



2026:AHC:157270

HIGH COURT OF JUDICATURE AT ALLAHABAD
CRIMINAL APPEAL No. - 1362 of 1984

Final AFR

Reserved On 29.04.2026

Delivered On 29.07.2026

Mahipal Singh and others

.....Appellant(s)

Versus

State of U.P.

.....Respondent(s)

Counsel for Appellant(s)	: Amit Mishra, Hasan Parvej, T. Rathore
Counsel for Respondent(s)	: A.G.A.

Court No. - 88

HON'BLE SANJIV KUMAR, J.

1. This appeal has been filed under Section 374(2) Code of Criminal Procedure 1973 (in short Cr.P.C.), by appellants **Mahipal Singh, Ram Pal Singh, Ram Singh, Subeydar Singh, Kunwar Singh and Angan Singh**, against the impugned judgment and order dated 26.04.1984 passed by Sri Mahesh Chandra, Additional Sessions Judge-VIII, Bareilly in Sessions Trial No.570 of 1982, Police Station- Bahedi, District- Bareilly.

undergo rigorous imprisonment of three years; for offence punishable under Section 365 read with 149 IPC sentenced them to undergo rigorous imprisonment of three years; for offence punishable under Section 324 read with 149 IPC sentenced them to undergo rigorous imprisonment of two years. Accused Angan Singh is convicted for offence punishable under Section 148 IPC and sentenced to undergo rigorous imprisonment for two years; for offence punishable under Section 452 IPC sentenced to undergo rigorous imprisonment of three years; for offence punishable under Section 365 read with 149 IPC sentenced to undergo rigorous imprisonment of three years; for offence punishable under Section 324 read with 149 IPC sentenced to undergo rigorous imprisonment of two years. It was further directed that all the sentences shall run concurrently.

3. During the pendency of this appeal, the appellants Mahipal Singh, Ram Pal Singh, Subeydar Singh, Kunwar Singh and Angan Singh have died and, therefore, this appeal stands **abated** against Mahipal Singh, Ram Pal Singh, Subeydar Singh, Kunwar Singh and Angan Singh, passed earlier. Now this appeal survives against Ram Singh, only.

4. Brief facts of the prosecution case are that Chandra Pal Singh son of Hem Singh, resident of Mitidandi, Police Station- Baheri, District- Bareilly, filed a written application dated 24.07.1980 (Ext.Ka.1), before Incharge Police Station- Baheri, stating that he had solemnized court marriage with Maya Devi, the daughter of Tara Singh, resident of Gurbara Gautihya, Police Station- Baheri about six months ago. She was living with her mother at his house. A day before yesterday i.e. on 22.07.1980 some altercation took place, as a result, her mother left the house. His wife was earlier married with Mahipal Singh son of unknown

noise he got awoken and all of them forcefully pulled Maya Devi aged about 19-20 years. Thereupon, he and his wife raised alarm then Balka Ram, Ghan Shyam Singh, Nathu Singh and Kunwar Pal and other villagers came running flashing their torches. In the meantime, the accused pulled his wife outside the house and when he was trying to separate them, Angan Singh shot at him with a gun. Two other persons were armed with *lathis* and due to the fear of the gun, none could dare to stop them and the accused kidnapped his wife with the purpose to solemnize her marriage. He sustained firearm injury over his leg and had identified the accused in the light of lantern and flash of torches.

5. On this information FIR under Case Crime No.366 of 1980, Sections- 147, 148, 149, 452, 324 and 366 IPC was lodged at Police Station- Baheri on 24.07.1980 at 02:30 a.m. and the investigation was entrusted to S.I. P.N. Mishra. He recorded the statements of witnesses and inspected the place of occurrence and prepared its site-plan (Ext.Ka.4). The injured was medically examined and after investigation the I.O. has filed charge-sheet (Ext.Ka.5) against all the appellants under Sections- 147, 148, 149, 324, 352 and 366 IPC before the concerned Magistrate.

6. The court concerned took cognizance of the offence and summoned the accused, they appeared and copies of relevant prosecution papers were furnished to them under Section 207 Cr.P.C. and thereafter the case was committed to the Court of Sessions for trial.

7. Before the Sessions Court, the accused appeared and charge under Sections- 147, 366 read with 149 IPC, 452, 324 read with 149 IPC was framed against appellants Mahipal Singh, Ram Pal Singh, Ram Singh,

8. The prosecution has examined five witnesses, to wit, P.W.1 Chandra Pal Singh; P.W. 2 Kunwar Pal Singh; P.W.3 Dariyab Singh; P.W.4 Dr. K.U. Ahmed; P.W. 5 S.I. Prem Nath Mishra, to prove its case.

