

**IN THE HIGH COURT OF HIMACHAL PRADESH
SHIMLA**

Cr. Appeal No. 196 of 2006.

Date of decision: October 30 , 2009.

State of Himachal Pradesh.	VersusAppellant.
Joginder Singh and another	 Respondents.

Coram:

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

The Hon'ble Mr. Justice Surinder Singh, J.

Whether approved for reporting?¹ No.

**For the Appellant : Mr. P.M. Negi, Deputy Advocate General with
Mr. Ramesh Thakur, Asstt. Advocate General.**

For Respondents : Mr. Neeraj K. Sharma, Advocate.

Surjit Singh, J (oral):

State has appealed against judgment dated 28th August, 2005 of learned Sessions Court, whereby respondents Joginder Singh and Kishan Chand, who were charged with and tried for offences, under Sections 420, 417, 363, 366-A, 376 and 120-B I.P.C., have been acquitted.

Prosecution case, which led to the trial of the respondents, may be stated thus. Respondent Joginder Singh is resident of village Kawarthan, District Kaithal, Haryana, which adjoins the area of Pattran in Patiala District of Punjab. In the year 2003, and perhaps a little prior to that, he started working as a Mason/ Carpenter in village Satrana, falling in the area of Police Station

¹ *Whether the reporters of Local Papers may be allowed to see the judgment?*

Pattran, District Patiala. PW3 Lakhvinder Singh and his cousin, Jogi were working as labourers with him. Respondent Joginder Singh told Lakhvinder Singh (PW3) and his cousin Jogi that he was in a position to arrange wives for them from Nahan in Himachal Pradesh. He brought Lakhvinder Singh to Nahan sometime in March or early April of 2003 and took him to the house of respondent Kishan Chand, who had two unmarried daughters. He told them that their marriages could be arranged with the daughters of respondent Kishan Chand. On 5th April, 2003, Kishan Chand visited the house of the father of Lakhvinder and settled the matrimonial alliance of his two daughters with PW3 Lakhvinder Singh and his cousin Jogi. He paid Rs.100/- each of Lakhvinder Singh (PW3) and Jogi, in confirmation of the alliance.

Thereafter, Joginder Singh respondent asked PW3 Lakhvinder, his cousin Jogi and a brother named Dalbir Singh of PW3 Lakhvinder Singh, sister-in-law of Lakhvinder Singh and the prosecutrix, sister of PW3 Lakhvinder Singh to accompany him to Nahan for engagement ceremony of Lakhvinder Singh and his cousin Jogi with two daughters of Kishan Chand respondent. They came to Nahan on 13th April, 2003. They were lodged in a Rest House at Nahan. Arrangements for lodging them in the Rest House were made by the two respondents. Next day, PW3 Lakhvinder Singh, his brother Dalbir Singh and other male members from the household of Dalbir Singh were asked by respondent Joginder Singh to go to Renukaji, a place

at a distance of about 40 k.m. from Nahan and wait for the daughter of Kishan Chand, who was to be engaged to Lakhvinder Singh (PW3). Prosecutrix and her two sisters-in-law were asked to stay back at Nahan.

When the male members left for Renukaji, respondent Joginder Singh took away the prosecutrix from the Rest House, on the pretext that some purchases were to be made. Respondent also required the two sisters-in-law of the prosecutrix to hand over the jewelry, which was to be given to the daughter of Kishan Chand, as gift on account of engagement. He (respondent Joginder Singh) had already been given a sum of Rs.11,000/- by the father of Lakhvinder Singh, for being spent on engagement ceremony. On the way, he made her to board a bus. When the two travelled for quite sometime by the bus, prosecutrix asked respondent Joginder Singh, as to where he was taking her. Upon that, respondent Joginder Singh got the bus stopped, deboarded it alongwith the prosecutrix and boarded another bus giving the impression that they were going back to Nahan. By that bus, the respondent and the prosecutrix reached Haridwar. When on reaching Haridwar, prosecutrix enquired as to why she had been brought to Haridwar, respondent told her that her father had sold her to him for Rs.20,000/- and therefore, she was supposed to live with him and to accompany him wherever he went. He then booked a room in a hotel at Haridwar, where they stayed for two nights. The prosecutrix was subjected to sexual intercourse in that room

of the hotel. Respondent thereafter took the prosecutrix to different places, including Paonta Sahib and had been raping her almost every night.

When the respondent Joginder Singh and the daughter of Kishan Chand, who was to be engaged with Lakhvinder Singh (PW3) did not reach Renukaji till 4 in the evening, Lakhvinder Singh accompanied by other male members, who had gone with him to Renukaji, returned to Nahan. They went to the Rest House, but nobody was there. They then went to the house of Kishan Chand, respondent, where they came to know from PW2 Baby, a sister-in-law of PW3 Lakhvinder Singh and another sister-in-law, that respondent had taken away the prosecutrix on the pretext of making purchases, and had also carried with him the ornaments, but did not return.

Matter was reported to the police on 18th April, 2003 by the father of the prosecutrix vide FIR Ex.PW13/A. As per this FIR, both the respondents had conspired to cheat Lakhvinder Singh (PW3) and his father Ram Kumar (PW13) and also to kidnap the prosecutrix with intent to compel her to marry respondent Joginder Singh. Police went in search of the respondent and the prosecutrix. On 6th June, 2003, when ASI Jagdish Chand (PW18) of Police Station, Nahan was present in village Kharka, he saw some persons fighting and when he went near them, he found that Joginder Singh was being beaten up by the people. He took Joginder Singh into custody. Prosecutrix was also there at the site of the fight. She was also taken into custody and

thereafter she was handed over to her father PW13 Ram Kumar by ASI Jagdish Chand (PW18).

