



2026:AHC:161907

Reserved on 14.07.2026

Delivered on 04.08.2026

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 2746 of 1983

Bal Karan

.....Appellant(s)

Versus

State of U.P.

.....Respondent(s)

Counsel for Appellant(s)	: S.a.shah
Counsel for Respondent(s)	: A.G.A.

Court No. - 93

HON'BLE SANTOSH RAI, J.

1. Heard Sri S.A. Shah, learned counsel for the appellant and Sri Purshottam Maurya, learned A.G.A. for the State- respondent and perused the record.
2. This criminal appeal has been preferred by the accused-appellant **Bal Karan** against the judgment and order dated 14.10.1983 passed by the III Additional Sessions Judge, Bijnor, in Sessions Trial No. 153 of 1983 (State v. Mangat and another), arising out of Case Crime No.739 of 1983, Police Station Chandpur, District Bijnor, whereby the accused-appellant, along with the co-accused Mangat, was convicted under Section 363 I.P.C. and sentenced to undergo two years' rigorous imprisonment and a fine of Rs. 100/- and in default of payment of fine to undergo one month's further R.I., further he convicted under Section 366 I.P.C. and sentenced to undergo four years' rigorous imprisonment and a fine of Rs. 500/- and in default of payment of fine he shall under-go six months further R.I.

3. It may be noted at the outset that the charge under Section 376 IPC was framed against the co-accused Mangat alone, and the said co-accused was separately convicted and sentenced thereunder to six years' rigorous imprisonment and a fine of Rs. 1,000/- and in default of payment of fine, one year's further R.I. Co-accused Mangat has not preferred any appeal against his conviction, and the present appeal, filed only by the accused-appellant Bal Karan, is confined to the conviction and sentence recorded against him under Sections 363 and 366 IPC.

4. The prosecution case, briefly, is that the accused Mangat and Balkaran resided in the same locality as PW1 Jaswant Singh in village Siau and were on visiting terms with his family. On 14.2.1983, at about 11.30 a.m., the prosecutrix, minor daughter of Jaswant Singh, aged about 16-17 years, went to Chandpur market to procure medicine for blisters in her mouth. As she reached Chandpur, the accused Mangat and Balkaran met her and represented that a good doctor was available in their village who would provide better treatment. The accused Mangat further told her that her father had asked him to arrange her medical treatment. Believing this representation, the prosecutrix accompanied the accused. Outside Chandpur town, the accused threatened her with a knife and, through the fields, took her to Gajrola railway station, keeping her thereafter at the railway platform and at other places for several days. It was alleged that between 21.2.1983 and 22.2.1983, the accused Mangat took the prosecutrix on foot to Brijghat and, on the way as well as at a Dharamshala there, committed rape upon her. When the prosecutrix did not return home, her father, PW1 Jaswant Singh, searched for her at Chandpur, Gajrola and at the houses of relatives. On 21.2.1983, he came to know from Rajaram and Dharamvir (examined as PW3) that they had seen the prosecutrix going away with the accused Mangat and Balkaran, whereupon he lodged a written report at Police Outpost Sugar Mill, Chandpur, the same day. On 22.2.1983, S.I. Prahalad Singh Yadav (PW8), accompanied by Jaswant Singh and other police

personnel, arrested the accused-appellant Bal Karan at Bagarpur railway station. It was on the information furnished by the appellant that Mangat had taken the prosecutrix towards Brijghat that the police party proceeded there and, from the roof of a Dharamshala at Khajanowali, Brijghat, District Ghaziabad, recovered the prosecutrix from the possession of the accused Mangat, who was arrested at that spot. The prosecutrix's salwar was taken into possession, recovery memos were prepared, and her medical examination was conducted on 22.2.1983 at the Government Female Hospital, Chandpur, by Dr. Pratibha Aggarwal (PW2), who assessed her age as being between 16 and 17 years and noted that the hymen was torn with irregular edges, though the vaginal smear was reported negative for spermatozoa.

5. On the basis of evidence, the trial court framed charges under Sections 363 and 366 IPC against both the accused, and an additional charge under Section 376 IPC against the accused Mangat. Both the accused pleaded not guilty.

6. The prosecution examined eight witnesses, namely Jaswant Singh (PW1), Dr. Pratibha Aggarwal (PW2), Dharamvir (PW3), the prosecutrix (PW4), Constable Jaswant Singh (PW5), Ajay Kumar (PW6), Dr. Vijay Kumar Goel (PW7) and S.I. Prahalad Singh Yadav (PW8).

7. Learned counsel for the appellant has assailed the impugned judgment on facts and on the evidence on record on, inter alia, on the ground that FIR was registered at belated stage. The main allegation regarding committing the rape and kidnapping against the minor is of accused Mangat only, the accused Bal Karan has no specific and distinct role and he is about 70 year old at present, he has no any previous criminal history, the maximum sentence awarded to the accused Bal Karan is only four years. P.W.4, the victim has not stated the specific and distinct role regarding enticing her from their legal guardians of PW1, Jaswant Singh.

8. Learned A.G.A., on the other hand, has supported the impugned judgment and submitted that the trial court, on a consideration of the entire evidence, rightly convicted the appellant along with the co-accused Mangat under Sections 363 and 366 IPC, since the appellant was named by the eyewitnesses as having gone away with the prosecutrix along with Mangat, and was present when the false representation was made to induce the prosecutrix to accompany the accused.

