



CRA-S-3410-SB-2015

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

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CRA-S-3410-SB-2015

Date of decision: 04.11.2024

Avtar Singh

....Appellant

V/s

State of Haryana and another

....Respondents

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Mr. S.S. Chatrath, Advocate for the appellant.

Ms. Mahima Yashpal, DAG Haryana.

Mr. TPS Bhatti, Advocate for respondent No.2.

SUMEET GOEL, J. (Oral)

1. Present appeal is directed against the judgment dated 02.06.2015 passed by the learned Additional Sessions Judge-I, Fatehabad, whereby respondent No.2 (herein) was acquitted from the charges under Sections 363 and 366-A of the IPC by granting him the benefit of doubt.

2. In the present appeal, the pertinent facts for adjudication are that the FIR No.416, dated 21.08.2013, was lodged against the accused-respondent No. 2, namely Balwinder Singh @ Bindu S/o Kripal Singh, resident of village Bighar, Tehsil & District Fatehabad, under Sections 363 and 366-A of the Indian Penal Code (for brevity the 'IPC') at Police Station Sadar Fatehabad. The matter proceeded to trial before the Court of learned Additional Sessions Judge-I, Fatehabad, which concluded its proceedings and, vide judgment dated 02.06.2015, acquitted the accused (respondent No.2 herein) of all the charges. The Court below held that the evidence brought on record by the prosecution does not meet the necessary standards



laid-down under Sections 363 & 366 of the IPC. Given the insufficiency of credible evidence, there is significant doubt regarding the involvement of the accused in the alleged offence & hence he ought to be acquitted by giving him the benefit of doubt.

3. The appellant, aggrieved by the findings of the Court below, has now invoked the appellate jurisdiction of this Court, seeking re-examination of the findings as the same are based on alleged misappreciation of evidence and procedural irregularities. However, it is well-settled law that the scope in appeal is limited and does not entail a re-appreciation of evidence unless there is a manifest illegality or a serious miscarriage of justice.

4. In brief, the case of the prosecution, as detailed in the FIR, is that on 21.08.2013, ASI Balbir Singh, alongwith his official team, was returning from village Dharnia and at Bighar bus stand, Avtar Singh (complainant), approached him and submitted a complaint regarding the kidnapping of his minor daughter. The complainant reported that his daughter (victim), aged 16 and a student of 10+2 in the village school, had been missing from home since the night of August 20/21, 2013. Balwinder Singh (respondent No.2 herein), also known as Bindu, son of Kripal Singh and resident of village bighar, was likewise missing. The complainant suspected that Balwinder Singh had enticed his daughter away and thus requested for legal action. Investigation ensued and statements of witnesses under Section 161 of Cr.P.C., 1973 were recorded. On 23.08.2013, the victim was recovered from the possession of Balwinder Singh (respondent No.2 herein) and her statement was recorded under Section 164 of Cr.P.C.



and she was sent to Nari Niketan, Karnal. On completion of necessary formalities, report under Section 173 of the Cr.P.C., 1973 was submitted before the Court of competent jurisdiction.

5. Learned counsel for the appellant has iterated that the Court below has erred in acquitting the accused-respondent No.2 and the impugned order is contrary to the law, facts and evidence on record. Learned counsel has further iterated that the Court below has erroneously relied upon the statements of the defence witnesses which do not inspire confidence and credibility while acquitting the accused. It has been further argued that the Court below ought to have considered the aggravating as well as mitigating circumstances yet the Court below has failed to properly appreciate them and acquitted the accused on flimsy grounds. According to the learned counsel, the victim was minor at the time of the alleged incident and there was sufficient evidence on record which proved the fact that the victim was kidnapped and forced to illicit intercourse. It has been further argued that the statement of the victim was consistent and credible, yet the Court below has failed to properly appreciate it and acquitted the accused on flimsy grounds. Learned counsel asserts that the Court below has dealt the matter in superficial manner without proper consideration of the evidence. Learned counsel has further canvassed that the Court below has wrongly acquitted the accused, despite there being sufficient evidence on record to establish his guilt and hence his acquittal is not justified in light of the evidence presented.

6. Learned State counsel has made submission in tandem with the learned counsel for the petitioner.



7. Learned counsel appearing for the respondent No.2 has argued that neither the offence under Section 366-A of IPC nor the offence under Section 363 of IPC was made out in the case as the victim had left the company of her guardians on her own accord. According to the learned counsel, there is no evidence of inducement by the respondent No.2. Furthermore, the story which has been put forth that the respondent No.2 had forcefully kidnapped the victim with three others is highly improbable and unreliable. Moreover the victim has voluntarily and willingly accompanied the respondent No.2.