9. P.W. 1 Chandra Pal Singh is the first informant of the case and has stated that he has solemnized marriage with Maya Devi about six months prior to the incident. It was a court marriage and his wife was living with him. Due to some altercation his mother-in-law left him sometime prior to the incident. Earlier his wife was married to accused Mahipal Singh. On the date of incident at about 12:30 a.m. he was sleeping in the courtyard of his house, the lantern was lit, then the accused along with Maya Devi's mother climbed the wall and entered in the house. He got awoken and his brother Dariyab Singh and Maya Devi also woke up then, they kidnapped his wife Maya Devi. He chased them then Angan Singh shot at him with his gun. The witness Kunwar Pal Singh, Nathu Singh and others came there having torches. He went to the police station at about 02:30 a.m. in the night and lodged the FIR. The witness has proved the tehrir (Ext.Ka.1) and has said then he was sent for medical examination.

10. P.W.2 Kunwar Pal Singh, is the neighbour of the first informant and is an eye-witness of the incident. He has said that he reached at the house of the first informant upon hearing the noise. There he saw the incident and the accused along with a woman kidnapped the first informant's wife. Angan Singh fired with a gun causing injuries to the first informant over his leg.

11. P.W.3. Dariyab Singh, is the brother of the first informant and he is also one of the inmates of the house in which the incident occurred.

incident. Then the accused and Maya Devi's mother came having gun and *lathis*. They pulled and took Maya Devi with them. Chandra Pal chased them, then Anagan Singh fired at him. It was a moon lit night and lantern was lit, and the accused had torches in their hands. Maya Devi is not traced out till today. He scribed the *tehrir* at the dictation of the first informant.

12. P.W. 4 Dr. K.U. Ahmad, is the Medical Officer, P.H.C. Baheri, who has medically examined Chandra Pal Singh, while he was posted as Incharge Medical Officer, there. He has found following injuries over his body:-

(i) Gunshot wound on dorsal aspect of the left lower leg and foot on the sole of the foot, measuring about 1/10 cm x 1/10 cm x skin and muscle deep and circular in nature. Some shots were skin deep and some were muscle deep and some of the nature of abrasion over lower part of left leg. Swelling was present. The movement of leg was painful. X-Ray was advised.

(ii) Contusion 2 cm x 0.5 cm to the right of forehead.

In the opinion of the doctor injury no.1 was kept under observation till the X- Ray report. Injury no.1 was caused by firearm and injury no.2 was caused by any blunt object. Injuries were simple in nature. The witness have proved injury report as Ext.Ka.2 and said that all the injuries could have been caused on 23/24.07.1980 at 12 or 12:30 a.m. Injury no.2 could be caused due to a fall.

13. P.W.5 S.I. Prem Nath Mishra, is the investigating officer of the case, he has proved chik FIR as Ext.Ka.3 and copy of G.D. No.2 dated 24.08.1980, time 02:30 a.m. scribed by Head Moharrir Omkar Misra as

was not found. Thereafter, he filed charge-sheet which he proved as Ext.Ka.5.

14. After the closure of prosecution evidence, the statements of accused were recorded under Section 313 Cr.P.C. The appellant Ram Singh in his statement under Section 313 Cr.P.C. has admitted that co-accused appellant Mahipal Singh was married to Maya Devi since before the incident. Rest of the prosecution case was denied and it was stated that false case has been lodged against him.

15. The accused have not adduced any evidence in their defence.

16. After perusal of evidence, the learned trial court came to the conclusion that the prosecution case is proved beyond reasonable doubt, but the court observed that the accused are guilty of offence punishable under Section 365 I.P.C. instead of Section 366 I.P.C. beside their conviction in other sections under which they were charged and accordingly, convicted and sentenced the appellants to the term as indicated above.

17. Heard Shri Hasan Parvej, learned Counsel for the appellants and Shri Akhilesh Kumar Mishra, learned A.G.A on behalf of the State and perused the material on record.

18. It is submitted by learned counsel for the appellant that the prosecution case is not established. The abduction in itself is not an offence unless it is combined with a specific criminal intent as mentioned in the IPC. It is also submitted that there is no specific role assigned to the appellant. The marriage of the victim with the informant is also not proved and there are material contradictions in the testimony

of PW-1, PW-2 and PW-3 is consistent, reliable and trustworthy. It is proved that the appellant along with other co-accused reached at the house of the first informant and thereafter committed *maarpeet* and in furtherance of their common object, as member of unlawful assembly, shot at the first informant causing him injuries, and had abducted the victim. Therefore the appellant has rightly been convicted, and therefore, this appeal has no force and is liable to be dismissed.

20. In view of the submissions of learned counsel for the both the parties and upon perusal of record, it is clear that the incident occurred on 23/24.07.1980 at about 12:30 AM and the FIR has been lodged the same night at 2:30 AM. Therefore, within two hours the FIR was lodged. The appellant is named in the FIR along with other co-accused. According to the first informant, at the time of incident Maya Devi was aged about 19-20 years, therefore, she was major and as per prosecution.

