

CRA-S-844-SB-2002 and
CRA-S-796-SB-2002

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRA-S-844-SB-2002 and
CRA-S-796-SB-2002
Date of decision: 04.11.2024

1.
STEPHEN... APPELLANT

V/s

STATE OF PUNJAB...RESPONDENT

2.

BUTA RAM... APPELLANT

V/s

STATE OF PUNJAB...RESPONDENT

CORAM: HON’BLE MR. JUSTICE SUMEET GOEL

Present: Mr. Ankit Bhinchar, Advocate for the appellant
in CRA-S-844-SB-2002.

Mr. Satinder Khanna, Advocate for the appellant
in CRA-S-796-SB-2002.

Mr. Adhiraj Singh Thind, AAG, Punjab.

SUMEET GOEL, J.

1. The above-mentioned two criminal appeals, filed against the common judgment of conviction and order of sentence dated 19.04.2002, passed by the learned Additional Sessions Judge, Jalandhar, in Sessions Case No.70 of 2001, are taken up together for adjudication. The prosecution case emanates from the FIR No.35, dated 27.05.1999, registered under Sections 363, 366, 306, 34 of the IPC at Police Station Goraya, District Jalandhar, Punjab.



**CRA-S-844-SB-2002 and
CRA-S-796-SB-2002**

2

2. The case of prosecution in brief is that the victim who was a student of B.A. Part – II, was abducted by the accused with an intent to compel her to marry the accused Stephen against her consent, on 19.05.1999 at about 8.00 PM. On the evening of 23.05.1999, the victim called her father telephonically and informed him that the accused Stephen had abandoned her at Ludhiana Bye Pass, from where she was brought back home. However, on the night intervening 26/27.05.1999 at about 11:00 P.M., the victim committed suicide by consuming sulphos (aluminum phosphide) tablets and leaving behind a suicide note naming accused Stephen responsible for her death. The victim at the time of her death was having conception of 2-3 weeks.

3. Prosecution named two persons as accused, namely Stephen as the main accused and Buta Singh as the co-accused, who acted in furtherance of a common intention with Stephen. Charges under Sections 366/34 and 306 of the IPC were framed against the accused Stephen, while a charge under Section 366 with the aid of Section 34 of the IPC, was framed against the accused Buta Singh.

4. The learned Additional Sessions Judge, after the culmination of the trial, held both the accused guilty of the respective charges framed against them and convicted the accused Stephen to undergo rigorous imprisonment for 3 years, with a fine of Rs.2000/-, and in default of payment of the fine, to further undergo rigorous imprisonment for 6 months under Section 366/34 of the IPC. He was



**CRA-S-844-SB-2002 and
CRA-S-796-SB-2002**

3

further convicted and sentenced to rigorous imprisonment for 3 years, with a fine of Rs.2,000/-; and in default of payment of the fine, to further undergo rigorous imprisonment for 6 months under Section 306 of the IPC. Both the sentences were ordered to run concurrently. However, accused Buta Singh was convicted and sentenced to rigorous imprisonment for 3 years, with a fine of Rs.2000/-; and in default of payment of the fine, to further undergo rigorous imprisonment for 6 months under Sections 366/34 of the IPC.

5. Both the convict persons filed separate appeals against their conviction, and both the appeals filed by them have been taken up together for adjudication.

6. Assailing their conviction in the case, it is argued on behalf of both the appellants, in unison, that the impugned judgment of conviction and the order of sentence passed against them is not sustainable being contrary to the evidence adduced on record of the case. It is argued that there is no evidence adduced by the prosecution to prove the alleged abduction of the victim by the accused on the alleged date of the incident. Further, it is argued that there was an inordinate and unexplained delay in lodging of the FIR by the complainant as far as the alleged incident of abduction of the victim is concerned. The prosecution story, being cooked up, without any substance, is not believable. PW-1, who was examined by the prosecution to prove the alleged incident of abduction, is not believable, as his statement was recorded by the police under Section



