

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Criminal Appeal No.322 of 2000

Reserved on : August 29, 2007

Date of decision : August 31, 2007

Bhim Singh alias Sanju

...Appellant.

Versus

State of H.P.

...Respondent.

Coram

The Hon'ble Mr. Justice Surjit Singh, Judge.

Whether approved for reporting?

For the Appellant : Mr. Ashwani Pathak, Advocate

For the Respondent : Mr. Som Dutt Vasudeva, Additional Advocate General, with Mr. D.S. Nainta, Deputy Advocate General.

Surjit Singh, Judge(Oral)

Appellant is aggrieved by the judgment of the trial Court whereby he has been convicted of an offence punishable under Section 366 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for four years and to pay a fine of Rs.1,000/-; in default of payment of fine to undergo imprisonment for a further period of three months.

2. Relevant facts are like this. Appellant was engaged to the prosecutrix (hereinafter referred to as P) a few days prior to her alleged kidnapping. After the engagement, appellant and his parents insisted for early marriage. The father of P told them that P being just 14½ years of age early marriage was not possible and she could be given in marriage only after her completing the age of 18 years. Appellant allegedly threatened that P will be kidnapped and forced to marry him.

Whether reporters of the local papers may be allowed to see the judgment?

This happened on 7th April, 1996. Two days later, i.e. on 9th April, 1996, when P was going to school, the appellant snatched her books and proceeded towards the bus stop. P followed him to get her books back. On reaching the bus stop, the appellant forced P to board the bus. He took her to a nearby place where some fair was going on. *Sindoor* and some other cosmetics were purchased. P was taken by the appellant to his place. Next day she was taken to a temple at Baijnath. One Amar Nath was also accompanying them. At Baijnath P was made to perform certain rituals and it was declared that she stood married to the appellant. Then she was taken to a place called Sambha in Jammu and Kashmir State.

3. When P did not return home on 9th April, 1996, her father searched for her and when he could not locate her he lodged report with the police on the next following day, i.e. 10th April, 1996. Police registered a case against the appellant and started the investigation. When the investigation was in progress, appellant accompanied by P appeared in the Court of Judicial Magistrate. The Judicial Magistrate sent P to some women protection centre.

4. On the completion of investigation, appellant alongwith two other persons, named Amar Nath and Amar Chand, was sent up for trial for offences punishable under Sections 366 and 376 of the Indian Penal Code, because P made allegation during the course of the investigating that the appellant had been having sexual intercourse with her. Age of P at the relevant time was 14½ years.

5. Trial Court charged the appellant with offences punishable under Sections 376 and 366 of the Indian Penal Code. His two accomplices, named above, were charged with an offence punishable under Section 366 of the Indian Penal Code. On the conclusion of the

trial, the two accomplices of the appellant were acquitted. Appellant was also acquitted of the charge of rape, under Section 376 of the Indian Penal Code. However, he was convicted of offence under Section 366 of the Indian Penal Code, as aforesaid.

6. Prosecution examined P as PW-2. Her father Mani Ram was examined as PW-3. One man from Sambha, named Kartar Singh, was examined as PW-9 to prove that the appellant had gone to Sambha with P. Investigating Officer SI Ishwar Dass was examined as PW-11. Appellant in his statement, under Section 313 of the Code of Criminal Procedure, did not set up any specific plea and denied various pieces of evidence put to him in the form of separate questions.

7. Learned counsel representing the appellant submitted that evidence on record indicated that P was sought to be got married, after her engagement with the appellant, to another person named Jaswant @ Jasso to which P objected and when she felt that she might be given in marriage to said Jaswant @ Jasso by her parents forcibly, she left her father's house and went to the house of the appellant on her own and thus it was not a case of kidnapping, in view of the law laid down by the Hon'ble Supreme Court in *S. Varadarajan v. State of Madras*, AIR 1965 Supreme Court 942.

8. The submission is without merit. There is absolutely no evidence on record that P was sought to be engaged or married to one Jaswant @ Jasso against her wishes and so she left her father's house and went to the house of the appellant. A suggestion was given to P in the course of her cross-examination that after her engagement with the appellant there was an offer for marriage from Jaswant @ Jasso. She denied the suggestion. No suggestion was given to her that she was sought to be forcibly given in marriage to Jaswant @ Jasso against her

wishes or that she left the house of her father on her own and went to the house of the parents of the appellant fearing that she might be given in marriage to Jaswant @ Jasso forcibly and against her wishes, by her parents. No suggestion was put to the father of P either, who appeared as PW-3, on the lines of the aforesaid submission. The only suggestion that was given to him and which he denied was that after engaging P to the appellant he wanted to break the engagement and to marry his daughter to some other person, which he denied.

9. Appellant, in his own statement, under Section 313 of the Code of Criminal Procedure, nowhere stated that P was sought to be engaged or given in marriage to Jaswant @ Jasso or to some other person against her wishes and so she left her father's house and came to him to stay at his parents' place. He in fact even denied that P was ever at his father's place or he had taken her to Baijnath or Sambha in Jammu and Kashmir State, even though there is categorical statement of PW-9 Kartar Singh that a brother of the appellant is his tenant in a building in Sambha and that in April, 1996, the appellant came to his brother's tenement with a girl whom he claimed to be his wife. No suggestion was thrown to this witness in the cross-examination that the appellant never visited his brother's tenement in the company of any girl.

10. In view of the abovestated position, submission by the learned counsel cannot be accepted and since the evidence, as discussed hereinabove, shows that the facts of the present case are different from the facts of the judicial precedent relied upon by the learned counsel for the appellant, in the sense that here P did not leave her father's custody of her own, as submitted by the learned counsel, but was taken away by the appellant. The facts of the judicial precedent

relied upon were that the prosecutrix herself left her guardian's place and joined the alleged kidnapper. Therefore, the precedent relied upon is of no help to the appellant.

11. Next submission made on behalf of the appellant is that the sentence of four years rigorous imprisonment was too harsh, in view of the factual matrix of the case, particularly the fact that P had been engaged to the appellant. It was submitted that in various cases the Hon'ble Supreme Court had taken very lenient view in the matter of award of punishment in similar facts and circumstances. Precedents relied upon are *Lalta Prasad versus State of M.P.*, (1979) 4 *Supreme Court Cases* 193; *Kamal Singh versus The State of H.P.*, 1985(1) *Crimes* 151 (Himachal Pradesh High Court) (SB); *Ramesh Singh versus State*, 1988(3) *Crimes* 890 (Delhi High Court) (SB); and *State of Himachal Pradesh v. Shri Dharam Dass*, 1992 Cri. L.J. 1758 (Himachal Pradesh High Court) (DB).

12. Facts of the cases in all the four precedents cited on behalf of the appellant were different. The kidnapped girls in all the cases were on the verge of attainment of consenting age or the age of majority and it was because of this reason that leniency was shown in the matter of award of punishment. Hence, the second submission is also rejected.

13. For the foregoing reasons, appeal is dismissed.

August 31, 2007_(sd)

(Surjit Singh), J