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

**Date of decision: August 31, 2018
CRA-D-781-DB of 2013 (O&M)**

Nishan Singh

.....Appellant

Versus

State of Punjab

....Respondent

CRA-D-803-DB of 2013 (O&M)

Navjot Kaur

.....Appellant

Versus

State of Punjab

....Respondent

CRA-S-1996-SB of 2013 (O&M)

Bikramjit Singh alias Bikram

.....Appellant

Versus

State of Punjab

....Respondent

CRA-S-2012-SB of 2013 (O&M)

Pankaj Gautam

.....Appellant

Versus

State of Punjab

....Respondent

CRA-S-2082-SB of 2013 (O&M)

Maninderjit Singh alias Dimpy Samra

.....Appellant

Versus

State of Punjab

....Respondent

CRA-S-2358-SB of 2013 (O&M)

Harsimran Singh Brar

.....Appellant

Versus

State of Punjab

....Respondent

CRA-S-2387-SB of 2013 (O&M)

Toofan Singh alias Toofani

.....Appellant

Versus

State of Punjab

....Respondent

CRA-S-2476-SB of 2013 (O&M)

Pardeep Singh alias Poppy

.....Appellant

Versus

State of Punjab

....Respondent

CRA-S-2477-SB of 2013 (O&M)

Varinder Kumar alias Dhalla

.....Appellant

Versus

State of Punjab

....Respondent

CRA-S-2550-SB of 2014 (O&M)

Rajwinder Singh alias Ghali

.....Appellant

Versus

State of Punjab

....Respondent

**CORAM: HON'BLE MR. JUSTICE A.B. CHAUDHARI
HON'BLE MR. JUSTICE INDERJIT SINGH**

Present: Mr. R.S. Rai, Senior Advocate with
Mr. Deepinder Singh Brar, Advocate for appellants
(in CRA-D-781-DB-2013).

Mr. A.P.S. Deol, Sr. Advocate with
Mr. Vishal R. Lamba, Advocate, for the appellants
(in CRA-S-1996-SB-2013 and CRA-S-2012-SB-2013).

Mr. J.S. Bedi, Sr. Advocate with Mr. Sunil Sihag, Advocate
for the appellant (in CRA-S-2358-SB-2013).

Mr. R.S. Budhwar, Advocate for the appellant
(in CRA-S-2387-SB-2013).

Mr. S.P.S. Sidhu, Advocate for the appellants
(in CRA-D-803-DB-2013 and CRA-S-2082-SB-2013).

Mr. A.S. Sekhon, Advocate for the appellant
(in CRA-S-2550-SB-2014).

Mr. H.S. Bhullar, Advocate for the appellant(s)
(in CRA-D-904-DB-2013 and CRA-D-765-DB-2013 and
for the complainant in other appeals).

Mr. Vishal Rattan Lamba, Advocate Amicus Curiae and
Mr. D.D. Sharma, Advocate for Mr. Narinder Singh, Advocate

for the appellants (in CRA-S-2476-SB-2013 and CRA-S-2477-SB-2013).

Mr. H.S. Sullar, DAG Punjab.

Mr. Achin Gupta, Advocate
for respondents No.8 and 10 (in CRA-D-904-DB of 2013).

Mr. Vivek Goel, Advocate
for respondent No.9 (in CRA-D-904-DB of 2013).

A.B. CHAUDHARI, J

By this common Judgment, all the above noted appeals are being disposed of.

2. Being aggrieved by judgment and order dated 27.05.2013, in Sessions case No.02 dated 16.01.2013, passed by the learned Sessions Judge, Faridkot, by which the learned trial Court convicted and sentenced the appellants for commission of offences as stated against their names, in the impugned judgment and order, these appeals have been filed by the convicts/appellants in this Court.

FACTS

3. In brief, the case of the prosecution was that Ashwani Sachdeva, resident of Dogar Basti, Faridkot deals in sale and purchase of cars. He has two daughters. The younger one namely prosecutrix 'S' aged about 15 years, student of 10th class, was forcibly abducted by the main accused Nishan Singh son of Sukhjit Singh resident of New Harindra Nagar, Petrol Pump Wali Gali, Faridkot along with his companions, initially on 25.06.2012, when prosecutrix had gone to take tuition. FIR was lodged, which was registered. Later prosecutrix 'S' somehow escaped

form the clutches of Nishan Singh and returned to the house on 27.07.2012. Due to registration of FIR No.166 dated 25.06.2012, under Sections 366, 376, 506 of Indian Penal Code, 1860 (for short 'IPC'), registered with Police Station City Faridkot, as aforesaid, Navjot Kaur, mother of Nishan Singh came to the house of the complainant and threatened them with dire-consequences, if qua the said FIR, they do not enter into compromise.