**CRA-S-844-SB-2002 and
CRA-S-796-SB-2002**

4

161 of Cr.P.C. on 07.07.1999, whereas the alleged incident took place on 19.05.1999. It is argued that, as per the complainant, the victim, after being allegedly abducted by the accused on 19.05.1999, returned on 23.05.1999. However, no complaint in this regard was lodged by the victim or her family members. The FIR in the present case was lodged only after the victim committed suicide on 27.05.1999. It is argued that the victim, as per medical evidence, was having a conception of 2-3 weeks at the time of her death, whereas the alleged abduction by the accused occurred just 8 days prior. As such, the pregnancy of the deceased cannot be attributed to the accused persons. On behalf of the accused-appellant Buta Singh, it is submitted that there is no specific overt act attributed to him, except for the allegations that he accompanied the victim and accused Stephen at the time of the alleged abduction of the victim. As such, his conviction is totally bad in law and facts of the case. It is submitted that the alleged suicide note of the victim has wrongly been relied upon by the learned Additional Sessions Judge, as the same has not been proved in consonance with the provisions of law. It is further submitted that the contents of the alleged suicide note of the victim do not make out any case against the appellants.

7. To the contrary, the learned State Counsel has vehemently opposed the submissions made on behalf of the appellants. It is argued that the findings given by the learned Additional Sessions Judge are based upon evidence and material duly



**CRA-S-844-SB-2002 and
CRA-S-796-SB-2002**

5

proved on the record of the case. The learned Additional Sessions Judge has dealt with every aspect of the case minutely and in great detail. The delay in lodging the FIR in sexual offences is to be construed liberally and cannot be made the sole basis for throwing out the entire case of the prosecution. There is a proper explanation for the delayed recording of the statement of PW-1, who was an eye-witness to the accused persons abducting the victim. Immediately after witnessing the incident, he left the village and returned after one month and thereafter, he recorded his statement with the police. The post-mortem report of the victim proves that she was pregnant at the time of her suicide, and her pregnancy is related to the accused Stephen, as is borne out from her suicide note also. With these submissions, the learned State Counsel prayed for the dismissal of both the appeals.

8. I have heard the learned counsel for the parties and have gone through the case record carefully.

9. In order to constitute the offence under Section 366 of the IPC, it is incumbent upon the prosecution to prove that the victim was abducted by the accused persons with the intent that she may be compelled, or knowing it to be likely that she may be compelled, to marry any person against her will, or in order that she may be forced or seduced to illicit intercourse. Upon looking into the evidence adduced by the prosecution, these ingredients of the offence under Section 366 of the IPC are totally lacking in this case. A perusal of



**CRA-S-844-SB-2002 and
CRA-S-796-SB-2002**

6

the testimonies of PW-3 and PW-4 the parents of the victim, make it amply clear that they did not eye-witness the accused Stephen taking away their daughter. They came to know that the victim was missing only after she had already left home. As such, the statements of these witnesses have no bearing on the case of prosecution so far as the offence under Section 366 of the IPC is concerned. The prosecution's case to prove the charge framed against the accused under Section 366 mainly rests upon the statement of PW-1, i.e. Kewal Singh, Member Panchayat. However, a perusal of his statement does not inspire the confidence of the court qua the facts deposed by him. He deposed that he saw both the accused with the victim going on a scooter on 19.05.1999 at about 8.00 PM. He further deposed that very next day, he went to a relative's house, from where he returned after 1 month and then came to know that the victim had committed suicide. He claimed that he then went to the police station on 07.07.1999 to get his statement recorded. If this witness is to be believed, he returned to his village on or around 19.06.1999. He had no explanation as to why he waited until 07.07.1999 to get his statement recorded with the police. His cross-examination has created a further dent in his deposition wherein he stated that he did not notice the number or make of the scooter used by the accused to take away the victim. He also visited the house of the victim but did not disclose the facts regarding the accused being seen with the victim to anyone. He directly visited the police station to get his



**CRA-S-844-SB-2002 and
CRA-S-796-SB-2002**

7

statement recorded. He failed to disclose any occasion which prompted him to directly visit the police station to get his statement recorded in the matter after the lapse of more than 1-½ months of the incident. Still further, if this witness is to be believed, his testimony still does not satisfy the ingredients of the offence under Section 366 of the IPC. As per his testimony, the victim, who was a major in terms of age, was simply accompanying the accused on their scooter. He has not deposed regarding any element of force or deceit exercised by the accused persons upon the victim, so as to constitute the offence of abduction as enshrined in Section 362 of the IPC. As such, the testimony of PW-1 is of no help to the case of the prosecution.

