S. No.04
Regular Cause List

INTHE HIGH COURT 0F JAMMU & KASHMIR AND LADAKH AT SRINAGAR

CRA No. 2/2011
IA (1/2011[89/2011])

ZAHOOR AHMD CHEETA

…Appellant(s)/Petitioner(s)

Through: Mr. S. R. Hussain, Advocate

Vs.

STATE

...Respondent(s)

Through: Mr. Faheem Shah, GA
Mr. Shuja Ul Haq, Advocate

CORAM:
HON'BLE MR. JUSTICE SANJAY PARIHAR, JUDGE

ORDER
29.10.2026

1. Heard both the counsels and examined the record
2. Learned counsel appearing for the appellant submitted that the appellant stands convicted by the learned Trial Court for the commission of an offence punishable under Section 363 of the Ranbir Penal Code (RPC). It is contended that the evidence brought on record establishes that the prosecutrix was more than 16 years of age at the relevant time and had voluntarily accompanied the appellant with the intention of marrying him, a relationship which was being opposed by her parents, particularly her father, who subsequently lodged the complaint. It is further submitted that the evidence also reveals that the prosecutrix had voluntarily come to the house of the appellant and that it was the appellant himself who subsequently took her to the Police Station

for the purpose of restoring her to her parents. Learned counsel, therefore, urged that these circumstances deserve consideration while determining the question of sentence.

3. Learned counsel further submitted that the FIR pertains to the year 2007; that the appellant underwent the ordeal of a criminal trial for approximately four years; and that the present appeal has remained pending for more than fifteen years. It is urged that, having regard to the nature of the accusation, the circumstances surrounding the occurrence, the age of the prosecutrix, and the subsequent conduct of the appellant, the case warrants a reformative rather than a punitive approach. Learned counsel accordingly submitted that, even if the conviction recorded by the learned Trial Court is maintained, the appellant deserves to be extended the benefit of probation. In support of this submission, reliance has been placed upon the judgment of the Rajasthan High Court in Ladu v. State of Rajasthan, rendered in S.B. Criminal Appeal No. 28/1994, as also the judgment of the Allahabad High Court, Lucknow Bench, in Virendra @ Vinder @ Rajendra v. State of U.P., Criminal Appeal No. 637 of 2010.

4. Learned counsel appearing for the respondents did not seriously oppose the prayer made on behalf of the appellant for extending the benefit of probation. In fact, during the course of arguments, the said aspect of the appellant's case remained substantially uncontested.

5. Heard learned counsel for the parties and perused the record of the case, including the judgment of conviction and order of sentence passed by the learned Trial Court.

6. Since the principal submission advanced on behalf of the appellant is confined to the grant of probation, it would be appropriate to examine the circumstances attending the commission of the offence, the findings recorded by the learned Trial Court, and the mitigating factors relevant to the question of sentence. The record reveals that the FIR was initially registered for the commission of an offence under Section 363 RPC, whereafter Section 376 RPC was also added during investigation. However, upon appreciation of the evidence led during trial, the charge under Section 376 RPC was not found to have been established. The learned Trial Court nevertheless recorded the conviction of the appellant under Section 363 RPC, principally on the finding that the prosecutrix was below 16 years of age at the relevant time and had been taken out of the keeping of her lawful guardian without the latter's consent.

7. The defence projected by the appellant throughout the proceedings was that the prosecutrix had voluntarily come to his house, as she intended to marry him despite opposition from her parents. The appellant, in his examination under Section 342 Cr.P.C., also stated that the prosecutrix had been residing with him as his legally wedded wife. The learned Trial Court, while appreciating the evidence, noticed that the prosecutrix had accompanied the

appellant of her own accord, that a marriage contract had purportedly been executed between them, and that she had thereafter resided in his house. The learned Trial Court, however, concluded that, the prosecutrix being below the prescribed age, her willingness to accompany the appellant or enter into a matrimonial relationship could not, by itself, displace the legal requirement of consent of her lawful guardian. It was in this background that the learned Trial Court held the ingredients of the offence under Section 363 RPC to have been established.

8. Another circumstance emerging from the record is the statement of the prosecutrix recorded under Section 164-A Cr.P.C. before the learned 2nd Subordinate Judge, Passenger Tax, Srinagar, on 15.11.2007, wherein she is stated to have asserted that she had married the appellant and that he was being falsely implicated. The learned Trial Court declined to attach decisive evidentiary value to the said statement, observing that the prosecutrix was a minor at the relevant time and, more importantly, that the defence had not confronted her with the said statement during cross-examination. The learned Trial Court, therefore, found that the statement could not materially affect the prosecution case.

9. Having considered the findings recorded by the learned Trial Court in the light of the evidence discussed in the impugned judgment, this Court finds no sufficient ground to interfere with the conviction of the appellant under Section 363 RPC. The question,

however, whether the sentence of imprisonment imposed upon the appellant is required to be maintained, or whether the circumstances of the case justify extending to him the benefit of probation, stands on a different footing and calls for independent consideration.

10. The law relating to probation embodies the reformative philosophy of criminal jurisprudence. Its underlying object is not merely to punish an offender for the wrong committed but, wherever the circumstances reasonably permit, to afford him an opportunity to reform himself and lead a law-abiding life. The Probation of Offenders Act, 1958, recognizes that the nature of the offence, the age and character of the offender, his antecedents, and the circumstances in which the offence came to be committed are relevant considerations in determining whether the offender should be subjected to incarceration or released on probation of good conduct. The statutory scheme also accords particular significance to offenders below 21 years of age and contemplates a more cautious approach before sentencing such offenders to imprisonment, subject to the conditions and limitations prescribed by law. The discretion to grant probation, however, is a judicial discretion which must be exercised upon consideration of the facts and circumstances of each case.