21. The prosecution has examined PW-1 Chandrapal, the first informant, PW-2 Kunwarpal Singh, the neighbour and PW-3 Dariyab Singh, the first informant's brother, as witness of fact. All the above three witnesses have supported the prosecution case. Apart from bearing minor contradictions, their deposition is consistent throughout. It is stated by these witnesses that on the fateful night, the appellant along with other co-accused arrived at the house of the first informant, where he was sleeping with victim Maya Devi. Then they kidnapped Maya Devi and upon being chased, co-accused Angan Singh shot at the first informant with his gun, causing injuries to his leg. According to PW-2, the neighbour, he reached there upon hearing noise and saw that the appellant along with other co-accused had kidnapped the first informant's wife. PW-3 Dariyab Singh is the brother of the first

lower leg and contusion on the right side of forehead and was simple in nature. Therefore, the ocular evidence is supported by medical evidence and the testimony of all the witnesses of fact is consistent and reliable in this regard.

22. Here, according to the first informant, the victim Maya Devi was his wife whom he had married six months prior to the incident. It was a court marriage. He has stated that he has a marriage certificate with him but it was not produced in the court. It is an admitted fact to the prosecution that the victim was earlier married to co-appellant Mahipal Singh and the first informant himself has admitted that there is no evidence that the divorce has taken place between Maya Devi and Mahipal Singh. In view of the above fact that the divorce of the victim with co-appellant Mahipal Singh is not established, and he was the husband of the victim, and also there is no evidence that the first informant has married the victim, therefore, it is not established that Maya Devi was the first informant's wife. Importantly, from the evidence it is proved that at the time of incident, co-appellant Mahipal Singh, the victim's husband, and the victim's mother had come along with other co-accused and had taken her away from the first informant's house. So even if, it is presumed that it was a case of abduction as defined in Section 362 IPC, but mere abduction is not an offence as held by the Hon'ble Supreme Court in a catena of judgments, such as **Joseph Shine Vs. Union of India AIR 2018 SC 2019**. The prosecution has to prove the intent with which the victim was abducted. In the present case, the appellant has been charged for offence under Section 366 IPC, but there is no evidence that she was abducted to compel her for marriage or seduce her to illicit intercourse, therefore, the charge under Section 366 IPC is not proved against the appellant.

wrongfully confine the victim, cannot be gathered from the evidence adduced by the prosecution. The victim herself was not properly traced. The mother of the victim was also not found, though according to the prosecution she was one of the accused, named in the FIR, who arrived at the place of occurrence alongwith other accused and had taken away her daughter. The I.O. did not bother to interrogate her or to capture her for the reasons best known to him. The statement of Investigating Officer shows that he has not investigated the case properly and did not make any extensive search of the victim as well as her mother. In this regard, the statement of victim and her mother was very material, but due to poor investigation both of them were not traced and the I.O. has filed charge-sheet hurriedly without any proper investigation. The relationship of the first informant with the victim is highly suspicious, under the circumstances that he claims himself as the husband of the victim, but this is not proved from the evidence. He has admitted that he is a home guard and was convicted in a murder case. Under what circumstances the victim was living with the first informant is not well explained by the prosecution. The victim was taken away by her husband along with her own mother and others. So it does not show that she was taken away with any intent to secretly and wrongfully confine her. Therefore, the offence under Section 365 IPC is also not made out. In this regard, the Learned Trial Court has not appreciated the evidence on record correctly and has reached at a wrong conclusion of the guilt of the accused, the appellant. So the offence under Section 366 or 365 IPC, under which the Learned Trial Court has convicted the appellant, is not proved. Therefore, the appellant deserves to be acquitted of the offence under Section 365 IPC.

25. So far as the sentence awarded to the appellant for the offence punishable under Sections 147, 452, 324 read with 149 IPC is concerned, looking into the facts and circumstances of the case, the role of the appellant, and the pendency of this appeal which is more than forty-two years old, it would serve no purpose to sentence the appellant and put him behind the bars. There is no evidence that the appellant was previously convicted in any case. The appellant is now an old and infirm person. He has been appearing in this appeal since last more than forty-two years and there was no specific role of the appellant in the said crime except that he was present along with other co-appellants. Therefore, the ends of justice would be met if, instead of passing any sentence, the appellant is given the benefit of Section 4 of the Probation of Offenders Act, 1958.

26. In view of the above this appeal is **allowed partly** and the conviction of the appellant under Section 365 IPC is set aside and the conviction of the appellant under Section 147, 452, 324/149 IPC, is upheld. But the sentence awarded to the appellant is modified and instead of sentencing him at once, he is released on probation for a period of six months to keep peace and maintain good behaviour for the aforesaid period, upon his furnishing a personal bond of Rs. 50,000/- with two sureties of the like amount to the satisfaction of the concerned probation officer, with an undertaking that in case of breach of the condition he shall appear and be heard on sentence. The bonds and sureties aforesaid be filed by the convict within fifteen days from the date of the Judgment as per law and Rules.

27. Let a copy of this judgment be sent to the concerned Trial Court and concerned Probation Officer for intimation and necessary