8. The principles governing the scope of interference by the High Court in an appeal against the judgment of acquittal, have been laid down by the Hon'ble Supreme Court in the judgment passed in the case titled as ***Babu Sahebagouda Rudragoudar and others versus State of Karnataka, 2024 INSC 320 = 2024(2) Law Herald (SC) 928*** held as under:

“39. Thus, it is beyond the pale of doubt that the scope of interference by an Appellate Court for reversing the judgment of acquittal recorded by the trial Court in favour of the accused has to be exercised within the four corners of the following principles:-

- (a) That the judgment of acquittal suffers from patent perversity;*
- (b) That the same is based on a misreading/omission to consider material evidence on record;*
- (c) That no two reasonable views are possible and only the view consistent with the guilt of the accused is possible from the evidence available on record.”*

9. In the light of the above principles laid down by the Hon'ble Supreme Court, I have thoughtfully considered the arguments advanced on behalf of the rival parties, perused the entire case record and the judgment passed by the learned Court below.



10. While going through the impugned judgment passed by the Court below, it appears that the victim has failed to satisfactorily discharge her burden of proof by presenting credible and reliable evidence or witnesses. It is a well-settled principle of law that the burden rests upon the prosecution to establish the guilt of the accused through cogent and convincing evidence, and any failure to do so entitles the accused to the benefit of doubt.

11. As per the case put forth by the complainant, he alleged that his daughter, the victim, went missing from the home on the night of August 20/21, 2013, along with Balwinder Singh. He suspected that the accused Balwinder Singh (respondent No.2 herein) had enticed away his daughter, who was then 16 years of age, leading to registration of the case under Sections 363 and 366-A of the IPC. The victim was recovered two days later at Dariyapur Bus Stand. The initial Police Report (Ex.P-6) is significant in assessing the case of the accused, as it provides early details before potential alterations. From the bare perusal of Police Report (Ex. P-6) and the statement of the victim recorded in the Court differed significantly, which introduce new claims about four individuals, including Balwinder Singh (respondent No.2 herein), abducting her, taking her to an isolated field where he allegedly raped her, and further trips to Fatehabad, Sirsa, Bathinda, and Amritsar by issuing threats to harm the family of the victim. The victim also claimed that the family of Balwinder Singh (respondent No.2 herein) pressured her to make statements favorable to him before being apprehended by the Police. However, it appears that Police Report (Ex.P-6) contains no mention of the prosecutrix's claims of abduction or rape, nor of any alleged



threats. Instead, her initial statements suggested that she accompanied Balwinder Singh (respondent No.2 herein) willingly, as also reflected in her statement to the Magistrate (Ex.D-3), where she indicated that she went willingly and desired to stay with Balwinder Singh (respondent No.2 herein). During cross-examination, the prosecutrix attempted to discredit the Police report given to the Police (Ex.P-6) and statement given to the Magistrate (Ex.D-3), claiming they were given under duress, though her explanations given to the Court were unconvincing.

11.1. Material contradictions in the statements of the victim raised serious doubts about the veracity of her claims. Furthermore, the victim had admitted that her mother, brother, and other family members were nearby when she allegedly opened the door for Balwinder Singh and three others, yet none heard or noticed the incident, even the family dog did not react. These discrepancies undermine the case of the prosecution and it fails to meet the stand of proving the guilt beyond a reasonable doubt and casts a significant element of doubt regarding the alleged incident in question and potentially weakened the case of the victim.

11.2. Another material contradiction which needs to be highlighted is the letter (Ex.D-1) written by the victim professing her affection for the accused Balwinder Singh which goes to show that the victim had left voluntarily from her house with the Balwinder Singh. The claims of the victim about the threats and forced abduction appear unlikely, given her failure to seek help despite multiple opportunities. The cumulative evidence points to the improbability of the version of the prosecution and it can be



safely inferred that the victim had left with Balwinder Singh of her own accord.

12. Upon reviewing all the evidence, this Court is of the firm opinion that the case is one of consensual elopement, rather than abduction as alleged by the prosecution. It is evident that, on the night of August 20/21, 2013, the prosecutrix had left her residence voluntarily to join the accused, with whom she stayed at a Gurudwara in Amritsar until they returned to their village, Dariyapur, on August 23, 2013. The statements of the prosecutrix lack any indication that the respondent No.2 (herein) played any active role in persuading her to leave her home or the custody of her guardians. There is no evidence which has come on record with regard to inducement, coercion, or promise made by the accused Balwinder Singh (respondent No.2 herein) which prompted the victim to leave her house. The manner in which she left to join the company of Balwinder Singh raises question and would not amount to enticement. The evidence, including Exhibit P-6 and a letter marked as Exhibit D-1, strongly suggests an underlying romantic relationship between them.