4. On 24.09.2012, at about 9:45 A.M., Nishan Singh along with his some companions, barged their entry into the house of the complainant armed with pistol, *kirches*, *kirpans* and iron rods and tried to forcibly take away the prosecutrix 'S' with them. The complainant, his wife and other daughter Sakshi obstructed them, but they were subjected to beatings. They dragged even the complainant in the courtyard and was assaulted with rods resulting into injuries on his left hand, left elbow and backside of neck. Prosecutrix 'S' was then forcibly taken away by them, though, she was raising the alarm. Despite this, the complainant and his other daughter chased them when one of the companions of Nishan Singh fired from the pistol as a result of which, the complainant retracted. The complainant went ahead and found that they had bundled prosecutrix 'S' into Ford Ikon car of brown colour having tinted glass and fled away. Navjot Kaur mother of Nishan Singh and others had actively participated in the kidnapping and abduction of the prosecutrix minor girl.

5. The complainant and his wife were admitted to the Hospital. Police recorded the statement of Ashwani Sachdeva, the complainant, on

24.09.2012 so also the supplementary statement. Since he was perplexed and in disturbed condition, he could not give the names and therefore, he stated again that along with Navjot Kaur, her relative Dimpy Samra had visited their house and threatened them to enter into compromise. He also stated that Ghali was armed with pistol and Dhalla and Poppy were having iron rods and it was Ghali who had fired from the pistol and others had caused injuries to them. Seema Arora, the wife of the complainant Ashwani Kumar, also stated on the same line. On 25.09.2012, Senior Superintendent of Police, Faridkot constituted a Special Investigation Team, which found that the car used was having number CH-03-E-7701. The car was having fake number plate PB-05-A-9272, which was recovered. Further, in the car, two number plates bearing number plate CH-03-E-7701, original registration certificate of the said car were recovered in the name of Agya Kaur, wife of Bachittar Singh, resident of House No.1020, Sector 37-B, Chandigarh. One brown purse was also recovered with Aadhar Card in the name of Nishan Singh so also Insurance Policy of the car and one repair bill and pollution certificate were also recovered. On 02.10.2012, Varinder Kumar alias Dhalla son of Surinder Singh, resident of Bedi Nagar, Moga and Pardeep Singh alias Poppy son of Kuldeep Singh, resident of Moga were apprehended and upon interrogation, were arrested. They were riding on motorcycle without number plate in the name of Jagdeep Singh son of Surinder Singh, resident of Bedi Nagar Moga and one iron rod each was recovered from their *dubs*. Seema Arora had suffered injuries and particular injury No.3,

which was found to be grievous upon receipt of X-Ray report. On 17.10.2012, some other accused were also arrested and in particular Rajwinder Singh alias Ghali son of Amar Singh, resident of Dashmesh Nagar, Faridkot was also arrested after being produced in the Court, in case FIR No.291 dated 07.10.2011. He made a disclosure statement that he had concealed, the pistol 7.65 mm used by him at the time of kidnapping, underneath the ground near *Jamun* tree. He got it recovered with four live cartridges. The Special Investigation Team, after thorough searches, on 21.10.2012, intercepted Nishan Singh in Goa and recovered victim prosecutrix 'S' from his custody. In the rented house that was taken by Nishan Singh in Goa, fake driving licences of Nishan Singh and prosecutrix 'S' were seized. A traffic challan as well as railway reservation ticket were also taken into possession. The accused persons who had assisted Nishan Singh in preparing the fake driving licences were also arrested.

6. On 22.10.2012, after prosecutrix 'S' was recovered in Goa, she was referred to Goa Medical College, but there, prosecutrix refused to undergo medical examination, though, medical examination of Nishan Singh was conducted. On 22.10.2012, accused Toofan Singh alias Toofani son of Sona, resident of Fatehgarh Korotana, was arrested. Prosecutrix having been brought to Faridkot was sent to Nari Niketan, Jalandhar. On 24.10.2012, accused Toofan Singh alias Toofani discovered baseball. On 26.10.2012, medico-legal examination of Nishan SINGh was conducted and on 27.10.2012, mechanical test report relating to pistol recovered by

Rajwinder Singh alias Ghali was obtained. On 28.10.2012, prosecutrix 'S' expressed desire for medical examination and a medical board examined her and found that she was carrying intra uterine early pregnancy. After obtaining one Jar sample, pursuant to MTP of prosecutrix for DNA test, the same were sent. After making detailed investigation, the Investigator prepared a challan and filed in the competent Court. Charges were framed against all the accused persons. The prosecution examined as many as 52 witnesses, while the defence examined as many as 25 witnesses. Learned Trial Court, after hearing the evidence, recorded the conviction of all the accused persons as stated above. Hence, these appeals.

7. Complainant has also claimed compensation by filing CRM No.35406 of 2013 In CRA-D-781-DB of 2013 and CRM No.34198 of 2013 IN CRA-D-722-DB of 2013, which were argued by the counsel for the complainant, at length, and opposed by the counsel for the appellants.

