

CRA-S-2079-SB-20121

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-S-2079-SB-2012
Date of Decision: 10.05.2024

HARWINDER SINGH @ NINDA

...Appellant

Versus

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Balraj Singh, Advocate
for the appellant

Mr. Rishabh Singla, AAG, Punjab

HARPREET SINGH BRAR, J. (ORAL)

1. This instant appeal has been preferred by the appellant-accused against the judgment of conviction and order of sentence dated 30.042012 passed by learned Additional Sessions Judge, Ludhiana in Sessions Case No.87 of 03.03.2011 arising out of FIR No.162 dated 17.08.2010 registered under Sections 363, 366, 376, 120-B of IPC at Police Station- Raikot, Ludhiana. The appellant was sentenced as under: -

Under Section	Sentence
363 IPC	<i>R.I for 3 years along with a fine of Rs.500/- and in case of default on fine, R.I for 15 days.</i>
366 IPC	<i>R.I for 5 years along with a fine of Rs.1,000/- and in case of default on fine, R.I for 1 month.</i>
368 IPC	<i>R.I for 3 years along with a fine of Rs.500/- and in case of default on fine, R.I for 1 month.</i>
376 IPC	<i>R.I for 7 years along with a fine of Rs.2,500/- and in case of default on fine, R.I for 3 months.</i>

**CRA-S-2079-SB-2012****2****FACTUAL MATRIX**

2. Succinctly, the facts are that on 17.08.2010, the father of the prosecutrix namely Gurmail Singh made a statement before the concerned police officials, wherein, he alleged that when he woke up during the night of 06.08.2010, he found his daughter aged 16 years to be missing from her cot. Thereupon, the complainant woke up his wife and tried to find the missing daughter but could not trace her whereabouts. They also found that cash amount of Rs.70,000/- and gold ornaments of about eight *tolas* consisting of one chain, bangle (*karra*), two rings, two bangles and a pair of ear-rings were missing from the house. Initially, it was alleged in the statement made by Gurmail Singh that one Kuldip Singh @ Kaddu had enticed away her minor daughter on pretext of marriage and a case was registered against him. But on further inquiry by the complainant, it came to the fore that Niranjana Singh saw the prosecutrix enter the house of the appellant. Another person namely Sukhwinder Singh saw the prosecutrix on the night of 06.08.2010 while she was going with the appellant on a motor cycle. The complainant and his wife were already suspicious of the appellant who was working as a mason at their house and upon confirmation from the aforesaid persons, he made a supplementary statement before the police alleging that the appellant had enticed away his minor daughter on pretext of marriage. Supplementary statement of the mother of the prosecutrix was also recorded by the concerned police. Further, statements of Niranjana Singh and Sukhwinder Singh were also recorded and offence under Section 120-B of IPC was added. On 23.08.2010, the police recovered the prosecutrix from the house of one Chaman Lal situated

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at Islam Ganj, Ludhiana where she was present along with the appellant. The appellant and one Manjit Kaur were arrested and medical examination of the prosecutrix was conducted and subsequently, offence under Section 376 of IPC was added. Statement of the prosecutrix under Section 164 Cr.P.C. was also recorded by learned JMIC, Jagraon. After completion of investigation, the final report under Section 173 Cr.P.C. was presented before the learned trial Court.

3. The learned trial Court upon finding a prima-facie case, framed charges against the appellant and accused Manjit Kaur for commission of offences punishable under Sections 363, 366, 368 and 376 of IPC, to which they pleaded not guilty and claimed trial.

4. On assessing the evidence available on record, the learned trial Court vide judgment dated 30.04.2012 convicted and sentenced the appellant-accused under Sections 363, 366, 368 and 376 of IPC whereas, accused Manjit Kaur was acquitted of the charges framed against her. Aggrieved by the same, the appellant has approached this Court by way of the present appeal.

5. The remaining portion of the sentence awarded to the appellant in the present case, after he had already undergone a custody of 2 years and 15 days out of the maximum sentence of 7 years, was suspended by this Court vide order dated 13.09.2012.

CONTENTIONS

6. Learned counsel for the appellant-accused *inter alia* contends that the learned trial Court was wrong in rejecting the defence plea of the appellant that the prosecutrix was major and was of consenting age at the time of the alleged occurrence as the age of consent was 16 years back then. Furthermore,

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the prosecutrix mentioned her date of birth to be 06.08.1994 in her own evidence and therefore, the prosecutrix was more than 16 years of age and was very much capable of giving her consent. He further submits that the learned trial Court erred by ignoring the fact that both the prosecutrix and her mother have categorically stated that on the night of the alleged occurrence, their house was locked from inside and it was the prosecutrix who opened the lock and went outside on her own. It has been also stated by the prosecutrix in her evidence that she was the only pillion rider and came across 2-3 co-villagers but she never raised any hue and cry and neither asked for any help. Learned counsel for the appellant further contends that there is an unexplained delay of 5 days in lodging the FIR (supra) against the appellant and moreover, he was not even named in FIR initially which shows that the entire story has been concocted by the complainant.