11. In the present case, it has been submitted that the appellant was below 21 years of age when the occurrence took place in the year

2007, while the prosecutrix was stated to be between 16 and 17 years of age. The circumstances emerging from the evidence, particularly the assertion that the prosecutrix had voluntarily accompanied the appellant with the intention of marrying him, the absence of proof of the charge under Section 376 RPC, and the subsequent conduct of the parties, constitute relevant considerations for examining the appellant's entitlement to probation. These circumstances, though insufficient to absolve the appellant of criminal liability under Section 363 RPC, cannot altogether be ignored while determining the appropriate sentencing response.

12. In ***Ladu v. State of Rajasthan***, the Rajasthan High Court, while dealing with an appeal arising out of a conviction under Section 363 IPC, extended the benefit of probation to the appellant notwithstanding the sentence of three years' simple imprisonment and a fine of Rs. 3,000/- imposed by the Trial Court. The appellant therein was directed to execute a bond in the sum of Rs. 50,000/- with two sureties, undertaking to maintain peace and good behaviour for a period of two years and not to repeat the offence. The said decision illustrates the exercise of judicial discretion in favour of a reformative approach where the circumstances of the case are found to justify such indulgence.

13. Likewise, in ***Virendra @ Vinder @ Rajendra v. State of U.P.,*** the Allahabad High Court partly allowed the appeal by maintaining the

conviction of the accused-appellant but modifying the sentence through extension of the benefit of Section 4 of the applicable probation law, subject to the conditions stipulated therein. The principle emerging from the aforesaid decisions is that, in an appropriate case, the appellate court may, while affirming the conviction, interfere with the substantive sentence and extend the benefit of probation, provided the statutory requirements are satisfied and the circumstances justify such relief.

14. Reverting to the facts of the present case, the appellant was sentenced by the Trial Court to undergo imprisonment for a period of two years and to pay a fine of Rs. 10,000/-. The occurrence dates back to the year 2007. The appellant has already undergone the ordeal of a protracted criminal trial spanning approximately four years and has thereafter remained engaged in appellate proceedings for more than fifteen years. It has further been submitted that, during the intervening period, the appellant has married, is blessed with children, and has settled into family life. The prosecutrix is also stated to have settled in her life. These circumstances assume significance while assessing whether, at this distant point of time, the ends of justice would be better served by directing the appellant to undergo incarceration or by affording him an opportunity to maintain good conduct under the supervision of the law.

15. Another material circumstance weighing with this Court is that no previous criminal antecedents of the appellant have been brought to its notice. There is also nothing on record to suggest that the appellant has subsequently indulged in any criminal activity. The circumstances surrounding the occurrence, as noticed by the Trial Court, indicate that the appellant and the prosecutrix were acquainted with each other and intended to enter into a matrimonial relationship, notwithstanding the opposition of the prosecutrix's parents. While such circumstances do not furnish a legal justification for taking a minor out of the keeping of her lawful guardian, they are nevertheless relevant to the limited question of sentencing. The Court is conscious that the offence of kidnapping from lawful guardianship cannot be trivialized merely because the minor may have expressed willingness to accompany the accused. Equally, however, the Court cannot remain oblivious to the peculiar circumstances of the case and the considerable passage of time since the occurrence.

16. It is also significant that the charge under Section 376 RPC was neither established by the prosecution nor supported by the testimony of the prosecutrix in the manner necessary to sustain a conviction for that offence. The conviction under Section 363 RPC rests upon the evidence concerning the age of the prosecutrix, the circumstances in which she came to reside with the appellant, and the explanation furnished by the appellant during his examination

under Section 342 Cr.P.C. Taking a cumulative view of the matter, particularly the appellant's stated age at the time of occurrence, the absence of previous criminal antecedents, the prolonged pendency of the proceedings, his subsequent family circumstances, and the nature of the evidence on record, this Court is of the considered opinion that the ends of justice would be adequately served by extending to the appellant the benefit of probation instead of requiring him to undergo the substantive sentence of imprisonment. Such a course would be consistent with the reformative object underlying the law of probation, without in any manner diluting the finding of guilt recorded against the appellant.

17. Accordingly, the appeal is ***partly allowed***. The conviction of the appellant for the commission of an offence punishable under Section 363 RPC, as recorded by the Trial Court, is upheld. However, the order of sentence is modified to the extent that, instead of being required to undergo the substantive sentence of imprisonment, the appellant shall be released on probation of good conduct, subject to his furnishing a bond in the sum of Rs. 50,000/- (Rupees Fifty Thousand only), with two sureties in the like amount each, to the satisfaction of the Trial Court. The bond shall contain an undertaking that the appellant shall maintain peace and good behaviour for a period of two years, shall not commit any offence during the said period, and shall appear and receive sentence if called upon to do so by the competent Court in accordance with

law. The appellant shall remain bound by the conditions of probation for the aforesaid period.

18. The appellant shall furnish the requisite bond and sureties before the Trial Court within a period of two months from the date of this judgment. Since the appellant is already on bail, his existing bail bonds shall stand discharged upon his furnishing the probation bond and sureties as directed above.

19. In the event of failure to comply with the aforesaid directions within the stipulated period, the Trial Court shall be at liberty to proceed in accordance with law.

20. The appeal stands ***disposed of*** in the aforesaid terms.

21. The record of the Trial Court, along with a copy of this judgment, be transmitted forthwith for information and compliance.

(SANJAY PARIHAR)
JUDGE

Srinagar
29.10.2026
"Imtiyaz"

Imtiyaz Ul Gani
I attest to the accuracy and
authenticity of this document

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