ARGUMENTS

8. In support of the appeals, learned counsel for the appellants, in various appeals, made their respective submissions and we state their submissions as under:-

- (i) It is an admitted fact, on record, that after the protests and *dharnas*, which were carried out in the City of Faridkot, police had made investigation on allegations of kidnapping, abduction etc. which had even come to the conclusion that there was neither kidnapping nor any abduction, but the prosecutrix 'S' had with full willingness and consent gone from her house along with Nishan Singh and therefore, in a way, the case was of a “run away couple”. These facts were

established on record by sufficient evidence. The evidence indicated that high ranking officers from the Police Department had held a press-conference and had pronounced so in the press-conference, accordingly. Learned counsel for the appellants then submitted that it is only because of political motive and protest and *dharnas*, even after pronouncement made by the higher ranking police officers, in the press-conference, the prosecution involved so many accused persons, including the alleged main accused Nishan Singh and thus, filed challan against number of accused persons;

- (ii) Learned trial Court ought to have noticed a significant fact in the entire prosecution case that the prosecution did not examine a single independent witness on the incident proper regarding kidnapping by force that too at 9:45 A.M. in the morning and chose to rely only upon the complainant and his family members. No neighbourers were examined to bring any independent evidence and therefore, the prosecution story was required to be looked with great suspicion. It was impossible that no neighbourer had noticed the incident, when even the firing is said to have taken place on the public road and no empty was found anywhere;
- (iii) The First Information Report lodged by the complainant-Ashwani Sachdeva did not name so many accused persons and by way of afterthought, the names of all other accused persons were added by way of recording supplementary statement etc., thus, giving a colour to the prosecution story;
- (iv) The trial Court has held that the prosecutrix was almost 15 and half years and the prosecution failed to prove beyond reasonable doubts that the age of the prosecutrix was below 16 years and therefore, the consequent entire finding about commission of offence of rape, when the prosecution evidence clearly indicate the case of consent through-ought, including

qua the earlier incident dated 25.06.2012, leading to FIR No.166 dated 25.06.2012, must be held to be perverse. The evidence regarding date of birth of prosecutrix tendered by the prosecution was required to be rejected as the prosecution did not prove the age of the prosecutrix to be less than 16 years by legally admissible evidence and whatever evidence was proved by the prosecution was incomplete and infirm and no finding that prosecutrix was below 16 years could have been recorded. The trial Court has placed reliance on the oral testimony of complainant and his wife in connection with date of birth of the prosecutrix. It is well settled legal position that when the documentary evidence could be available, the Court would not prefer to rely upon the oral evidence. In the present case, the trial Court unfortunately, has chosen to rely on oral testimony contrary to law. At any rate, the alleged birth certificate did not mention the name of the prosecutrix and therefore, no affirmative finding could be recorded to hold that the documentary evidence produced by the prosecution regarding birth related only to the prosecutrix and none else, particularly when the complainant himself stated that he has two daughters with a little difference of age between them. The benefit of doubt in that behalf ought to go to the accused;

- (v) Learned counsel for the appellants then contended that the evidence of the prosecutrix including the letters written by her to the appellant-Nishan Singh, in her own hand-writing and several other letters, written to the Sessions Judge, Faridkot, Human Rights Commission, and so on and so forth, in terms, indicate that she was willing and consenting party right from the beginning and therefore, it was unjust to ignore the theory of consent, which was established by voluminous evidence. The details regarding phone calls made by the prosecutrix 'S' to Nishan Singh and the evidence regarding the same clearly

indicate that it was the prosecutrix, who had made advances towards Nishan Singh rather than the other way around;

- (vi) The conduct of the prosecutrix right from the beginning till the end, firstly, from 25.06.2012 to 25.07.2012, i.e. for a period of one month, in not making any protest, she being allegedly with Nishan Singh and nowhere FIR being lodged, clearly indicate her consent and willingness. Similarly, the defence clearly proved that the prosecutrix had willingly and with consent performed marriage with Nishan Singh and the same marriage was duly proved by the defence witnesses, two in number, one of whom was Dinesh Kumar, Photographer (DW-25) and the other one was Nikka Singh, *Pathi* (DW-20) with necessary ceremonies. The fact that the prosecutrix even after the alleged kidnapping and abduction till she was recovered from Goa did not protest or make any noise or make any public cry whenever she was travelling with the appellant-Nishan Singh, demonstrates her conduct through-ought as a consenting party. She was challaned in Goa while driving scooter with licence which show that she was a free woman, even in Goa and could have established contact with her father, if she was not the consenting party;
- (vii) Learned Senior counsel for the appellant-Nishan Singh contended that the marriage having been proved and even if the prosecutrix is held to be of 15 and a half years, there is no question of any rape within the meaning of exception to Section 375 IPC as the case at hand, would fall in that exception, and therefore, the entire prosecution case must fall to the ground atleast giving benefit of doubt;
- (viii) Learned counsel for the appellants-Rajwinder Singh alias Ghali, Toofan Singh alias Toofani, Varinder Kumar alias Dhalla and Pardeep Singh alias Poppy, submitted that these accused persons have been falsely implicated and involved by

the complainant and his family members and there are no independent witnesses to support the prosecution case. It was submitted that these accused persons were identified, for the first time, before the Court not being backed by any Test Identification Parade, and therefore, it was risky for the trial Court to record conviction against them. The prosecution has no explanation as to why the neighbours or the independent witnesses were not examined, if at all these accused persons had participated in the crime. The alleged recovery from these witnesses was also not proved by any independent witness and it was risky to rely on the police officer's evidence on the aspect of the matter. The conviction of these appellants, is therefore, clearly perverse, unjust and they are liable to be acquitted;

