



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

461

CRA-S-2662-SB-2012(O&M)

Date of decision: 27.03.2026

Varinder Singh

...Appellant(s)

VERSUS

State of Punjab

...Respondent(s)

CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present :- Mr. Prateek Pandit, Advocate for the appellant.

Dr. (Ms.) Savi Nagpal, AAG, Punjab.

VINOD S. BHARDWAJ, J. (Oral)

The above appeal has been preferred against the judgment of conviction dated 23.08.2012 passed in Sessions case No.20 of 21.11.2011 arising out of FIR No.47 dated 26.07.2011 registered under Sections 363, 366, 366-A, and 376 of the Indian Penal Code, 1860 (hereinafter referred to as IPC) at Police Station Kotwali, District Kapurthala to the extent whereby the appellant was convicted for offence under Section 363 IPC and sentenced to undergo rigorous imprisonment for a period of two years and also imposed a fine of Rs.5,000/- while he was acquitted for commission of offences under Sections 366, 366-A and 376 IPC.

2. Briefly summarized, the FIR in the present case was lodged at the statement of Bhagatvir Singh son of Swaran Singh, on the allegations that his eldest daughter, Ravinder Kaur @ Ruby, had been studying in Sahibzada Ajit Singh Public School, Noorpur Rajputtan, in 10+2. On 16.7.2011, they went to sleep in their room after having a meal. On 17.7.2011 at about 6.00 AM, he found that his daughter, namely Ravinder Kaur @ Ruby, was missing from her room. He searched for her here and there and also enquired about her from his

relatives but she was nowhere to be found. He believed that his daughter Ruby had been enticed/ seduced by Varinder Singh @ Ghonu, who, after conspiring with his father Gurdeep Singh, sister Surjit Singh @ Jit, Gurjit Kaur @ Sonu, residents of Jhal Thikriwala, took his daughter away to marry her. An FIR was lodged on these allegations. The accused persons were arrested, the statement of the victim was also recorded, and she revealed that she had been taken away to Bombay by accused Varinder Singh and Dilbagh Singh, who had connived with other accused. Accused Gurdeep Singh, Surjit Kaur and Gurjit Kaur were found innocent, and challan was presented against the remaining accused viz. the appellant, Soma Singh, Jograj Singh and Dilbagh Singh in the Court.

3. Copies of documents as required under Section 207 Cr.P.C were supplied to all the accused free of cost. Thereafter, the case was committed to the court of Ld. Sessions Judge by the Addl. Chief Judicial Magistrate, Kapurthala vide order dated 7.11.2011.

4. The accused were charge sheeted under Sections 363, 366-A, 376/120-B IPC on 21.11.2011, to which they pleaded not guilty and claimed trial.

5. To prove its case, the prosecution examined PW1 Dr. Simmy Dhawan, Medical Officer, who medically examined Ravinder Kaur @ Ruby and proved on record application moved by the police for medico-legal examination of the victim Ex.PWI/A, endorsement of SMO Ex.PWI/B, her report Ex.PWI/C, report of chemical examiner Ex.PWI/D, original report produced in the court Ex.PWI/E.

6. PW2 Dr. Atul Rattan conducted the medico-legal examination of accused Varinder Singh and proved on record application moved by the police Ex.PW2/A, endorsement of the SMO Ex.PW2/B, his report Ex.PW2/C

7. PW3 Ravinder Kaur, the victim, supported the version of the prosecution and proved on record her statement recorded under Section 164 Cr.P.C Ex.PW3/A.