Prosecutrix was got medically examined. PW11 Dr. R.K. Baria, conducted her medical examination. Prosecutrix was found to be habitual of sexual intercourse. Respondent Joginder Singh was also got medically examined. He was found fit and capable of performing sexual intercourse. Ossification test of the prosecutrix was also got conducted. Her skeletal age was found to be between 16½ to 19 years. An entry from the School record, where the prosecutrix had been studying, was also procured, per which her date of birth was 2.11.1988.

Respondent Kishan Chand denied that there was any conspiracy of the type alleged by the prosecution and he is one of the conspirators. Joginder Singh respondent did not deny having accompanied PW3 Lakhvinder Singh, his sister-in-law and the prosecutrix to Nahan on 13.4.2003 nor did he deny that he and Kishan Chand had arranged for their stay in the Rest House at Nahan. He also did not deny having taken away the prosecutrix from Nahan to Haridwar and from there to different places and having stayed in different places for the night and having committed sexual intercourse with her, but claimed that the prosecutrix went with him of her own sweet-will and he had been having sexual intercourse with her consent. He stated that the prosecutrix was major and he developed physical intimacy with her about a year prior to the incident, when he had been working in her father's village and that the prosecutrix told that

she had become pregnant and in case her father, who was a drunkard, came to know about the same, he would ill-treat her and asked him to take her away to some other place.

Prosecution examined the prosecutrix as PW1, her sister-in-law Baby as PW2, her brother Lakhvinder Singh (PW3), her father Ram Kumar (PW13), the owners of the lodging places at Haridwar and Paonta Sahib and some other witnesses, to prove the accusation of kidnapping and rape. It also examined the Principal of the School, namely PW14 Subhash Chand, to prove that the prosecutrix was below 16 years of age.

Trial Court came to the conclusion that the prosecutrix was major and that she went with respondent Joginder Singh of her own and had been enjoying sexual intercourse with him voluntarily. Trial Court also disbelieved the prosecution version that there was conspiracy between the two respondents and in furtherance of that conspiracy, offences of cheating, kidnapping and rape had been committed.

We have heard the learned Deputy Advocate General, as also the learned counsel representing the respondents. Also, we have examined the evidence on record.

Prosecutrix had been with respondent Joginder Singh for a little less than two months, after her alleged kidnapping. She was taken to a number of places. She had been travelling by buses in the company of the respondent. She stayed with him in different hotels at different places. She never complained to anybody that she had been kidnapped and was being subjected

to sexual intercourse without her consent. Her conduct in accompanying the respondent to different places for such a long time and not complaining to anybody is suggestive of her consent.

The only question that needs to be examined is whether the prosecutrix was major, i.e. 18 years or above that age, at the time of her alleged kidnapping. Birth entry from the register of Births and Deaths has not been proved. Only an entry in the school record, per which the date of birth of the prosecutrix is 2.11.1988, has been proved by PW14 Subhash Chand, Principal of the School. The witness stated that the date of birth of the prosecutrix is entered in the school record on the basis of an affidavit submitted by the mother of the prosecutrix at the time of her admission. Mother of the prosecutrix was not examined.

The prosecutrix herself, while in the witness box stated that her age was 15 years. She appeared in the witness box a year after the incident. That means, according to her testimony, she was only 14 years of age at the time of alleged kidnapping. In cross-examination, however, she stated that she was younger to her brother Lakhvinder Singh only by one year. According to her, age of Lakhvinder Singh was 17 years.

Lakhvinder Singh, while in the witness box stated that his age was 19 or 20 year. PW2 Baby, a sister-in-law of the prosecutrix, stated her age was 20 years. In the cross-examination, she stated that her husband Dalbir Singh, a brother of the prosecutrix was elder to her by 4-5 years. That means, the

age of Dalbir Singh, the brother of the prosecutrix was 24 or 25 years, a year after the occurrence. Father of the prosecutrix Ram Kumar (PW13) stated that he had five children. According to him, Dalbir Singh was his eldest issue, and the prosecutrix was the fourth. He stated that age difference among all the five issues was one year. That means, according to the statements of PW2 Baby & PW13 Ram Kumar, the age of the prosecutrix was 20 or 21 years, when he appeared in the witness box. His statement was recorded in July, 2004 or say about 15 months after the alleged kidnapping.

Skeletal age of the prosecutrix was opined to be 16½ to 19 years by PW12 Dr. D.D. Sharma.

The above discussion suggests that the age of the prosecutrix was more than 18 years, at the time of the alleged kidnapping. If that is so, the offence of kidnapping does not stand established. Evidence on record suggests that the prosecutrix went with respondent Joginder Singh voluntarily and had been having sexual intercourse with him without making any protest or objection.

As regards the allegation of cheating, suffice it to say that the evidence is self contradictory. While according to the brother of the prosecutrix, namely PW3 Lakhvinder Singh, a sum of Rs.11,000/- was paid by him to respondent Joginder Singh, according to PW13 Ram Kumar, the father of the prosecutrix, it was he who paid the money. The ornaments which the prosecutrix carried with her are not shown to have been

purchased for the would-be bride of PW3 Lakhvinder Singh. The ornaments consist of a pair of Silver Payals worth Rs.150/-. It is quite likely that the prosecutrix herself was wearing those Payals.

For the foregoing reasons, we see no merit in the present appeal. The same is, therefore, dismissed.

(Surjit Singh)
Judge.

(Surinder Singh),
Judge.

October 30, 2009.
(Pds)