



CRA-AS-242-2019

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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CRA-AS-242-2019

Date of decision: 28.11.2024

Sukhwinder Singh

....Appellant

V/s

State of Punjab and another

....Respondents

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Mr. Sunny K. Singla, Advocate for the appellant.
Mr. Anup Singh AAG Punjab.

SUMEET GOEL, J. (Oral)

1. Present appeal is directed against the judgment dated 09.08.2019 passed by the learned Additional Sessions Judge, Sangrur, 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.62, dated 01.06.2018, was lodged against the accused-respondent No. 2, namely Narotam Singh S/o Nanak Singh, resident of Beer Ahmedabad, P.S. Amargarh, District Sangrur, under Sections 363 and 366-A of the Indian Penal Code (for brevity the 'IPC') at Police Station City-2, Malerkotla. The matter proceeded to trial before the Court of learned Additional Sessions Judge, Sangrur, which concluded its proceedings and, vide the judgment dated 09.08.2019, 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-A 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 against acquittal 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 01.06.2018, ASI Nirbhey Singh, HC Amar Singh and Guard Sohan Singh were on patrol duty at Delhi Gate, Malerkotla, when the complainant (the victim's father) approached and gave a statement to ASI Nirbhey Singh. He stated that he is a retired military personnel now working as a watchman. He has a son and a daughter (the victim), aged 16 years and 08 months, who is a student in 10+2 class at Sahibzada Fateh Singh Senior Secondary School, Malerkotla. On 30.05.2018, at around 07:30 A.M., his daughter left for school as usual but did not return home. Despite their efforts to locate the victim, they discovered during their search that she had been kidnapped by Narotam Singh, son of Nanak Singh, a resident of Beer Ahmedabad. Based on his statement, an FIR was registered against Narotam Singh. After completing the investigation, report under Section 173 of the Cr.P.C., 1973 was submitted before the Court of competent jurisdiction. Upon finding a *prima facie* case, charges under Sections 363, 366-A of IPC were framed



against the accused-respondent No.2 (herein), to which he pleaded not guilty and opted for trial.

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 all the incriminating circumstances against the accused, yet the Court below has miserably failed to properly appreciate the material on record in right perspective and has wrongly 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 was kept in illegal confinement in the house of respondent No.2. It has been further argued that the Court below has failed to consider the consistent and credible testimonies of the witnesses, 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. Furthermore, there is sufficient evidence on record to prove the guilt of the accused-respondent No.2 and the same was duly proved from the ocular as well as documentary evidence lead by the prosecution. 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. It appears that notice of motion has not been issued in the instant case. However, on the strength of advance notice, Mr. Anup Singh AAG Punjab has entered appearance on behalf of the State-respondent No.1. He has made submission in tandem with the learned counsel for the appellant.

7. At the outset, it is pertinent to mention herein that in adjudicating an appeal against an order of acquittal, the appellate court operates within narrowly circumscribed framework. It is a settled legal principle that acquittal by a trial court carries a presumption of innocence. further strengthened by the trial Court's findings. The appellate court is precluded from engaging in a wholesale re-appreciation or reassessment of evidence unless the conclusions drawn by the trial Court are patently perverse, unreasonable, or unsupported by the record. 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."*



Thus, the present appeal must be examined in context and after drawing guidance from the aforementioned principles.

8. The allegations in the present case relate to that of kidnapping from lawful guardianship as defined under Section 361 of IPC (punishable under Section 363 of IPC) and procurement of minor girl as defined under Section 366-A. The law governing Section 363 and Section 366-A is well-settled. Section 361 of IPC reads as under:-

“361. Kidnapping from lawful guardianship.-Whoever takes or entices any minor under sixteen years of age if a male, or under eighteen years of age if a female, or any person of unsound mind, out of the keeping of the lawful guardian of such minor or person of unsound mind, without the consent of such guardian, is said to kidnap such minor or person from lawful guardianship.

Explanation. The words "lawful guardian" in this section include any person lawfully entrusted with the care or custody of such minor or other person.

Exception. This section does not extend to the act of any person who in good faith believes himself to be the father of an illegitimate child, or who in good faith believes himself to be entitled to the lawful custody of such child, unless such act is committed for an immoral or unlawful purpose.”

8.1 To establish the offence of kidnapping of a minor girl under Section 363 of the Indian Penal Code (IPC), the prosecution must demonstrate specific elements, supported by evidence, as prescribed under the law. The crux of the offence lies in the act of "*taking*" or "*enticement*" by the accused. This act must be intentional and direct, resulting in the minor girl being removed from the lawful guardianship of her custodian, typically her parents or legal guardian. The term "*taking*" implies a deliberate act of physically moving or transporting the minor out of lawful custody.