- (ix) Learned counsel for the appellants-Maninderjit Singh alias Dimpy Samra and Navjot Kaur, submitted that the finding of conviction recorded against them regarding alleged conspiracy for commission of offence is totally misplaced, misconceived and the trial Court has made a serious error in convicting them. The allegation that they had conspired and that they had participated in the crime are not substantiated by any positive evidence before the trial Court. As a matter of fact, the appellant-Nishan Singh had clearly proved on record the filing of two civil suits in respect of the dispute regarding property with his mother Navjot Kaur, even well before the incident and therefore, it was highly improbable and impossible that Navjot Kaur could be held guilty for any conspiracy or participation in the alleged crime, so also Maninderjit Singh alias Dimpy Samra. Maninderjit Singh alias Dimpy Samra had nothing to do with the incident in question and has been unnecessarily convicted by the trial Court. There is no evidence worth the name against them and therefore, they are

liable to be acquitted;

- (x) Arguing for the accused/appellant-Bikramjit Singh alias Bikram and Harsimran Singh Brar, learned counsel submitted in respect of the allegations that they had, pursuant to the alleged conspiracy, committed the offences regarding kidnapping, forgery etc. were not proved. In so far as Pankaj Gautam @ Rinku is concerned, he had allegedly harboured the criminal. There is no evidence against these accused persons and they have been wrongly convicted by the trial Court. They are liable to be acquitted.

9. Learned counsel for the complainant along with the learned counsel for the State vehemently opposed these appeals and supported the impugned judgment and order and the reasons recorded therein. Learned counsel for the complainant, in addition, invited our attention to the miscellaneous applications filed by him for award of compensation from accused persons. According to the learned counsel for the complainant due to the act of the accused persons, the entire family of the complainant has been ruined and the complainant has even lost his business completely, so also the peace in the family, apart from the social stigma suffered by him, his wife and his daughters. Learned counsel for the complainant therefore, prayed that maximum compensation should be awarded to the complainant, his wife and his daughter, the prosecutrix from the accused persons who have been convicted by the trial Court.

10. *Per contra*, learned State counsel opposed the appeals and prayed for their dismissals. He submitted that the trial Court has given a detailed judgment discussing the entire evidence and the pros and cons of

the entire matter. He submitted that the law is trite that if the evidence of the witnesses is found to be reliable and satisfactory and trustworthy, there is no need to have the independent witnesses. The experience shows that the independent witnesses do not come forward to support the prosecution cases. Learned State counsel then submitted that the reading of the entire prosecution case clearly shows that the trial Court has rightly recorded the conviction against the appellants and conspiracy that was hatched by the respective accused persons is writ large from the conduct of the accused persons who acted in tandem, to commit the offences in question. Learned State counsel supported the submissions made by the learned counsel for the complainant and finally, prayed for dismissal of the appeals filed by the convicts.

CONSIDERATIONS

11. We have heard learned counsel for the rival parties at length for number of days. We have gone through the entire record of the Sessions trial. We have seen the entire oral evidence as well as documentary evidence produced by the prosecution as well as defence. We have also seen the reasons given by the trial Court so also the manner of appreciation of evidence made by the trial Court. With this, we proceed to record our findings as under.

12. We take up the first issue regarding the age of the prosecutrix 'S'. The complainant PW1-Ashwani Kumar Sachdeva, PW2-Prosecutrix 'S' and PW3-Seema Arora wife of the complainant, deposed about the date of birth of the prosecutrix 'S', as 01.05.1997, which means on the date of

occurrence, her age was 15 and half years. That is the oral evidence. PW8-Chhinderpal Kaur, Clerk in the office of Nagar Council, Faridkot proved the entry regarding date of birth of the prosecutrix by bringing original relevant register of birth. PW20-Ranjit Singh, D.P. Master, Saint Marry Convent School, Faridkot, brought school admission record of the prosecutrix and proved the relevant entry. We have gone through the evidence of PW8-Chhinderpal Kaur and PW20-Ranjit Singh and we find that they have duly proved the documentary evidence in respect of date of birth of the prosecutrix. There is no dent whatsoever to their evidence proving the date of birth as 01.05.1997. The father, mother and the prosecutrix are the best witnesses to remember and ascertain the date of birth and therefore, we have no hesitation in accepting the oral evidence of these witnesses, which fully corroborates the documentary evidence as discussed above. The submission that the name of the child is not mentioned in the certificate is bereft of any merit. The parentage of the child is clearly mentioned in the entry Exhibit PJ and there is no challenge to the said aspect of the evidence nor any attempt to show that it related to any other child, particularly because the other daughter is elder one. Thus, relying on documentary evidence Exhibit PV/D and Exhibit PJ, we are of the firm opinion that the age of the prosecutrix was firmly proved by the prosecution as 15 and half years. We have no doubt in our mind about the same. To say, in other words, the girl was below 16 years of age and consequently, she was minor. To repeat, her age being below 16 years, the question of any consent of the girl throughout as vociferously projected by

the appellants must be rejected outright. Even, if there was any consent, the same is wholly immaterial, insignificant and leads one nowhere. In other words, if the sexual intercourse is proved, obviously the offence of rape with minor girl is proved. The exact age of the prosecutrix comes to 15 years and little less than 5 months as on the date of occurrence, namely 25.09.2012.