12.1. From the facts and circumstances of the case, it is safely established that the victim had left her house and the custody of her guardian on her own accord. The victim, being over 16 years old and nearing adulthood, had sufficient maturity and capacity to make her own decisions. The victim deliberately left her family's guardianship without any undue influence, reflecting her independent will. There is no reliable evidence to show that the accused-respondent No.2 had enticed, threatened, or coerced her into leaving with him.



12.2. Similarly for a conviction under Section 366 of the IPC, it is essential to demonstrate that the victim was either compelled into marriage against her will or was coerced or induced into intercourse. In the instant case, the facts suggested a premeditated elopement between consenting parties. The prosecutrix's voluntary choice to accompany the accused, without evidence of force or duress, undermines the charges of abduction or forcible marriage under Section 366 IPC.

13. In light of the prosecutrix's age, her willingness to accompany the accused, and the absence of any credible evidence of coercion or inducement, this Court is of the considered view that the elements necessary to establish offenses under Sections 363 and 366 of IPC have not been met. The actions of the accused-respondent No.2 do not legally amount to kidnapping or abduction as the victim had made a conscious decision to join his company.

14. The glaring inconsistency of the key prosecution witnesses i.e. the victim herself directly impacts the credibility and the case of the prosecution. Such discrepancies cannot be lightly overlooked as they strike at the very root of the prosecution's narrative and reliability of the evidence presented. In criminal jurisprudence, where the burden of proof lies squarely on the prosecution to establish the guilt beyond the reasonable doubt, the conflicting statement of star prosecution witness significantly undermine the ability of the prosecution to prove the charges conclusively and potentially warranting an acquittal of the accused by giving him the benefit of doubt. Moreover, there is no reasonable explanation forthcoming



either from the evidence produced by the complainant or records of the case or from the averments made in the present petition, on this aspect.

15. Furthermore, the Court below has found the allegations under Sections 363 and 366-A of the IPC, to be without merit, as they lack any substantive evidence or corroborative material. The prosecution has failed to establish a prima facie case to substantiate the charges. Moreover, the victim has failed to provide any medical evidence to substantiate her claim that she had been forcefully raped. In the considered opinion of this Court, in the absence of credible material/medical evidence on record, the Court below has rightly concluded that the essential ingredients required to prove these offences were not satisfied, resulting in the dismissal of the charges.

16. It is a well established principle in criminal jurisprudence that the burden of proof rests squarely upon the prosecution, which must establish the guilt of the accused beyond reasonable doubt. Any failure to meet this standard, particularly when key evidence is either missing or questionable, entitled the accused to the benefit of doubt. It has been consistently held that suspicion, however grave, cannot substitute for proof, and where there exists any reasonable doubt, the benefit of such doubt must be given to the accused and he must be acquitted in accordance with law. In light of the above discussed discrepancies and inconsistencies, it can safely be inferred that the case put forth by the prosecution is false and there is no evidence of the alleged incident as projected by the victim. Where the victim herself has failed to substantiate her case beyond reasonable doubt, as has happened in the case in hand, the defence, if any, raised/pleaded by the accused recedes into the background and rather becomes immaterial.



However, as has been noted by the learned Additional Sessions Judge, while passing the judgment of acquittal, in concluding para of the judgment that the prosecution falls short of the requirement under Sections 363 and 366 of IPC and hence the accused is entitled to benefit of doubt and acquittal.

In the instant case, the prosecution has miserably failed to discharge its liability.

17. In the facts and circumstances of the entire case coupled with the presence of multiple lacunae as also inconsistencies in the case, the learned Additional Sessions Judge, rightly arrived at the conclusion that the story put forth by the victim was false and the allegations raised lack substance.

18. The facts of the case clearly narrate that the victim has tried to conceal the real genesis of the case. However, the Court below has meticulously and judiciously examined the matter, appreciating the facts and evidence in their proper context. The Court below has rightly discerned the attempt of the victim to distort the narrative and has delivered the findings based on thorough evaluation of the material on record.

19. Perusal of the impugned judgment of acquittal passed by the Court below shows that the entire evidence led by the prosecution has been gone through in detail and in a painstaking manner and has dealt with each and every aspect of the case in a pragmatic manner. The judgment of acquittal is based on sound reasoning; does not suffer from any illegality or perversity. As such, the judgment of acquittal dated 02.06.2015 passed by the learned Additional Sessions Judge-I, Fatehabad, is upheld. Resultantly, the present appeal, being bereft of merits, fails and is dismissed.



20. Pending application(s), if any, shall also stand disposed off.

(SUMEET GOEL)
JUDGE

November 04, 2024
Ajay

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No