

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Date of Decision: *August 26, 2015*

1.

Criminal Appeal No.S-177-SB of 2009

Dinesh Kumar

..... APPELLANT

VERSUS

State of Punjab

..... RESPONDENT

2.

Criminal Appeal No.S-178-SB of 2009

Karam Chand

..... APPELLANT

VERSUS

State of Punjab

..... RESPONDENT

CORAM: HON'BLE MR. JUSTICE JASPAL Singh

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1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

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PRESENT: Mr. Akshay Rana, Advocate, for Mr. S.S. Rana, Advocate, for the appellant in Crl. Appeal No.S-177-SB of 2009.

Mr. Himanshu Puri, Advocate, for Mr. Gajmohan Ghuman, Advocate, for the appellant in Crl. Appeal No.S-178-SB of 2009.

Mr. Y.K. Gupta, Assistant Advocate General, Punjab.

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Jaspal Singh, J

1. This judgment shall decide aforesaid two appeals preferred by accused Dinesh Kumar and Karam Chand as they similar question of facts & law, and have arisen out of same FIR and a common judgment of conviction & sentence.
2. The appeals have been directed by appellants feeling dissatisfied against judgment of conviction dated November 05, 2008 and order of sentence dated November 06, 2008 passed by learned Sessions Judge, Kapurthala, passed in case FIR No.291 dated November 26, 2007 under Sections 376, 506, 34 IPC, Police Station, Sadar, Phagwara, whereby they have been convicted and sentenced as under:-

Name of the convict	Offence under section	Period of sentence RI	Fine imposed (Rs.)	Period of sentence in default of payment of Fine (SI)
Karam Chand @ Fiddi	375/376 IPC	Ten years	Rs.20,000/-	Two years
Dinesh Kumar	375/376 IPC	Ten years	Rs.20,000/-	Two years

3. Briefly stated, the instant case has been registered against the accused – appellants on the statement of prosecutrix, who alongwith her paternal uncle Charan Dass, appeared before SI Yogesh Kumar Sharma, on November 26, 2007 and made a statement against them. She alleged that her parents had died while she was very young and was put up in an orphanage, from where, Sagli Ram and his wife Parkasho had adopted her but after a few years, both of them died.

Thereafter, the village panchayat handed over her custody to Karam Chand @ Fiddi and his wife as they were issueless, and she started residing in the their house. The prosecutrix alleged that on her attaining the age of 9/10 years, accused Karam Chand started raping her and threatening her of dire consequences. Accused Dinesh Kumar, who used to work with Karam Chand @ Fiddi, and residing in the same village, also started raping her under threat. She also narrated the factum of rape to Neelam wife of Karam Chand but she was asked to keep mum. It was on November 25, 2007 when her paternal uncle Charan Dass came to meet her, she narrated her miseries. Charan Dass took her to village Ajram where Charan Dass brought her to the police. She was medico legally examined. Statement of the victim was recorded under Section 164 Cr.P.C. and both the accused were arrested on November 28, 2007.

4. After completion of investigation, challan was presented before learned jurisdictional Magistrate. Since the offence was exclusively triable by the Court of Sessions, the case was committed under Section 209 Cr.P.C. by the Magistrate after having complied with provisions contained under Section 207 Cr.P.C. which was ultimately tried by the Court of Sessions Judge, Kapurthala.

5. There being a prima facie evidence appearing in report under Section 173(2) Cr.P.C. and the documents annexed with it, both the accused were chargesheeted to face trial under Section 376(G) IPC.

The accused did not plead guilty to the charge and opted to contest the same. Accordingly, the prosecution was asked to adduce evidence in

support of its case. In order to substantiate its charge framed against the accused, the prosecution examined as many as six witnesses.

6. Incriminating substances appearing in the prosecution evidence were put to the accused for eliciting their explanation as required under Section 313 Cr.P.C. They denied the same and complained of false implication. However, they did not lead any evidence in defence.

7. After hearing learned counsel for the parties and appraisal of the evidence available on record, the trial court believed the story of prosecution and convicted & sentenced the accused-appellants in the manner stated in Para 1 of this judgment.

8. Aggrieved against the said judgment, the appellants preferred the instant appeals which were admitted for hearing. The trial court's record was also required and received.

9. At the very outset of arguments, learned counsel for the appellants submits that he does not press the appeals qua conviction, however, the appellants be heard only qua quantum of sentence. This Court has also scrutinized the impugned judgments as well as the relevant documents/ evidence and is of the considered view that there is no scope for any interference in impugned judgment(s) as far as the conviction of the appellants under the aforesaid provisions of IPC is concerned. As such, the conviction of the appellants is upheld.

10. As far as quantum of sentence is concerned, learned counsel for the appellants has submitted that appellant – Karam Chand is more than 60 years of age whereas appellant – Dinesh Kumar is more than 25 years of age. They have asserted themselves to be first offender. No other case of similar nature is either pending or disposed of against the appellants. They are the only bread winners in their families. They never misused the concession of bail during trial. They have already undergone a sufficient period of incarceration. Accordingly, learned counsel for the appellants prays that sentence imposed upon the appellants be reduced to the period already undergone.

11. This Court has given an anxious thought to the submissions made by learned counsel and have gone through the record available on file.

12. As per the custody certificate of appellant Dinesh Kumar dated February 23, 2015, by now, the petitioner has already undergone more than 8 years out of total sentence of ten years.

13. In similar circumstances, the Hon'ble Apex Court in case Harjit Singh v. State of Haryana, (2002) 10 SCC 695 had reduced the sentence of 7 years under Section 25 of the Arms act as already undergone (more than 5 years). To the same effect is the judgment in case Kirpal Singh v. State of Punjab, 2009(1) AICLR 243, whereby this Court had reduced the sentence of petitioner to

already undergone, taking into consideration the fact that petitioner has three children – there is no one to look after his family – petitioner has already undergone sentence of more than 5 months out of total sentence of one year. In cases Jagdeep Singh @ Neetu v. State of Punjab, 2013(2) *Law Herald* 1849; Surjit Singh v. State of Punjab, 2003(2) *RCR (Criminal)* 429, Sudhir v. State of Haryana, 2001(2) *RCR (Criminal)* 336; and Chhotu Ram v. State of Haryana, 2013(4) *RCR (Criminal)* 630, similar view has been adopted.

14. Taking into consideration the totality of facts and circumstances, though, conviction of the appellants is upheld but the sentence imposed upon them under Sections 375, 376 IPC is reduced to the period already undergone by them with no change in fine clause The appellants are ordered to be released forthwith.

15. With the above modification in the sentence, the appeals are dismissed.

August 26, 2015
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(Jaspal Singh)
Judge