Meanwhile, enticement involves persuasion, allurement, or influence, which



convinces the minor to leave the lawful guardianship willingly. An essential ingredient of this offence is the proximate connection between the accused person's actions and the minor's removal from lawful guardianship. The prosecution must prove that the accused person's conduct directly caused the minor to step outside the control or protection of her lawful guardian. Furthermore, the law does not require coercion or force; mere enticement suffices, provided it is shown that the accused person's actions influenced the minor's departure. Importantly, consent of the minor girl under eighteen is immaterial, as the law presumes that a minor lacks the capacity to consent independently in such cases. A profitable reference in this regard can be made to *dicta* of the Hon'ble Supreme Court in the case of ***S. Varadarajan versus State of Madras, 1965 AIR (Supreme Court) 942***, relevant whereof reads as under:-

"9. It must, however, be borne in mind that there is a distinction between "taking" and allowing a minor to accompany a person. The two expressions are not synonymous though we would like to guard ourselves from laying down that in no conceivable circumstances can the two be regarded as meaning the same thing for the purposes of Sections 361 of the Indian Penal Code. We would limit ourselves to a case like the present where the minor alleged to have been taken by the accused person left her father's protection knowing and having capacity to know the full import of what she was doing voluntarily joins the accused person. In such a case we do not think that the accused can be said to have taken her away from the keeping her lawful guardian. Something more has to be shown in a case of this kind and that is some kind of inducement held out by the accused person or an active participation by him in the formation of the intention of the minor to leave the house of the guardian.

10. It would, however, be sufficient if the prosecution establishes that though immediately prior to the minor leaving the father's protection no active part was played by the accused, he had at some earlier stage solicited or persuaded the minor to do so. In our opinion, if evidence to establish one of those things is lacking it would not be legitimate to infer



that the accused is guilty of taking the mirror out of the keeping of the lawful guardian merely because after she has actually left her guardian's house or a house where her guardian had kept her, joined the accused and the accused helped her in her design not to return to her guardian's house by taking her along with him from place to place. No doubt, the part played by the accused could be regarded as facilitating the fulfillment of the intention of the girl. That part, in our opinion, falls short of an inducement to the manor to slip out of the keeping of her lawful guardian and is, therefore, not tantamount to "taking".”

In light of the above, it can be safely deduced that in cases where a minor girl voluntarily leaves her lawful guardianship without any evidence of active enticement or taking by the accused, the accused cannot be held liable under Section 363 IPC. The law requires the prosecution to establish a direct act by the accused that prompted the minor's departure from lawful custody. If there is no material on record demonstrating that the accused actively influenced, persuaded, or physically removed the minor, the essential ingredients of the offense remain unfulfilled. Merely accompanying the minor after her departure or passive association does not suffice to constitute kidnapping under this provision.

8.2 Section 366-A of the IPC reads as under:-

“366-A. Procurement of minor girl.- Whoever, by any means whatsoever, induces any minor girl under the age of eighteen years to go from any place or to do any act with intent that such girl may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall be punishable with imprisonment which may extend to ten years, and shall also be liable to fine.”

To establish an offence under Section 366-A of the Indian Penal Code (IPC), the prosecution must prove a direct causal connection between the accused person's act of inducement and the intended outcome of illicit intercourse. This provision is specifically designed to safeguard minor girls



under 18 years of age from being lured or coerced into situations that result in their exploitation. Inducement is a pivotal element of the offence and involves persuading, enticing, or influencing a minor girl to leave her place or perform a specific act. However, the act of inducement alone is insufficient to constitute an offence under Section 366-A. It must be demonstrated that this inducement was aimed at achieving a particular outcome: the minor girl being forced or seduced into illicit intercourse with another person. The prosecution must establish that the accused acted with specific intent or knowledge that the inducement would likely lead to such exploitation. This requires evidence showing that the minor girl's movement or actions resulting from the inducement were directly linked to the intention of subjecting her to illicit intercourse. This direct link ensures that only deliberate actions aimed at exploiting minors are penalized, upholding the protective purpose of the law.

9. In light of the above discussion, I have thoughtfully considered the arguments advanced on behalf of the appellant as well as the learned State counsel who has made submissions in tandem with the learned counsel for the appellant, perused the entire record and the judgment passed by the Court below.

10. While going through the records of the case, it appears that the prosecution has failed to satisfactorily discharge its 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. The case put forth by the



prosecution is riddled with material discrepancies, as discussed herein below, that substantially undermine its credibility and foundational strength.

11. As per the case put forth by the prosecution, the complainant has alleged that his daughter, the victim, aged 17 years of age, was studying in 12th class at Sahibzada Fateh Singh Senior Secondary School, Malerkotla. On 30.05.2018, at about 07:30 a.m. his daughter (victim) went to school for study. At about 08:30 am, he had received a telephone call from the school that his daughter had not reached the school on the said day. Thereafter, he along with his family members started searching for his daughter. In the evening, he came to know that his daughter was kidnapped by the accused Narotam Singh son of Nanak Singh (respondent No.2-herein), who is his neighbour with the allurement that he would marry her, leading to registration of the case under Sections 363 and 366-A of the IPC. Thereafter, the Police raided the house of the accused. On 11.06.2018, the victim was produced before the Magistrate and her statement was recorded under section 164 of Cr.P.C. After recording of the statement, the victim was handed-over to her parents vide memo Ex.PF. In order to prove its case, prosecution examined as many as five witnesses and closed its evidence.