8. PW4 HC Kartar Singh, in whose presence the accused persons were arrested and the victim was recovered from the custody of accused Varinder Singh and Dilbagh Singh, proved on record the recovery memo of the victim Ex.PW4/As, memo Ex.PW4/B vide which the prosecutrix was handed over to her maternal uncle, arrest memo of Varinder Singh Ex.PW4/C, and his personal search memo, Ex.PW4/D. PW5 SI Sarabjit Singh, Investigating Officer, recorded the statement of the complainant Bhagatvir Singh and proved on record the same Ex.PW5/A, his endorsement Ex.PW5/B, FIR Ex, PW5/C, site plan of the place of occurrence Ex.PW5/D, recovery memo of the victim Ex.PW4/A, recovery of one mobile phone Nokia 2690 Ex, PW4/D, memo Ex.PW4/B vide which victim was handed over to maternal uncle, arrest memo of accused Varinder Singh Ex.PW4/C, memos Ex.PW5/E and Ex, PW5/F vide which the victim was handed over to her father and maternal uncle after medico-legal examination, arrest memos of accused Dilbagh Singh, Jograj Singh and Soma vide memos Ex.PW5/G, Ex.PW5/H and Ex.PW5/J, their personal search memos Ex.PW5/K, Ex.PW5/L and Ex.PW5/M, memo recovery of one mobile phone from the possession of the accused Jograj Singh Ex.PW5/N, memo recovery of the birth certificate of the victim Ex.PW5/P, application Ex.PW5/Q moved to the Head master of Sahibzada Ajit Singh Public School, memo recovery of school certificate from the head teacher Ex.PW5/R, statement of the prosecutrix under Section 164 Cr.P.C Ex.PW3/A, application Ex.PW5/S, handing over the prosecutrix to her father vide memo Ex.PW5/T, case property one mobile phone Nokia Ex, PI.

9. PW6 Bhagatvir Singh, the complainant, supported the version of the prosecution and proved on record his statement Ex.PW5/A and recovery memo of the birth certificate of the victim Ex.PW5/P. PW7 Jaswinder Kaur, mother of the prosecutrix, also supported the version of the prosecution.

10. PW8 Kulwinder Kaur, Principal Sahibzada Ajit Singh Public School, handed over the birth certificate of the victim to the Investigating Officer and proved on record the same Ex.PW5/R. PW9 Gajjan Singh, upon whose taxi Varinder Singh had been working as a driver, saw the accused take away a girl with him, along with other accused persons Jograj and Soma.

11. PW10 J.S.Marok, Addl. Chief Judicial Magistrate, Kapurthala, recorded the statement of the prosecutrix under Section 164 Cr.P.C. He proved on record an application moved by the police for recording the statement of the victim Ex.PW5/S and the statement of the victim Ex.PW3/A, and zimni order regarding recording of statement Ex.PWIO/A.

12. PW11 HC Charanjit Singh proved on record call details of mobile phone No.97814-11087 as Ex.PWII/A and call detail of mobile phone No.99301-76452 Ex.PWII/B.

13. PW12 MHC Tarsem Singh sent the sample to the chemical examiner.

14. PW13 Joginder Pal Patwari prepared the site plan Ex.PW13/A.

15. PW14 Pardeep Kumar, Clerk, Births and Deaths, proved on record the birth certificate of the victim Ex.PW14/A. Ld. Public Prosecutor for the State closed the evidence of the prosecution.

16. After the closure of the prosecution evidence, the accused were examined under section 313 Cr.P.C, in which all the incriminating evidence that appeared in the prosecution evidence was put to them; however, they

denied all the allegations and pleaded innocence. No evidence was however led in defence.

17. The parties were heard thereafter, and the appellant was convicted and sentenced as above. Hence, the present appeal.

18. Learned counsel for the appellant contends that the prosecutrix was 17 and a half years of age at the time of the incident. The trial Court erred in convicting the appellant for the offence under Section 363 IPC, notwithstanding that the pre-requisites for the commission of the offence, as specified in law and explained in the judgment of the Hon'ble Supreme Court in the matter of "*S. Varadarajan Vs. State of Madras*" reported as **AIR 1965 SC 942** (which principles are still good), were not fulfilled. It is further contended that the prosecution story, to the extent that the prosecutrix went to answer the call of nature at midnight, to the fields of another person, fails to evince credibility since the testimony specifically reflects that there were two pucca toilets/bathrooms constructed within the house of the prosecutrix herself. The said circumstances corroborate the suggestion put forth by the appellant that the prosecutrix left the parental house of her own accord and without seeking permission from her parents. In the said circumstances, the act of enticing or taking away the prosecutrix cannot be attributed to the appellant herein.