10. The learned Additional Sessions Judge, while saddling the accused with liability under Section 366 of the IPC, relied upon the fact that the victim, after returning to her home, disclosed about her abduction by the accused to her parents, PW-3 and PW-4. However, this finding returned by the learned Additional Sessions Judge is not sustainable in the facts of the case. As per the case of the prosecution, the victim returned to her home on 23.05.1999 and committed suicide on the night of 26.05.1999. However, during this period, when the victim was alive after her alleged return, no complaint was made to anyone by the victim or her family members against the accused persons. Not only this, yet another unbelievable circumstance is that the victim remained missing from her home from



**CRA-S-844-SB-2002 and
CRA-S-796-SB-2002**

8

19.05.1999 until 23.05.1999, and no complaint in this regard was made by her family members to the police regarding her disappearance. Had the victim been abducted by the accused persons it is not expected that the victim as well as her family members would not have taken any action against the accused persons while the victim was still alive.

11. Perusal of the testimonies of PW-3 and PW-4, the parents of the victim, shows that they did not depose about the accused compelling the victim to perform marriage with him. As such, the deposition of these witnesses falls short of establishing the requirements to constitute the offence under Section 366 of the IPC. All that they deposed was that the accused, Stephen, took away the victim with a promise to marry her but he cheated her and left her at the Ludhiana Bye-Pass. The allegations against the accused regarding the alleged false promise to marry the victim and to cheat her on that account do not, in any manner, constitute the offence under Section 366 of the IPC.

12. Reliance has been placed by the learned Additional Sessions Judge on Section 106 of the Indian Evidence Act to hold that, since the accused were seen with the victim on 19.05.1999, therefore, they have to explain under what circumstances they took the victim. Their failure to furnish such explanation, shall be presumed under Section 114 of the Indian Evidence Act that the prosecutrix version is true. However, the finding returned by the



**CRA-S-844-SB-2002 and
CRA-S-796-SB-2002**

9

learned Additional Sessions Judge in this regard is palpably wrong for two reasons. First, there is no prosecution version available on the record of the case. The FIR in question was lodged by the father of the victim after her death. Second, there is no trustworthy evidence adduced by the prosecution to prove that the accused were seen with the victim on 19.05.1999.

13. There is yet another vital aspect of the case. PW-7, the doctor who conducted the post-mortem of the victim in his cross-examination, deposed that at the time of post-mortem on 27.05.1999 at 11.00 AM, he found that the victim had a conception of about 2 to 3 weeks. The learned Additional Sessions Judge, while dealing with this aspect of the case held that the victim died after 9 days after her abduction by the accused. After seven days, the second week started, as such the victim died in the midst of the second week of her abduction. The opinion of the doctor about the period of pregnancy, which he estimated as approximately two weeks, was interpreted by the learned Additional Sessions Judge as supporting the conclusion of a 9 days pregnancy. In my considered opinion, the presumption so drawn by the learned Additional Sessions Judge is not sustainable. The victim went missing on the night of 19.05.1999 and committed suicide on the night of 26.05.1999. As such, the victim died within 7 days of her alleged abduction, and the finding returned by learned Additional Sessions Judge that she died 9 days after her abduction is wrong. Still further, it is a cardinal rule of criminal jurisprudence that



**CRA-S-844-SB-2002 and
CRA-S-796-SB-2002**

10

the prosecution has to prove its case against the accused beyond a reasonable doubt and the benefit of doubt, if any, in the case of prosecution shall go to the accused. In view of these circumstances, the pregnancy of the victim casts a serious shadow of doubt on the case of prosecution qua the involvement of the accused in the present case, especially in view of the fact deposed by the parents of the deceased that, prior to the present occurrence, they had no knowledge of the victim having any relation with the accused, Stephen.