12. The statement of appellant under Section 313 of Cr.P.C. was recorded in which all the incriminating circumstances appearing in the prosecution evidence were put to him, which were denied by him in toto and pleaded his false implication in the case. However, no evidence was led in defence by the appellant.

13. The victim appeared as PW-4 and testified in alignment with the case of the prosecution during her examination-in-chief. However, her



cross-examination revealed certain discrepancies which are fatal to the case of the prosecution. The victim stated that she travelled to school in a van with teachers and students. On the day of occurrence, she left for school at 07:30 A.M. but did not mark her attendance or enter the school building. Instead, she went to the Malerkotla bus stand, a crowded area, and boarded a bus to Ludhiana with the accused-respondent No.2 (herein). Thereafter, they travelled from Ludhiana to Manali, then to Chandigarh, Delhi and finally Mumbai, passing through busy public places without seeking help or informing anyone. She remained in the company of the accused-respondent No.2 (herein) and did not contact her parents or disclosed her situation to anyone during her journey, which casts a significant dent in the prosecution narrative. The statement of the victim under Section 164 of Cr.P.C. recorded on 11.06.2018, and her subsequent Police statement on 12.06.2018, both indicate that she went with the accused (respondent No.2 herein) voluntarily and did not accused him of kidnapping.

In cases involving offences under Section 363 and Section 366-A of the Indian Penal Code (IPC), the testimony of the prosecutrix holds paramount importance in determining the culpability of the accused. However, when the testimony of the prosecutrix is fraught with inconsistencies or material discrepancies, the case put forth by the prosecution is significantly weakened. The burden of proof rests squarely on the prosecution to establish the guilt of the accused beyond reasonable doubt, and any infirmity in the testimony of the prosecutrix erodes the credibility of the prosecution's narrative. This principle assumes greater significance when the prosecutrix, though a minor, is above the age of



sixteen years and possesses the requisite maturity to comprehend and articulate the material facts of the case. In such circumstances, her testimony must withstand the test of cogency, coherence, and corroboration with other evidence. Where contradictions or omissions in her account raise doubts about the veracity of her statements, the benefit of doubt must be extended to the accused in accordance with the established principles of criminal jurisprudence. Thus, the court must exercise heightened scrutiny in evaluating the testimony of a prosecutrix who is capable of understanding the gravity of the situation, ensuring that justice is not undermined by conjectures or unsubstantiated claims. In somewhat similar circumstances, the Hon'ble Supreme Court in the case *Shyam versus State of Maharashtra, 1995 AIR (Supreme Court) 2169*, observed that where the prosecutrix has stayed with the accused for a significant period of time without putting up any struggle or raising alarm while alleged to be taken away by the accused it can be inferred that the prosecutrix was a willing party to go with the accused on her own.

These contradictions in the statement of the victim itself undermine the case of the prosecution and it fails to meet the standard of proving the guilt beyond reasonable doubt and casts a significant element of doubt regarding allegations of kidnapping/enticement on behalf of the accused-respondent No.2 (herein) and potentially weakened the case of the prosecution.

13.1 Another material contradiction which needs to be highlighted is the statement of the Investigating Officer, PW-2, ASI Nirbhey Singh, who confirmed that during the course of investigation, the victim stated that she



had accompanied the accused on her own accord and did not provide any evidence of coercion or enticement. This statement of the key prosecution witness i.e. the Investigating Officer, when read cumulatively with other material on record, in particular the statement of the victim recorded under section 164 of Cr.P.C., 1973 and her statement made before the Police, goes on to show that the victim had voluntarily left her house with the accused-respondent No.2 (herein) on the day of alleged occurrence. The claims of the complainant about the threats and forced abduction appear unlikely, given the victim's failure to seek help or raise alarm 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 accused-respondent No.2 (herein) of her own will and accord.

14. Upon reviewing all the evidence and material available on records of the case, this Court is of the firm opinion that the instant case is one of the consensual elopement, rather than kidnapping as alleged by the prosecution. It is evident that, on the fateful day, the victim had left her residence for school and voluntarily joined the company of the accused, with whom she travelled and stayed for a while at different places. Nothing has come on record which suggests any effort on part of the victim to seek help or raise any alarm and hence the culpability of the accused-respondent No.2 was not establish. The statements of the victim 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 (respondent No.2 herein) which prompted the victim to leave her



house. The manner in which she left to join the company of accused-respondent No.2 raises question and would not amount to kidnapping/enticement.

14.1 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 kidnapped, threatened, or coerced her into leaving with him.

15. 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 offence under Sections 363 and 366-A 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.

16. 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.

17. 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, there is no medical evidence on record to substantiate the claim that the victim 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.

18. 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 has miserably failed to prove that the accused (respondent No.2 herein) has kidnapped the victim with an intention to commit intercourse with her 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.

19. 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.

20. 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.

21. 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 09.08.2019 passed by the learned Additional Sessions Judge, Sangrur, is upheld. Resultantly, the present appeal, being bereft of merits, fails and is dismissed.

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

(SUMEET GOEL)
JUDGE

November 28, 2024
Ajay

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