19. Counsel submits that, in her statement recorded under Section 164 Cr.P.C., the prosecutrix nowhere alleged that she had been enticed or taken out of the custody of her lawful guardian. Hence, even for the said reason, the ingredients as specified, for the commission of offence punishable under Section 363 IPC, are not made out. It is vehemently argued by the counsel that the prosecutrix moved along with the appellant for nearly 01 month. He further

submits that the incident of the prosecutrix leaving the parental house took place on 17.07.2011; however, the FIR in question was registered after a delay of nearly 10 days, i.e. on 26.07.2011. The prosecutrix was thereafter recovered on 22.08.2011, i.e. after more than a month of her having left her parental house, and that her statement under Section 164 Cr.P.C. was recorded after a further delay of one month of her recovery. It is also submitted that there can be no presumption of commission of offence against the appellant herein and that the burden lies upon the prosecution to establish that the appellant had in any way contributed to the act of taking away or enticing the prosecutrix. The evidence and the corroborative circumstances referred to above, rather, establish that the prosecutrix had left the parental house of her own accord and joined the company of the appellant. It is submitted that the appellant was under no obligation to disclose or to restore the custody of the prosecutrix to the lawful guardian. The finding of conviction has thus been challenged. It is also vehemently argued that the impugned judgment dated 23.08.2012, to the extent whereby the appellant had been acquitted of the offences under Sections 366-A and 376 IPC, had been challenged by the complainant-father of the prosecutrix before a Division Bench of this Court in CRM-A-894-MA-2012 & CRM-A-895-MA-2012. The said challenge was, however, dismissed vide judgment dated 29.11.2012.

20. Learned State Counsel, however, reiterates the submissions as noticed by the Trial Court and contends that the prosecutrix was 17 ½ years of age at the time of the incident and that, as per her initial statement, she had gone outside to answer the call of nature, wherefrom she was sedated and forcibly taken away. She remained under the influence of the sedative and only regained consciousness for the first time when she reached Ludhiana. Thus,

there was an act of taking away of the prosecutrix herein. She further contends that the prosecutrix was a minor at the time of the occurrence, which stands fully established not only by the medical evidence but also from the school record as well as the record of the municipality, which are Ex.PW5/R and Ex.PW14/A respectively. The date of the birth of the prosecutrix is 02.02.1994.

21. I have heard counsel for the respective parties and have gone through the documents appended along with the present appeal.

22. Even though the registration of the FIR was for offences also under Sections 366, 366-A & 376 IPC, the said aspect is not required to be gone into at this stage since the appellant has already been acquitted/discharged of the said offences and the challenge by the complainant to the said judgment already stands dismissed vide judgment dated 29.11.2012 passed by the Division Bench of this Court.

23. The consideration before this Court is now restricted only to the commission of an offence under Section 363 IPC, i.e. of taking away/enticing the prosecutrix out of the lawful guardianship of the complainant.

24. Before proceeding any further, it would be apposite to refer to the relevant statutory provisions, which are extracted as under:

“Section 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.

Section 363 – Punishment for kidnapping

Whoever kidnaps any person from India or from lawful guardianship, shall be punished with imprisonment of either

description for a term which may extend to seven years, and shall also be liable to fine.”

25. It is evident from the above that establishing an offence punishable under Section 363 IPC, the ingredients as required under Section 361 IPC are to be satisfied. The same contemplates that any of the two acts, i.e. taking out or enticing out of the keeping of the lawful guardian, is an offence punishable under the Act. So far as the factum of enticing the prosecutrix is concerned, the said fact is not even pressed by the respondent-State since the case set up by the respondent-State is specific to the effect that the prosecutrix was sedated and taken away on the intervening night of 16/17.07.2011. The prosecution relies on the above alleged act of taking the minor out of the keeping of the lawful guardianship for pressing the charge.

26. The two words “takes” and “entices” as used in Section 361 IPC are intended to be read together so that each takes, to some extent, its colour and content from the other. If the minor leaves her parental home completely uninfluenced by any promise, offer or inducement emanating from the guilty party, then the latter cannot be considered to have committed the offence as defined under Section 361 IPC. Reliance in this regard may be placed on the judgment of the Supreme Court in the matter of ‘**Parkash Vs. State of Haryana**’ reported as **2004 (1) SCC 339**. The distinction is however in “taking” from “allowing” a minor to accompany. The act of allowing would not be an act attracting the penal consequences under Section 361 of IPC.

27. In the said background, it would be now apposite to refer to the testimony of the prosecutrix who appeared as PW3. In her deposition before the Court, she had stated that she went to the fields to answer the call of nature.