9. The First Information Report was lodged on 21.02.1983, whereas the incident is alleged to have occurred on 14.2.1983, a delay of about seven days that has not been satisfactorily explained. The charge under Section 376 IPC was framed against the co-accused Mangat alone; no charge of rape was ever framed against, or allegation of rape made against, the accused-appellant Bal Karan. The only evidence connecting the appellant with the presence of the prosecutrix in the company of the accused is that of the witnesses Rajaram and Dharamvir, who claimed to have last seen the prosecutrix with both accused. However, Dharamvir, examined as PW.3, is not a witness to the commission of any offence under Section 363 or 366 IPC; he merely deposed to having seen the three of them going away together, and that too on the basis of a solitary sighting.

10. PW1 Jaswant Singh has himself deposed that the appellant Bal Karan was arrested at Bagarpur Railway Station on 22.02.1983, and it was thereafter, on information furnished by the appellant, that the police proceeded to Brijghat and arrested the co-accused Mangat, recovering the prosecutrix from his possession from the roof of a Dharamshala. The appellant was thus not present at the time and place of recovery of the prosecutrix and the arrest of the co-accused Mangat. No site plan was prepared by the Investigating Officer in respect of the place where the appellant was arrested at Bagarpur Railway Station.

11. As per the medical evidence of Dr. Pratibha Aggarwal (PW2), the age of the prosecutrix was assessed as being more than 16 but less than 17 years, and it was further found that she was habituated to intercourse, the hymen being already ruptured. The prosecutrix (PW4) herself deposed that when she reached Chandpur for medical treatment, both the accused Mangat and Bal Karan met her, but it was the accused Mangat alone who asked her where she was going and who suggested that a better doctor was available in his village; it was Mangat who further told her that her father had directed him to arrange her medical treatment. The appellant Bal Karan was merely present and moved along with Mangat and the prosecutrix on this occasion. It was outside Chandpur town that the accused showed a knife and threatened to kill the prosecutrix if she raised an alarm; no knife or other weapon was ever recovered from the possession of the appellant, nor was any site plan prepared regarding the place of his arrest. The prosecutrix stated that the appellant Bal Karan returned a day before her recovery, and that it was the co-accused Mangat alone who committed rape upon her, in the sugarcane field and at other places. The prosecutrix further stated that she lived with the co-accused Mangat alone for about eight days in the forest, sleeping at the railway platform at night and remaining in the jungle during the day; she has nowhere stated that the appellant Bal Karan remained continuously in her company during this period.

12. The incident is stated to have occurred on 14.02.1983, whereas the prosecutrix was recovered only on 22.02.1983, seven to eight days later, and the charge itself alleges that the rape was committed by the co-accused Mangat sometime between 14.02.1983 and 22.02.1983, a period during which, on the prosecutrix's own showing, she remained in the company of Mangat alone. The specific allegations of the prosecutrix (PW4), both regarding the commission of rape and regarding cohabitation during the intervening week, are directed against the co-accused Mangat alone. On a fair reading of the testimony of PW4, the essential ingredients constituting the

offences under Sections 363 and 366 IPC, namely, the taking and keeping away of the minor from lawful guardianship with intent, are attributable to the co-accused Mangat, who alone made the representation regarding the doctor and who alone falsely invoked the authority of the prosecutrix's father to induce her to accompany him. The Investigating Officer failed to prepare a proper site plan of the place of occurrence and examined material witnesses at a belated stage, which further weakens the prosecution case.

13. It is well settled that in order to sustain a conviction under Sections 363 and 366 IPC, the prosecution must establish that the accused took or enticed the minor out of the keeping of her lawful guardian without consent, with the requisite intent. On a careful reading of the testimony of the prosecutrix (PW4), the enticement was, on her own showing, initiated and effected by the co-accused Mangat, who represented to her that a better doctor was available in his village and who falsely invoked the sanction of her father. The role attributed to the appellant Bal Karan is that of a bystander who was present and who moved along with Mangat and the prosecutrix on that occasion, without any specific overt act being attributed to him individually either in the inducement or in the subsequent confinement and movement of the prosecutrix from place to place.

14. It is significant that the prosecutrix has consistently attributed both the acts of forcible confinement accompanied by the threat of a knife and the subsequent commission of rape to the co-accused Mangat alone, and has stated that she remained with Mangat alone for about eight days, without any allegation that the appellant remained continuously in her company during this period. Indeed, her own testimony indicates that the appellant returned only a day before her recovery. This is consistent with the fact, deposed to by PW1 Jaswant Singh himself, that the appellant was arrested at Bagarpur railway station and was not present when the police, acting on information furnished by him, proceeded to Brijghat and recovered the prosecutrix from the co-accused Mangat. The absence of any site

plan of the place of the appellant's arrest, the absence of recovery of any weapon from him, and the belated and inadequate investigation on the part of the Investigating Officer further detract from the reliability of the case as pleaded against the appellant. Taking an overall view of the matter, this Court is of the considered opinion that the prosecution has failed to establish, beyond reasonable doubt, the ingredients of the offences under Sections 363 and 366 IPC as against the accused-appellant Bal Karan, and that the benefit of doubt must be extended to him.

15. For the reasons stated above, the appeal is **allowed**. The conviction and sentence of the accused-appellant Balkaran under Sections 363 and 366 IPC, as recorded by the III Additional Sessions Judge, Bijnor, vide judgment and order dated 14.10.1983 in S.T. No. 153/83, are set aside.

16. The appellant **Bal Karan** is acquitted of the charges under Sections 363 and 366 I.P.C., and is on bail, his bail bonds and sureties stand discharged. He needs not surrender, and if in custody, he be released forthwith unless wanted in any other case.

17. The trial court record be sent back 'forthwith' to the trial court, along with a copy of this judgment, for information and necessary compliance.

18. Register (compliance) is directed to communicate this order to the concerned trial court through District & Sessions Judge, Bijnor within two days.

(Santosh Rai,J.)

August 4, 2026
Asha