

Brij Bihari Patel and Another Vs State of M.P.

Court: Madhya Pradesh High Court

Date of Decision: Feb. 21, 2002

Acts Referred: Criminal Procedure Code, 1973 (CrPC) â€” Section 320(2)
Penal Code, 1860 (IPC) â€” Section 366

Citation: (2002) 2 MPJR 85

Hon'ble Judges: S.P. Khare, J

Bench: Single Bench

Final Decision: Allowed

Judgement

S.P. Khare, J.

Appellants Brij Bihari Patel and Beer Singh Patel have been convicted u/s 366 I.P.C. and sentenced to reigorous imprisonment for five years and

to pay a fine of Rs. 500/-.

2 The impugned judgment and record of the trial court perused. Archana Kabra (P.W.10) is the prosecurtix. Her date of birth is 7.6.1976.

According to the prosecution she was kidnapped by accused Brij Bihari Patel on 17.7.1993 from the house of her father Shivdas Kabra (P. W.

1). Accused Beer Singh Patel is related to accused Brij Bihari Patel and he also helped Brij Bihari Patel in kidnapping this girl. They came from

Kareli to Jabalpur and then they boarded a bus for Nagpur. The father reported the matter to the police as per Ex. P-1 and they were caught at

Nagpur.

The trial court after appreciation of the evidence on record has held that the date of birth of Archana is 7.6.1976 and she was of 17 years, 1 month

and

10 days on 17.7.1993. There is also a finding of the trial Court that there was consent of Archana Kabra (P.W.10) in going with the accused

persons. However, it has been found that the accused persons had induced Archana to leave the protection of her father and, therefore, the

offence u/s 366 I.P.C. is made out. On this finding, the accused persons have been convicted and sentenced as stated above.

In this Court an application has been submitted describing it to be u/s 320 (2) Cr. P.C. for permission to compound the offence. It is stated in this

application that accused Brij Bihari Patel has married Archana and they are living together. They have a son. Archana has filed an affidavit in

support of this application. She is present today in the Court. Accused Brij Bihari Patel is also present. On inquiry by the Court it has been stated

by Archana that she has married Brij Bihari Patel on 22.5.1998 and a son was born to them on 21.10.1999 and at present they are living happily

at Indore. It has also been stated by Archana that now her father has no objection.

The offence u/s 366 I.P.C. is non-compoundable. However, the subsequent conduct of Archana and Brij Bihari Patel can be taken into account

for determining whether the offence u/s. 366 I.P.C. is established in the present case. This case appears to be akin to S. Varadarajan Vs. State of

Madras, which has been referred to by the trial Court also in the impugned judgment. A perusal of the evidence on record shows that Archana was

on the verge of attaining majority on the date of incident and she accompanied accused Brij Bihari Patel voluntarily. She took out the ornaments

from her almirah and for this reason the trial Court has also held that she left her father's home after making full preparation. Archana Kabra

(P.W.10) was examined by the prosecution but she did not make any statement before the Court. She does not say that she was in any way

induced or persuaded by the accused persons to leave the guardianship of her father. Thus Archana does not say that she was induced either on

the date of incident or at any time earlier to leave the protection of her father and go with accused Brij Bihari Patel. There is no other direct or

circumstantial evidence to show that accused Brij Bihari Patel at any time earlier solicited or persuaded Archana to go with him. In the present case

also the girl left her father's protection knowing and having capacity to know the full import of what she was doing and voluntarily joined accused

Brij Bihari Patel. Therefore, this case is fully covered within the dictum of the Supreme Court mentioned above. The distinction drawn by the trial

Court is not sustainable.

As mentioned above the subsequent conduct of Archana in marrying accused Brij Bihari Patel and having a son also also indicates that she

voluntarily accompanied accused Brij Bihari Patel on the date of incident and, therefore, this case should now be brought to an end in such a way

that both of them should lead happy wedded life in future.

In the result, the appeal is allowed. The conviction and sentence of appellants Brij Bihari Patel and Beer Singh Patel are set aside and they are

acquitted of this charge.