13. The appellant-Nishan Singh has taken a peculiar and strange defence that even if the girl was below 16 years, but then, admittedly as per the prosecution, her age was above 15 years. Therefore, as per the definition of rape and exception provided thereto under Section 375 IPC, sexual intercourse by man with his wife, wife not being under 15 years of age, is not rape. In order to buttress the above submission, learned Senior counsel for the appellant-Nishan Singh vehemently contended that willingly and with consent, the prosecutrix 'S' and the appellant-Nishan Singh had performed marriage which has been duly proved by DW20-Nikka Singh, *Pathi* and DW25-Dinesh Kumar, Photographer. Therefore, according to the learned Senior counsel for the appellant-Nishan Singh, the offence regarding alleged rape cannot be said to have been proved in law. We have gone through the evidence of DW20-Nikka Singh, *Pathi* and DW25-Dinesh Kumar, Photographer. We have also seen the reasons recorded by the trial Court which recorded a finding that no such marriage was at all proved by the appellant-Nishan Singh, who were supposed to prove it affirmatively. The learned trial Court has recorded the reasons in Paragraph 54 of the impugned judgment and we quote the relevant extract

form the said paragraph, which reads thus:-

“54.Nikka Singh DW20, who is claimed to be **Pathi of Gurudwara Belongi sahib**, situated at a distance of 5 K.Ms. from Kharar, towards Mohali, who has deposed about the performance of **Anand Karaj ceremony**, between Nishan Singh and prosecutrix. He had claimed that Nishan Singh and the prosecutrix had made request for performance of their marriage and they had disclosed about themselves to be belonging to District Faridkot and he also deposed that he had performed **Anand Karaj ceremony** of both of them. He further stated that firstly, he had verified about their consent to undergo marriage and they had also disclosed that their parents were not agreeing to their marriage. He also stated that firstly, he made them sit before **Sri Guru Grant Sahib** and made **Sukhman Sahib Ardas** and then **Palla Jod** ceremony was conducted and then path of **Lawans/Pheras** was conducted and then **Parshad** was distributed. He has also deposed that during the performance of this marriage ceremony, photographs were got clicked and on seeing the Album Ex.DC, he stated about the same, to be containing photographs of Nishan Singh and the prosecutrix during performance of the marriage. However, it is pertinent to mention that this witness has no where produced any record about his working as **Pathi** in the said **Gurudwara Sahib** and even if said marriage was performed by him, definitely, there ought to be some entry made in the register or some kind of certificate issued, regarding marriage of the persons concerned, but nothing, as such, is coming on the record. Even, Dinesh Kumar Photographer has been examined as DW23. He has deposed about having called by Nikka Singh **Pathi of Gurudwara Belongi Sahib** on 28.6.2012 and he had clicked photographs of **Anand Karaj ceremony** of Nishan

Singh and prosecutrix in Gurudwara Sahib as well as Jai Mala ceremony in nearby Shiv Mandir and also identified the said photographs, which are Ex.D1 to Ex.D98. However, it is pertinent to mention that none of the aforesaid depicts about Sri Guru Granth Sahib, in Parkash Form. Even in none of the photographs, the Pathi, who performed the marriage ceremony, as such, is visible. None of the ceremonies, which are claimed, to have been performed by the Pathi are evident from the photographs. Though Palla Jod ceremony was stated to have been conducted, but there is no photograph, relating to the same. Even taking place of lawans/phere in the photographs, as such, is not depicted. Even, it is pertinent to mention that some of the photographs, which are claimed to have been clicked at a religious place, are in objectionable postures, which in any manner, cannot be clicked, during the process of performance of the marriage and that too, at a religious place. Rather, it is pertinent to mention that in photographs Ex.D3, Ex.D93 and Ex.D100, the prosecutrix is wearing T-shirt and jeans, which is different from the dress, worn in the other photographs, which as such, also counters the claim of the photographs, to have been clicked one after the other at the same place. Besides the same, it is pertinent to mention that in some of the photographs, there is bed visible, upon which, iron is also placed and the same, in any manner, does not relate to the Gurudwara Sahib. Also, besides the same, it is pertinent to mention that in photograph Ex.D104, there are four hands visible, out of which, three are clearly established to be of females only. These hands are visible to be wearing Chooria. In any manner, this photograph having not been prepared by way of reflection, also can be taken note of, as the design of the Chooria is different in one hand. It shows that there was some other person also present, at that

time and qua the same, there is no explanation coming forth. Taken as a whole, even these photographs do not depict the performance of the marriage ceremony. In the light of the denial of marriage by the prosecutrix, the testimonies of DW20 Nikka Singh and DW23 Dinesh Kumar do not prove the factum of marriage, as claimed.”