14. Now coming to the second charge framed against the accused Stephen under Section 306 of the IPC and his conviction under said section. The prosecution relied upon the suicide note left behind by the deceased to assert that the same proves the guilt of the accused. The suicide note (Ex.PB), along with specimen handwriting in notebook the (Ex.P3) and the Government Forensic Expert Report, opining that the handwriting in the suicide note to be in common with that in the notebook (Ex.P3) have been pressed in by the prosecution to contend that the victim held the accused responsible for her suicide. The suicide note and the specimen handwriting notebook of the deceased were recovered by the police, vide recovery memos Ex.PJ and Ex. PK. These recovery memos were witnessed by one Gurdev Singh and HC Harjinder Singh as attesting witnesses. However, these attesting witnesses to the recovery memos were not examined by the prosecution as witnesses in the case, even though they were cited as witnesses. They were given up as unnecessary



**CRA-S-844-SB-2002 and
CRA-S-796-SB-2002**

11

witnesses by the Additional Public Prosecution vide statement dated 9.8.2000. Perusal of the note book of the deceased victim (Ex P3), relied upon as a specimen of handwriting of the victim makes it abundantly clear that the same cannot be termed as the notebook of the victim by any means. This document, portrayed as a notebook of the deceased, is apparently and visibly a bundle of some loose handwritten paper sheets, visibly torn from some other notebooks and then stapled together, with a cover stapled on it which does not bear the name, class, roll no., or subject over it. The first paper sheet inserted in this bundle of papers bears the name, class and roll no. of the victim, but it is clearly visible that the same has been put on this paper by making huge lot of cuttings over the original text material written on this page. All these circumstances create a serious shadow of doubt with regard to the plausibility of these papers being authentic specimen handwriting of the deceased victim. No effort has been made by the investigating officer of the case to collect any reliable and authenticated specimen handwriting of the victim from her college or any other such source where the handwriting of the victim would have been easily available.

15. The contents of the suicide note (Ex.PB) in Punjabi language are reproduced herein below, after translating the same into English Language:

“I am not able to face my family and society due to the wrong committed by Stephen with me. Therefore, I am killing myself. After my death no member from my family and no one else be harassed. I am myself responsible for my death.”



**CRA-S-844-SB-2002 and
CRA-S-796-SB-2002**

12

16. A bare perusal of this suicide note makes it crystal clear that no clear overt act has been attributed to the accused, Stephen, in this suicide note that could constitute abetment towards the victim for committing suicide. Though some wrongful act has been attributed to the accused Stephen, but no details of any such wrong act have been divulged so as to enable this Court to assess the import of the said wrongful act towards the instigation and abetment met out to the victim in committing suicide. Another aspect that pricks the conscience of this Court is that, though the wrongful act in the suicide note has been imputed to the accused, Stephen, but it is mentioned therein that no family member of the deceased victim should be harassed. Furthermore, it is mentioned therein that the victim herself is responsible for her death, and no one else shall be harassed for the same. It is not decipherable as to what wrong was committed by the accused, Stephen, with the victim. The prosecution has utterly and miserably failed to prove the alleged wrongful act of the accused, Stephen, which prompted the victim to commit suicide. In view of these contents of the suicide note relied upon by the prosecution, it is clearly borne out that the accused cannot be saddled with any liability towards the abetment in committing suicide by the victim. The Hon'ble Supreme Court, in a case titled ***Netai Dutta vs State of West Bengal, 2005 AIR (Supreme Court) 1775***, held as under:

“An offence under Section 306 Indian Penal Code would stand only if there is an abetment for the commission of the crime. The parameters of the "abetment" have been stated in Section 107 of the Indian Penal Code.



**CRA-S-844-SB-2002 and
CRA-S-796-SB-2002**

13

Section 107 says that a person abets the doing of a thing, who instigates any person to do that thing; or engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, or the person should have intentionally aided any act or illegal omission. The explanation to Section 107 says that any willful misrepresentation or willful concealment of a material fact which he is bound to disclose, may also come within the contours of "abetment".

In the suicide note, except referring to the name of the appellant at two places, there is no reference of any act or incidence whereby the appellant herein is alleged to have committed any willful act or omission or intentionally aided or instigated the deceased Pranab Kumar Nag in committing the act of suicide. There is no case that the appellant has played any part or any role in any conspiracy, which ultimately instigated or resulted in the commission of suicide by deceased Pranab Kumar Nag."