Then, the appellant-Varinder Singh @ Ghonu, forcibly made her consume

something because of which she fell unconscious, and she only regained consciousness at Ludhiana in a train. She alleged that she had been threatened by the appellant herein, along with his accomplices, that in the event of the prosecutrix raising any alarm, they would kill her. It is, however, admitted by the prosecutrix in her examination-in-chief that she went to Bombay with the appellant herein and that they stayed in a rented premises in Bombay. The prosecutrix thereafter told the appellant that she wanted to come back home and solemnize marriage with him after their return, whereupon the appellant-Varinder Singh @ Ghonu, agreed to return. When they returned on 22.08.2011, the police arrested appellant-Varinder Singh @ Ghonu and recovered the girl.

28. In her cross-examination, she admitted that the entire family used to sleep in one room and she further acknowledged that two toilets had been constructed in her house. She further admitted in her cross-examination that she had gone to the fields of some other person, who is not known to her, to answer the call of nature. It was also acknowledged by her that her hands had not been tied when she was travelling with the appellant in train. She also admitted that she was fully conscious in Bombay and that she did not raise any alarm either at the railway station or at any other place. She also admitted that she went in an autorickshaw, from the Railway station to the room that had been rented in Bombay. The room, which was taken on rent in Bombay, was on the ground floor, and other rooms adjoining the said room were also there, which were occupied by various people, but she did not alarm any other person. She also acknowledged that there was no cooking material and that they used to have food outside. She also acknowledged that she stayed at Bombay for a period of one month till 22.08.2011 and that the room was opened for 2/3 times a day. They travelled to different places within Bombay and boarded the train from

Bombay, and thereafter travelled by bus to the prosecutrix's residence. It was also acknowledged that even during the journey back, her hands were not tied, and no alarm was ever raised by her. It is acknowledged that from the day of her return till her statement was recorded, she was perfectly hale and hearty.

29. Bhagatvir Singh- father of the prosecutrix, appeared as PW6, and he acknowledged the existence of two toilets/bathrooms in the house, one of which was on the ground floor. He also acknowledged that he did not give any application to any authority regarding his missing daughter from 16.07.2011 to 25.07.2011. It is also acknowledged that the prosecutrix remained healthy post her recovery, i.e., from 22.08.2011 to 25.09.2011, yet the statement under Section 164 Cr.P.C. was not recorded. It was also admitted by him in his cross-examination that the family used to sleep in their own rooms and they answered the call of nature mostly at toilets constructed in the residence only. The suggestion was put to the effect that Bhupinder Kaur, mother of the prosecutrix, had died about 26/27 years back and that the father had performed a second marriage. Similar attribution was also made in the testimony of Jaswinder Kaur, wife of Bhagatvir Singh, who appeared and testified as PW-7.

30. Further, this Court has also perused the statement of the prosecutrix recorded under Section 164 Cr.P.C on 25.09.2011 by Additional Chief Judicial Magistrate, Kapurthala. In the said statement, the prosecutrix stated to the effect that she had cleared her 10+2 from Sahibzada Ajit Singh Public School at Village Noorpur Rajputtan, and one Amandeep Kaur daughter of Sukhdeep Singh was her class-fellow in Class 10. Said Amandeep Kaur gave the telephone number of the prosecutrix to the appellant-Varinder Singh @ Ghonu, but the prosecutrix did not receive the appellant's calls. She further submitted that Varinder Singh made her consume something as a result of

which she became unconscious, and when she regained consciousness, she came to know that she was in Ludhiana. She had further stated that initially, other persons had also accompanied appellant-Varinder Singh @ Ghonu but they all left whereafter Varinder Singh, along with one Dilbagh Singh brought the prosecutrix to Bombay and that she convinced them to bring her back to Kapurthala and that on the date of her recovery on 22.08.2011 they were at the Bhilla Bus Stand and coming back to their respective houses.

31. The prosecutrix also did not render any explanation as to why she could not come to get her statement recorded at the earliest, despite having come back to her house and being hale and hearty from 22.08.2011 onwards.

32. It is evident from consideration of the above that various essential aspects remain unanswered. The same are as under:

(i) There were no compelling or convincing circumstances in which the prosecutrix would go out of house in pitch dark, to answer the call of nature, despite there being two fully functional toilets/bathrooms within the house itself.