14. We have checked the evidence of these witnesses to find out whether the said finding recorded by the learned trial Court is inconsonance with the evidence. We find that the finding is based on evidence and no fault can be found out. We agree with the said finding that no such marriage was proved.

15. We, however, find it strange that such a defence being taken in the wake of the forceful day light kidnapping and abduction and taking away the minor girl from the house of the complainant on the strength of deadly weapons, arms. The pistol was used to fire eventually in order to keep the people away from the appellant-Nishan Singh and his companions. The fact about the said incident having taken place is well established beyond any doubt from the oral testimony of the witnesses, namely complainant, his wife and his daughter. There is no dent to their testimonies whatsoever in the cross-examination. We are at the complete loss to understand as to whether there can be a valid and legal marriage between the two when on gun point and deadly arms, a minor girl is taken away from complainant's house causing injuries to the inmates of the house. Nay we are not prepared to believe or even imagine in the background of the grisly act by Nishan Singh and the gangsters. We,

therefore, reject outright the theory propounded by the appellants that there was marriage between the prosecutrix and Nishan Singh. That apart, Hindu Marriage Act, 1955 does not permit such a marriage that too with a minor girl and therefore, it must be held that the alleged marriage must be held to be *void ab initio* and having no effect at all in law and as an eyewash for the sin committed.

16. The submission that the exception in the definition of rape would come to the help of appellant-Nishan Singh, must be rejected and we do so without any hesitation. In defiance to the rule of law, in a broad day light, the appellant-Nishan Singh and his companion gangsters barged their entry in the house of the complainant with deadly weapons, injured the inmates of the house and forcibly took away the minor girl away with them by also firing a shot from pistol for keeping the people away. As to the incident proper, we have read the testimony of PW1-Ashwani Kumar Sachdeva, his daughter PW2-Prosecutrix 'S' and his wife PW3-Seema Arora, in juxtaposition. We have also seen the cross-examination of these witnesses carefully. In so far as the incident proper regarding barging the entry of these gangsters in the house of the complainant and therefore, assault on the inmates of the house is concerned, we find that the evidence is consistent, clear, most natural and trustworthy. The appellant-Nishan Singh accompanied by Rajwinder Singh @ Ghali, Toofan Singh alias Toofani, Varinder Kumar alias Dhalla and Pardeep Singh alias Poppy barged their entry in the house of the complainant with deadly weapons and started forcibly taking away the minor girl prosecutrix out of the

house. The complainant and his wife and the other daughter obstructed them but they were dragged out and assaulted by these gangsters. Finally, they succeeded in dragging the girl to the car wherein all of them fled away. When the complainant again attempted to save his daughter from the clutches of these gangsters by proceedings towards them, Rajwinder Singh alias Ghali fired shot from his pistol and kept everybody away from them. The argument that no independent witness or the neighbourer were examined on the incident proper, in the wake of the broad-day light *gundaism* of the appellant-Nishan Singh and his gangsters will have to be rejected. The appellant-Nishan Singh and his gangsters created such an atmosphere in the area that no independent person or the neighbourer would dare to come forward to depose against them, particularly in the wake of the fact that it was well known in the town that Nishan Singh, has had to his credit some FIRs with the police stations. Even otherwise, need to bring independent witnesses could arise if the testimony of PW1, PW2 and PW3 had been shaken. But there is nowhere any dent in their cross-examination. However, to our mind, their evidence clearly show that testimony of these witnesses before the Court is truthful, honest and most natural and must be accepted and was rightly accepted by the trial Court. We, therefore, hold that on the date of incident, the appellant-Nishan Singh and his gangster companions Rajwinder Singh @ Ghali, Toofan Singh alias Toofani, Varinder Kumar alias Dhalla and Pardeep Singh alias Poppy barged their entry in the house of the complainant and committed the offences for which they have been convicted. We must, therefore,

uphold their conviction for these offences.

17. Now examining the evidence regarding rape as stated earlier by us, the question of consent is insignificant. Apart from the fact that the prosecutrix, in clear terms, deposed before the Court that despite resistance, the appellant-Nishan Singh had committed rape upon her. No other evidence is required to prove rape when there is a medical evidence on record that the prosecutrix had become pregnant and ultimately, when she was recovered from the custody of Nishan Singh, her MTP was performed and even DNA test was got conducted. The testimony of the prosecutrix on the aspect of the rape must be therefore, accepted as there is voluminous evidence for proof of the offence of rape. Our attention was drawn at the evidence of the prosecutrix to show her conduct namely, that, she was always willing and consenting from the inception till her recovery from Goa. We have also given serious thought to her evidence about her conduct to that effect. We do not want to describe that evidence lest it should occupy innumerable pages. Suffice it to say that the prosecutrix having been kidnapped on the strength of arms from her house with the episode of her family members being injured, the people being scared with firing taking place in the broad day light, and she being in custody of appellant-Nishan Singh throughout, what kind of consent/willingness is being propounded! Can one call this as consent! The minor girl herself was worried about her life. We reject the arguments in toto. That apart, we having held the girl being of the age of 15 years, 5 months, consent would be wholly irrelevant. The argument that high-ranking police officers held

press-conference and declared that there was no kidnapping, the case being of run-away couple does not impress us. In order to pacify the people holding *dharna*, that might have been done. But nothing depends thereon as substantive evidence before the court is only relevant. The test identification parade is not a substantive evidence as is trite law. At any rate, there was no serious challenge to the identification of the accused persons. Then these accused had made the scene for quite a long period to memorise their faces.