17. The learned Additional Sessions Judge, in the impugned judgment, held that since on behalf of the accused a suggestion was made to the parents of the deceased victim that she was having sexual relations with some boy, got pregnant, and wanted to marry that boy, but due to objections by them she committed suicide, therefore, the onus shifted on the accused to prove the said fact and disclose the name of the said boy. This finding by the learned Additional Sessions Judge suffers from palpable serious legal infirmity. The Hon'ble Supreme Court, in the case of ***Ritesh Chakarvarti vs State of Madhya Pradesh, 2006(4) RCR (Criminal) 480***, held as under:

"32. It was furthermore urged that Appellant has not been able to prove the defence raised by him. It was not necessary for him to do so. It was contended that the burden to prove the defence set up by him was on Appellant and he failed to discharge the same. In a case like the present one, the said submission cannot be appreciated. The prosecution was required to prove its case beyond all reasonable doubt. If the prosecution has failed to prove its case, it cannot fill up the lacuna by contending that Appellant has not proved its defence.

33. Our attention has been drawn to Section 103 of the Indian Evidence Act. The said provision has no application in this case. Appellant did not raise a plea of alibi. Plea of alibi by way of defence stands on a different footing. As and when such a defence is raised, ordinarily other defences are given up. Despite the provisions of Section 103 of the Indian Evidence Act, even if alibi is not proved, the prosecution cannot rest its case only in terms thereof. In other words, even if an alibi is not proved, the court



**CRA-S-844-SB-2002 and
CRA-S-796-SB-2002**

14

shall not record a judgment of conviction unless the prosecution is found to have established its case.”

18. So far as the accused Buta Ram is concerned, he has been convicted with the aid of Section 34 of the IPC by the learned Additional Sessions Judge under Section 366 of the IPC. The Hon’ble Supreme Court, in the case of ***Jasdeep Singh alias Jassu vs The State of Punjab, 2022(1) RCR (Criminal) 662***, has held as under:

“28. The existence of common intention is obviously the duty of the prosecution to prove. However, a court has to analyse and assess the evidence before implicating a person under Section 34 IPC. A mere common intention per se may not attract Section 34 IPC, sans an action in furtherance. There may also be cases where a person despite being an active participant in forming a common intention to commit a crime, may actually withdraw from it later. Of course, this is also one of the facts for the consideration of the court. Further, the fact that all accused charged with an offence read with Section 34 IPC are present at the commission of the crime, without dissuading themselves or others might well be a relevant circumstance, provided a prior common intention is duly proved. Once again, this is an aspect which is required to be looked into by the court on the evidence placed before it. It may not be required on the part of the defence to specifically raise such a plea in a case where adequate evidence is available before the court.

Merely on the ground that appellant-Buta Ram was seen by PW-1 on 19.05.1999 with the victim and accused Stephen on a scooter, he cannot be held guilty of any common intention, moreso in the absence of any offence being divulged. The statement of PW-1 is not reliable, as has already been held in the preceding portion of this judgment. *Ergo*, merely the alleged presence of Buta Ram with the accused Stephen and the victim does not, in any manner, fulfill the requirement of sharing of a common intention under Section 34 of the IPC. It is not the case of the prosecution that PW-1 overheard any conversation between Stephen, Buta Ram and the victim. The

CRA-S-844-SB-2002 and
CRA-S-796-SB-2002

prosecution failed to adduce any evidence on the part of Buta Ram of sharing the common intention with accused Stephen in the abduction of the victim.

19. As a sequel to my above findings, both of the above-mentioned appeals i.e. CRA-S 796-SB of 2002 and CRA-S 844-SB of 2002, are hereby allowed. *Ergo*, the impugned judgment of conviction and the order of sentence dated 19.04.2002, passed by the learned Additional Sessions Judge, Jalandhar, in Sessions Case No.70 of 2001, is set aside, and the appellants in both the above-mentioned Criminal Appeals are acquitted of the charges framed against them.

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

(SUMEET GOEL)
JUDGE

November 04, 2024
jatin

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