(ii) Even though it was stated by the prosecutrix that the accused-appellant made her to sniff something, however, there is no explanation offered by the prosecution as to whether the incident could have taken place, in the manner suggested. What compound was allegedly used for sedating and wherefrom it was procured, if any.

(iii) No explanation has been offered as to how the appellant would have come to know of the prosecutrix coming out of the house, at midnight, to answer the call of nature, especially when it is the specific case of the prosecution and prosecutrix that

the appellant and the prosecutrix were not talking to each other.

(iv) The charge for offences against Section 366, 366-A and 376 IPC were not proved. Similarly, other accused were acquitted, ruling out the prosecution version of the prosecutrix being threatened by the appellant and other accused who accompanied.

(v) The prosecutrix undisputedly travelled to Ludhiana and thereafter from Ludhiana to Bombay. Undoubtedly, she was not under the influence of sedatives while travelling thereafter and even the presence of the fellow passengers in the train is also not disputed. There was no attempt to raise any alarm and no suspicious behaviour was noticed by any person.

(vi) From the railway station, Bombay, to the rented accommodation, the prosecutrix as well as the appellant herein travelled in an auto-rickshaw. She raised no alarm and made no attempt to escape.

(vii) That at the rented accommodation, where they stayed for a period of more than 01 month, there were other neighbours in proximity but no help was ever sought.

(viii) It is also not disputed by the prosecutrix that there were no cooking materials or utensils available; hence, the presumption is that the appellant as well as the prosecutrix had their meals either outside the house or the same was bought from outside.

(ix) It is further acknowledged in the cross-examination that the room used to be opened 2/3 times a day and that the

prosecutrix had access to the neighbourhood.

(x) Further, it has also come forth that the appellant agreed to bring the prosecutrix back to the village, and they travelled from Bombay to village Bhilla, wherefrom the appellant was apprehended on 22.08.2011. She was under no influence but still she made no attempt to save herself.

(xi) The prosecutrix did not state that there was any toilet or washroom in the room. Invariably, it is not possible that she did not bathe, wash clothes or use washroom during the entire period. All these factors rule out against taking out of the keeping of lawful guardianship.

(xii) The charge of enticing has never been pressed or elaborated, hence, the said part does not subsist against the appellant.

33. All the aforesaid circumstances seemingly reflect against the case setup by the prosecution that the prosecutrix had been sedated by sniffing, in the act of being taken away. Her conduct after the alleged incident of being taken away establishes that she had not put any resistance at any point in time and did not raise any alarm or alert any co-passengers/neighbour(s) either during her travels at different places, including the train travel to Mumbai or from Mumbai Railway Station to the place where the rented accommodation was situated or back.

34. The total failure on the part of the prosecutrix to take any such steps, which any prudent person would have taken under the said circumstances, raises a presumption that there is much more to the story than what has been brought forth before this Court. Seemingly, the prosecutrix left

the parental house of her own accord and joined the companionship of the appellant herein. The law does not impose any obligation on the part of the appellant, to whom a minor goes for companionship or stay, to return her to the custody of her lawful guardian.

35. In the above circumstances, there can be no presumption of crime against the appellant herein. The version of the prosecution that the prosecutrix had been sedated is not corroborated by any recovery. Any such sedative, if administered, could have only been procured from somewhere, but there is no investigation on these lines. Given the circumstances, the version of the prosecution is improbable. The version thus being suspect, the benefit of doubt ought to be extended in favour of the accused-appellant herein.

36. Under the given circumstances, I am of the opinion that the prosecution has failed to discharge its burden of proving its case, even of taking away by the appellant, beyond a reasonable doubt. Consequently, the judgment of conviction dated 23.08.2012 passed in Sessions case No.20 of 21.11.2011 arising out of FIR No.47 dated 26.07.2011 registered under Sections 363, 366, 366-A, and 376 of the Indian Penal Code, 1860 at Police Station Kotwali, District Kapurthala is set aside, and the appellant is acquitted.

37. Appeal is *allowed* in the above terms.

38. Pending application(s), if any, shall stand disposed of.

(VINOD S. BHARDWAJ)
JUDGE

27.03.2026
Sumit Gusain

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