18. The next part of the prosecution evidence relates to the accused Navjot Kaur, mother of the appellant-Nishan Singh and her relative Maninderjit Singh alias Dimpy Samra. There is consistent evidence of PW1, PW2 and PW3, on record, that when first FIR No.166 was lodged with the police station, Navjot Kaur, mother of the accused-Nishan Singh and Maninderjit Singh alias Dimpy Samra had arrived at the house of the complainant and asked them to withdraw the FIR by entering into compromise or else they were threatened with dire consequences. It is thus, clear that there was meeting of mind between Maninderjit Singh alias Dimpy Samra and Navjot Kaur that the FIR No.166 lodged against the appellant-Nishan Singh must be got compromised and withdrawn by imparting threats. This was the beginning of conspiracy between them along with main accused Nishan Singh. The matter does not end here as it is seen from the evidence of PW2-Prosecutrix who, in her evidence, disclosed the active role played by the mother Navjot Kaur and Maninderjit Singh alias Dimpy Samra. It is strange and really surprising

that instead of discouraging the appellant-Nishan Singh from indulging into criminal activities, his mother Navjot Kaur and Maninderjit Singh alias Dimpy Samra, by conspiracy encouraged and went on to help and instigate Nishan Singh to go ahead with his plan. They are conspirators with other accused to forcibly kidnap the minor girl and thereafter, take her away for commission of rape. The prosecutrix deposed that after the first incident as aforesaid, the mother Navjot Kaur provided an amount of ₹2.5 lakhs to Maninderjit Singh alias Dimpy Samra. The huge amount in lacs was given to appellant-Nishan Singh by his mother and Maninderjit Singh alias Dimpy Samra when from a secluded place by car in which the prosecutrix was bundled. We have checked, if there was any dent in the cross-examination of her evidence, but we find none. We are therefore, of the firm opinion on evidence that Maninderjit Singh alias Dimpy Samra and Navjot Kaur both had with active and overt acts as a result of conspiracy, decided and implemented their plan to forcibly lift the minor girl from the house of the complainant and thereafter, they provided money to him to run away from the place and ultimately, they were found after a few days at Goa when the police apprehended them. What other evidence is required to prove the conspiracy and the offences committed by both of them, namely Maninderjit Singh alias Dimpy Samra and Navjot Kaur, mother of the appellant-Nishan Singh . We, therefore, uphold the finding of the trial Court for holding both of them guilty for the offences for which they have been convicted.

19. In so far as Harsimran Singh Brar, Bikramjit Singh alias @

Bikram and Pankaj Gautam alias Rinku are concerned, we find, in the first place that Pankaj Gautam was convicted for offence under Section 120-B IPC and 216 IPC. Upon reading of the entire evidence, at the outset, we find that there is neither any evidence of conspiracy that Pankaj Gautam had conspired with other accused persons or main accused Nishan Singh nor there is evidence on record that he knew the person in his house was the criminal. We are therefore, quite sure that Pankaj Gautam alias Rinku has been wrongly convicted for the offence under Section 120-B IPC and 216 IPC and he must be acquitted for the conviction for the said offences, which we do.

20. In so far as other two accused-Harsimran Singh Brar and Bikramjit Singh alias @ Bikram are concerned, the trial Court had convicted them for following offences by recording a finding in Para 87 of the impugned judgment. We quote Para 87 of the impugned judgement, which reads thus:-

“87. Now coming to the role of accused Harsimran Singh Brar and Bikramjit Singh alias Bikram. There are accusations of both the aforesaid accused to have got prepared fake driving licences in the names of Gurpreet Singh qua Nishan Singh and Jasmeet Kaur qua the prosecutrix and in fact, the said driving licences were used as genuine by accused Nishan Singh, to hide his identify, during the various bouts of movement. The prosecutrix while in the witness box, has categorically deposed that after reaching Chandigarh, she was also taken by Nishan Singh to the house of Bikramjit Singh alias Bikram and then Harsimran Singh Brar was also called and further, she has also deposed about aforesaid