7. Learned State contends that there is ample evidence on record to prove that the appellant had kidnapped the prosecutrix from lawful custody of her guardian with intention to compel her to marry him and also committed rape upon her. He further submits that the age of the prosecutrix has been duly proven on record to be 16 years and therefore, the present appeal filed by the appellant is devoid of any merit and is liable to be dismissed.

OBSERVATIONS AND ANALYSIS

8. I have heard learned counsel for the parties and perused the paper-book with their able assistance. It transpires that there is an inexplicable delay of 5 days in filing the FIR (supra). PW2 Niranjan Singh deposed during his cross-examination that he had intimated the complainant about the incident on

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around 11/12-08-2010 but the complainant did not reveal in his statement made to the police on 17.08.2010 that he was already aware of the fact that his daughter was seen with the appellant and rather named Kuldeep Singh @ Kaddu as the accused in his complaint. Most importantly, the date of birth of the prosecutrix had been duly established as 06.08.1994 which means that she was above 16 years of age at the time of the alleged incident, thereby, was of consenting age.

9. Dealing with the issue of delay in lodging of FIR in cases involving serious offences like murder or rape, a two Judge Bench of the Hon'ble Supreme Court in **Maharaj Singh vs. State of Uttar Pradesh, 1994(5) SCC 188**, speaking through Justice Dr. A.S. Anand has observed the following: -

"12. FIR in a criminal case and particularly in a murder case is a vital and valuable piece of evidence for the purpose of appreciating the evidence led at the trial. The object of insisting upon prompt lodging of the FIR is to obtain the earliest information regarding the circumstance in which the crime was committed, including the names of the actual culprits and the parts played by them, the weapons, if any, used, as also the names of the eye witnesses, if any. Delay in lodging the FIR often results in embellishment, which is a creature of an after-thought. On account of delay, the FIR not only gets benefit of the advantage of spontaneity, danger also creeps in of the introduction of a coloured version or exaggerated story."

10. Similarly, a two Judge Bench of the Hon'ble Supreme Court in **Thulia Kali v. The State of T.N., 1973 AIR (Supreme Court) 501**, speaking through Justice H.R. Khanna, has observed the following: -

"First information report in a criminal case is an extremely vital and valuable piece of evidence for the purpose of corroborating the oral evidence adduced at the trial. The importance of the above report can hardly be overestimated from the standpoint of the accused. 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



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played by them as well as the names of eye witnesses 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 of 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 lodging of the first information report should be satisfactorily explained."

11. Furthermore, the conduct of the prosecutrix has to be seen from the facts and circumstances of the case at hand. Although, it has been stated by the prosecutrix that the appellant threatened to kill her family members in case she made any ruckus about the incident, it is revealed from the evidence on record that the main gate of the house was locked from inside at the time of the incident. The prosecutrix had ample opportunity to raise an alarm at this point. Further, she was the only pillion rider when she was taken by the appellant from her house to the house of Manjit Kaur, from where she further taken to the house of Chaman Lal in Ludhiana where they lived for 15-17 days in busy locality. During the entire period, the prosecutrix did not even make a single attempt to raise an alarm. The mother of the prosecutrix Kulwant Kaur examined as PW1 had categorically deposed that on the day of the alleged incident, they found out that cash amount of Rs.70,000/- along with jewellery weighing 8 *tolas* was missing from the house but the prosecutrix has nowhere mentioned that she was threatened to bring along the aforesaid articles. All the aforesaid facts when clubbed together, do not inspire confidence in this Court to proceed against the appellant. In the case of ***Mussaiddin Ahmed vs. State of Assam, (2010) 1 SCC (cri) 1445***, the Hon'ble Supreme Court also allowed an appeal and acquitted the appellant who was convicted under Section 376 of

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IPC considering the conduct of the prosecutrix which showed willingness on her part.

12. In view of the above discussion, this Court finds that learned counsel for the appellant has been successful in establishing the case of the appellant. Hence, the present appeal is allowed and the impugned judgment of conviction and order of sentence dated 30.04.2012 passed by learned Additional Sessions Judge, Ludhiana, is hereby set aside.

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

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

(HARPREET SINGH BRAR)
JUDGE

10.05.2024*Ajay Goswami*

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>