of IPC were added. Upon completion of the investigation and all other necessary formalities, Final Report under Section 173 of Cr.P.C. was presented against the appellant.

3. The appellant was charged with offences punishable under Sections 363, 366A, 506 and 376 of IPC to which he pleaded not guilty and claimed trial. In order to establish its case, the prosecution examined 11 witnesses. The statement of the appellant under Section 313 Cr.P.C. was recorded wherein he pleaded false implication, however he did not examine any witness in his defence. After assessing all the material available on record, the learned trial Court passed a guilty verdict against the appellant under Sections 363 and 366 of IPC, while acquitting him under Sections 376 and 506 of IPC and sentenced him in the abovementioned terms. Aggrieved by the same, the present appeal was preferred by the appellant.

### CONTENTIONS

4. Learned *amicus curiae* appearing on behalf of the appellant, *inter alia*, contended that the learned trial court ignored material discrepancies in the testimonies of the prosecution witnesses, which go to the root of the matter and



render the prosecution version utterly unreliable. There is sufficient and cogent evidence available on record to show that the victim was involved in a romantic relationship with the appellant-accused and that she eloped with him of her own volition. The learned trial court rightly acquitted the appellant of the charges of rape and criminal intimidation as it was a case of consensual sexual relations, however, the court miserably failed to appreciate the well settled proposition of law that the acquittal of rape should have concomitantly resulted in his acquittal for the offence under section 366 of IPC. As such, the learned trial Court has failed to appreciate the evidence available on record and erroneously delivered a judgment of conviction, which deserves to be set aside. Learned counsel places reliance on the judgments rendered by this Court in *Rakesh vs. State of Haryana 2006(4) R.C.R.(Criminal) 505*; *Devki Nandan vs. State of Haryana 2015(4) R.C.R.(Criminal) 64*; *Sagar Kumar vs. State of Haryana 2011(1) R.C.R.(Criminal) 620* and *Lakhan vs. State of Haryana 2016(2) R.C.R.(Criminal) 655*.

5. Learned State counsel submitted that the impugned judgment has been passed by the learned trial Court after duly appreciating the complete evidence on record which establishes the guilt of the appellant beyond the shadow of reasonable doubt and therefore, the said impugned judgment of conviction does not warrant any interference by this Court.

### **OBSERVATION AND ANALYSIS**

6. Having heard the learned counsel for the parties and after perusing the record with their able assistance, it transpires that the narrative put forward by the prosecution is laden with ambiguity. Admittedly, the victim travelled to



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Delhi from Faridabad with the appellant, where they boarded a train from the railway station for Lucknow. They then travelled from Lucknow to Gorakhpur by another train. Finally they took a bus and reached the native village of the appellant. However, it seems rather unnatural as to why she would not raise any alarm in spite of being in a crowded public set up for a prolonged period of time. Furthermore, the victim was alone at the appellant's hut when she was recovered by the police. It is nowhere the case of the prosecution that she was confined in the house of the appellant. She did not inform anyone in the village that she was brought there forcibly despite living there for eleven days. Surprisingly, in spite of the extensive travels, no independent witness was examined by the prosecution to support its case. To further strengthen his defence of a pre-existing consensual romantic relationship, the appellant brought on record several letters authored by the victim which points towards a pre-existing romantic relationship between them. Moreover, by way of the report of the handwriting expert from FSL Madhuban, it stands duly proved that the said letters were in fact written by the victim. The assertion that the appellant threatened to kill the brother of the victim and that is why she decided to accompany him cuts no ice. As per the testimony of the victim, the appellant met her on 10.03.2005 i.e. nine days before the victim left her house and extended threats to her. Throughout these nine days, however, she never once disclosed this to her family or to the police. As such, in the facts and circumstances of the case, the explanation put forth by the victim does not inspire any confidence in this Court.

7. Further, there is an inordinate delay of five days in moving the complaint regarding the victim being missing. Delay in setting the law into



motion by lodging a complaint and registration of FIR is normally viewed by the courts with suspicion as it undermines the integrity of the cause of action. Hence, it becomes imperative to satisfactorily and cogently explain the delay. In the case at hand, however, no explanation has been put forth by the prosecution to justify the delay. Here, it would be worthwhile to refer to the judgment of the Hon'ble Supreme Court in ***Thulia Kali vs. State of Tamil Nadu (1972) 3 SCC 393***, wherein a two Judge Bench, speaking through Justice H.R. Khanna, observed as follows:

*“12. The object of insisting upon prompt lodging of the report to the police in respect of commission of an offence is to obtain early information regarding the circumstances in which the crime was committed, the names of the actual culprits and the part played by them as well as the names of eyewitnesses present at the scene of occurrence. Delay in lodging the first information report quite often results in embellishment which is a creature of afterthought. On account of delay, the report not only gets bereft of the advantage of spontaneity, danger creeps in of the introduction of coloured version, exaggerated account or concocted story as a result of deliberation and consultation. It is, therefore, essential that the delay in the lodging of the first information report should be satisfactorily explained...”*

8. The Hon'ble Supreme Court in ***S. Vardarajan v. State of Madras AIR 1965 (SC) 942*** held that merely facilitating the fulfilment of the intention of the victim to slip out of the keeping of the lawful guardian does not amount to kidnapping. There is a difference between taking and allowing a minor to accompany. As per the prosecution, the age of the victim was more than 16 years. Thus, it can clearly be inferred that she was mature enough to understand the repercussions of her actions. Similarly, in ***Shyam and another v. State of Maharashtra 1995 AIR (SC) 2169***, the Hon'ble Supreme Court observed that



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where the alleged victim did not resist or raise an alarm when purportedly taken by the accused, it suggested that she was a willing participant in leaving with the accused, thus negating the establishment of the culpability of the accused.

### **CONCLUSION**

9. In view of the discussion above, it cannot be pragmatically concluded that there was either 'taking' or 'enticement' of the victim. This Court finds that learned counsel for the appellant has been successful in establishing his case. Hence, the present appeal is allowed and consequently, the impugned judgment dated 25.09.2006 and order of sentence dated 27.09.2006 passed by the learned Sessions Judge, Faridabad, are hereby set aside.

10. The appellant stands acquitted of the charges framed against him in the present case and his bail bonds and surety bonds also stand discharged.

11. The Punjab & Haryana High Court Legal Services Committee is directed to pay the remuneration to the learned *amicus curiae* as per rules.

12. Pending miscellaneous application(s), if any, shall also stand disposed of accordingly.

**08.11.2024**

Ajay Goswami

**(HARPREET SINGH BRAR)  
JUDGE***Whether speaking/reasoned  
Whether reportable**Yes/No  
Yes/No*