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

CRA-S-2325-SB-2004 (O&M)

Date of decision: 11.07.2025

Avtar Singh and another

... Appellants

Vs.

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Abhijeet Chaudhary, Advocate (legal aid counsel)
for the appellants.

Mr. Subhash Godara, Addl. A.G., Punjab.

HARPREET SINGH BRAR, J. (ORAL)

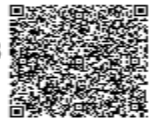
1. Present appeal has been preferred against the judgment of conviction and the order of sentence dated 06.11.2004 passed by learned Additional Sessions Judge-cum-Presiding Officer, Fast Track Court, Rupnagar, in FIR No.350 dated 25.08.2003 under Section 364-A of the Indian Penal Code (for short 'IPC'), registered at Police Station Mohali, District Ropar.

2. The appellants were convicted and sentenced under Section 363 of IPC for abducting minor son of the complainant and were ordered to undergo rigorous imprisonment for a period of 03 years and to pay a fine of Rs.1,000/-



each along with default mechanism.

3. Learned legal aid counsel for the appellants, *inter alia*, contends that complainant Rana Gurdial Singh specifically named one Dinesh Kumar Arora @ Goldi as accused, who was his business partner and due to dispute between them, said Dinesh Kumar Arora @ Goldi abducted his son. The complainant further alleged in his statement that three days prior to the occurrence, accused Dinesh Kumar Arora @ Goldi threatened him that he would suffer the consequences for not settling the accounts with him. The appellants were named in the case thereafter on the statement made by PW4 Harinderdeep Singh Virk, on the allegations that he saw the child in the company of the appellants. The prosecution has not been able to explain the presence of PW4 Harinderdeep Singh Virk at the place in question. Further, case of the prosecution is highly probable regarding the place, which he has mentioned in his statement. As per the case set up by the prosecution, the appellants travelled from one place to another in a thickly populated area, firstly in a car and thereafter, on a scooter. It is unbelievable that the child, who was 08 years of age, had not raised any hue and cry and nobody noticed the suspicious movement of the appellants. Even the child, who appeared as PW8, did not make a whisper in this regard. The appellants have duly proved that they have been falsely implicated, as they had a monetary dispute with one of the appellant for his salary. Furthermore, at the alleged time of recovery of the child, no witness was called or joined, although the house, from which the child was



allegedly recovered, is situated in a thickly residential area. Even the defence evidence adduced by the appellants had not been relied upon by learned trial Court and totally discarded more plausible and trustworthy deposition of defence witness. He further submits that appellant No.1 Avtar Singh has undergone actual sentence of almost 02 years and 07 months and appellant No.2 also underwent more than 01 year and 02 months of actual custody. The appellants are first offenders and they are not involved in any other criminal activity.

5. *Per contra*, learned State counsel opposes the prayer made by the appellants on the ground that complicity of the appellants is duly established, as the child was recovered from their possession and he vividly narrated the sequences. The prosecution has been able to prove its case beyond a reasonable shadow of doubt.

6. Having heard learned counsel for the parties and after perusing the record of the case with their able assistance, it transpires that the appellants were convicted under Section 363 of IPC, for kidnapping minor son of the complainant, for which no minimum punishment has been prescribed. The appellants are not involved in any other case and appellant No.1 Avtar Singh has undergone actual sentence of almost 02 years and 07 months and appellant No.2 also underwent more than 01 year and 02 months of actual custody. Since there is no minimum punishment prescribed under Section 363 of IPC, this Court is of the opinion that it would be in the interest of justice, if the sentence awarded to



the appellants is reduced to the period already undergone by them.

7. In *Deo Narain Mandal Vs. State of U.P., (2004) 7 SCC 257*, the Hon'ble Supreme Court has opined that awarding of sentence is not a mere formality in criminal cases. When a minimum and maximum term is prescribed by the statute with regard to the period of sentence, a discretionary element is vested in the Court. Background of each case, which includes factors like gravity of the offence, manner in which the offence is committed, age of the accused, should be considered while determining the quantum of sentence and this discretion is not to be used arbitrarily or whimsically. After assessing all relevant factors, proper sentence should be awarded bearing in mind the principle of proportionality to ensure the sentence is neither excessively harsh nor does it come across as lenient.

8. Further, the Hon'ble Supreme Court in *Ravada Sasikala Vs. State of AP, AIR 2017 SC 1166*, has reiterated that the imposition of sentence also serves a social purpose as it acts as a deterrent by making the accused realise the damage caused not only to the victim but also to the society at large. The law in this regard is well settled that opportunities of reformation must be granted and such discretion is to be exercised by evaluating all attending circumstances of each case by noticing the nature of the crime, the manner in which the crime was committed and the conduct of the accused to strike a balance between the efficacy of law and the chances of reformation of the accused.

9. A perusal of the judgment of conviction passed by learned trial



Court indicates no perversity in its findings and the same is based on correct appreciation of evidence available on record. However, the FIR (*supra*) in the present case was lodged on 25.08.2003 and the appellants have been suffering the agony of trial for the last more than 21 years. Since their conviction, the appellants have grown into law-abiding citizen and desire to live a peaceful life.

10. Consequently, the present appeal is disposed of and the judgment of conviction dated 06.11.2004 passed by learned Additional Sessions Judge-cum-Presiding Officer, Fast Track Court, Rupnagar is upheld, however, the order of sentence of even date is modified to the extent that the sentence of rigorous imprisonment for a period of three years and fine of Rs.1,000/- each along with default mechanism awarded to the appellants is reduced to the period of sentence already undergone by them.

11. All the pending miscellaneous application(s), if any, shall also stand disposed of.

12. The High Court Legal Services Committee is directed to pay the remuneration to learned Legal Aid Counsel, as per relevant Rules/Orders.

[HARPREET SINGH BRAR]
JUDGE

11.07.2025
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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No