persons having brought them, at a Hotel, in Sector 17, Chandigarh and further about the said persons, having taken both of them to Panchkula, to some Studio, where her photographs as well as photographs of Nishan Singh were got clicked. She further deposed about handing over of Rs.5000/- by Nishan Singh to Harsimran Singh Brar for the preparation of fake driving licences. Though, now it is submitted that accused Bikramjit Singh alias Bikram has been falsely implicated and in this regard, learned defence counsel has also made reference to various phone calls made by the police officials to the father of Bikramjit Singh alias Bikram, but however, it is pertinent to mention that the prosecutrix, in her statement, got recorded on 21.10.2012, has categorically stated about the involvement of Bikramjit Singh alias Bikram and even, while in the witness box, she has deposed to this effect and so cross examined at length, but nothing material elicited out to dislodge her version. In view of the same, the very fact of accompanying Nishan Singh and the prosecutrix and facilitating the clicking of photographs along Harsimran Singh Brar, do not point out about tainted role of accused Bikramjit Singh alias Bikram as well as Harsimran Singh Brar. Though in defence, plethora of documents relating to avocation followed by Bikramjit Singh alias Bikram and the zeal on the part of the said accused to improve his career as well as documents to establish the educational qualifications of his family and the highly placed status, enjoyed by them, have been produced, but however, these documents ipso facto, are not sufficient to proclaim innocence of accused Bikramjit Singh alias Bikram. Specific role has been attributed to him as well as Harsimran Singh Brar which stands amply established from the categoric version coming from the mouth of the prosecutrix.”

21. Both of them have been convicted for the offence of conspiracy, kidnapping, unlawful assembly and forgery. The evidence on the basis of which they have been convicted is of the prosecutrix herself. The prosecution case against these two accused is that they had prepared fake driving licences in different names, which were used by the main accused Nishan Singh and the prosecutrix. The evidence is that both these accused had taken both of them to a photo studio and their photographs were taken and an amount of ₹5,000/- was given for preparing fake driving licence. Except this insufficient oral evidence of prosecutrix, there is no evidence to show that they were in conspiracy of kidnapping or unlawful assembly. In other words, we do not find any evidence on record for holding them guilty for hatching conspiracy for which they have been convicted by the trial Court. We also do not find any evidence for their conviction under Section 149 IPC. In so far as section 468 IPC is concerned for which they have been convicted, we find that there is no evidence whatsoever that they had in fact, in her presence, forged any document and given to them. In other words, there is no ocular evidence to show that these two accused had prepared those fake documents. There is evidence that the documents were handed over to them but that does not mean that they had forged the documents or licences for being given to them. There is no evidence of meeting of mind of the accused-Nishan Singh with these two persons. These two persons appear to be the agents in the transport offices of the Government. But then that by itself, would not be enough to convict them for the serious offences. We are, therefore,

fully convinced that the finding in Para 87 of the impugned judgment recorded by the trial Court for convicting them is not legal and proper. Consequently, we hold that the conviction of Harsimran Singh Brar and Bikramjit Singh alias Bikram is illegal and they will have to be acquitted.

22. The upshot of the above discussion is that following order is inevitable:-

ORDER

- (i) **CRA-781-DB of 2013** filed by appellant-Nishan Singh, **CRA-D-803-DB of 2013** filed by appellant-Navjot Kaur, **CRA-S-2082-SB of 2013** filed by appellant-Maninderjit Singh @ Dimpny Sarma, **CRA-S-2387-SB of 2013** filed by appellant-Toofan Singh @ Toofani, **CRA-S-2476-SB of 2013** filed by appellant-Pardeep Singh alias Poppy, **CRA-S-2477-SB of 2013** filed by appellant-Varinder Kumar alias Dhalla, and **CRA-S-2550-SB of 2014** filed by appellant-Rajwinder Singh alias Ghali, are dismissed;
- (ii) **CRA-S-1996-SB of 2013** filed by appellant-Bikramjit Singh @ Bikram, **CRA-S-2012-SB of 2013** filed by appellant-Pankaj Gautam, and **CRA-S-2358-SB of 2013** filed by appellant-Harsimran Singh Brar, are allowed;
- (ii) The impugned judgment and order dated 27.05.2013, in Sessions case No.02 dated 16.01.2013, passed by the learned Sessions Judge, Faridkot, by which appellants, namely Bikramjit Singh @ Bikram, Pankaj Gautam, and Harsimran Singh Brar were convicted and sentenced for commission of offences stated against their names in the impugned judgment and order, is set aside qua them only;

- (iii) Appellants, namely Bikramjit Singh @ Bikram, Pankaj Gautam, and Harsimran Singh Brar are acquitted of the charge framed against them;
- (iv) Fine if paid, be refunded to Bikramjit Singh @ Bikram, Pankaj Gautam, and Harsimran Singh Brar;
- (v) Bikramjit Singh @ Bikram, Pankaj Gautam, and Harsimran Singh Brar be set at liberty forthwith, if not required, in any other case;
- (vi) **CRM No.35406 of 2013 in CRA-D-781-DB of 2013** filed by the applicant/complainant-Ashwani Kumar Sachdeva for compensation is being decided separately.

**(A.B. CHAUDHARI)
JUDGE**

**(INDERJIT SINGH)
JUDGE**

August 31, 2018

mahavir

Whether speaking/ reasoned: **Yes**

Whether Reportable: **Yes**