

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

**CRA-S-2315-SB of 2004
Date of Decision : 15.12.2015**

Manmohan

.....Appellant

Versus

State of Haryana

.....Respondent

CORAM:- HON'BLE MR. JUSTICE GURMIT RAM

Present: Mr. Vivek Goel, Advocate
for the appellant.

Mr. Vijesh Sharma, DAG, Haryana.

GURMIT RAM, J.

This appeal is preferred by above-said appellant against the judgment dated 17.11.2004 and order of sentence dated 18.11.2004 passed by the Court of learned Additional Sessions Judge, Rewari in criminal case bearing FIR No.13 dated 20.1.2004, u/Ss 363/366-A/376/511/506 of the IPC, Police Station Kosli vide which he was held guilty for the offence punishable u/S 354 of the IPC and awarded sentence of rigorous imprisonment for two years along with a fine of Rs.1,000/-. In default of payment of fine to further undergo rigorous imprisonment for three months.

2. The case of prosecution in nutshell before the learned trial Court was that on 20.1.2004, ASI Satyavir Singh along with other police officials was present at railway crossing *nahar* while on PCR duty. At

that time complainant Rajesh son of Bihari Lal, resident of village Naya Gaon (Jatowala) met him and presented before him an application to the following effect:-

“That yesterday on 19.1.2004, his daughter namely Ritu aged about quarter to four years was playing with Nisha daughter of Dharambir of the same age near village *phirni* (passage), plucking plums (bers) from plum tree (beri) at about 5:00 p.m. Accused Mohan son of Krishan Chand, resident of his village allured both the said girls and took them to a room nearby his tubewell. There he attempted to commit rape upon Ritu who started weeping. Nisha who came out of the room also started weeping. At that time, he along with one Surender alias Billu was going towards a vacant area for answering the call of nature. On hearing the weeping voice of Nisha and Ritu, they went nearby the said tubewell room. On reaching there they found that accused had made Ritu laid on the ground with her pant off and was attempting to commit rape upon her. On seeing them, accused picked his clothes and ran away from the spot. He caused them threat not to report the matter to the police. The girls also narrated them the entire occurrence. He took both the girls to home and brought this matter to the notice of family members and other residents of the village. Prayer was made to take action against the culprit.”

Upon the said application of the complainant, ASI Satyavir

Singh made his endorsement and sent ruqqa to the police station, on the basis of which, the instant case was registered. Accused was arrested. His medical-examination was got done. Site-plan of the place of occurrence was prepared. Statements of witnesses were also recorded. On the completion of investigation, challan against the accused was presented in the Court of learned Illaqa Magistrate, Rewari who after making compliance of the provisions of section 207 of Cr.P.C. committed this case to the Court of learned Additional Sessions Judge – I, Rewari for the trial.

3. Finding a prima facie case for the offences punishable u/Ss 363, 366, 376 read with Section 511 and 506 of IPC against the accused, he was charge-sheeted accordingly, to which, he pleaded not guilty and claimed trial.

4. During trial of the case, prosecution examined twelve witnesses in all to prove its case.

5. Then accused was duly examined as per the provisions of section 313 of Cr.P.C. Entire incriminating evidence as brought on the file against him during trial of the case was put to him, which was denied by him entirely. Further he pleaded his innocence and false implication in this case.

Though the accused opted to lead evidence in defence, but no evidence in defence was led by him.

6. After hearing the learned counsel for both the parties and going through the record, the learned trial Court held accused guilty for the offence punishable u/S 354 of the IPC whereas acquitted him of the

charges u/Ss 363, 366, 376 read with Section 511 and 506 of the IPC vide the impugned judgment.

7. Appellant (accused) being not satisfied with the impugned judgment and order of sentence has come up in the instant appeal before this Court, notice of which was given to the respondent – State. Trial Court record was also requisitioned.

8. I have heard the learned counsel for the appellant, learned State counsel and have also gone through the record with their able assistance.

9. Learned counsel for the appellant at the very outset has contended that he does not press this appeal so far it relates to the impugned judgment of conviction. Further he has contended that vide the impugned judgment and order of sentence, the appellant was awarded the sentence of rigorous imprisonment of two years along with fine of Rs.1,000/-. In default of payment of fine to further undergo rigorous imprisonment for three months more. Then it is also his contention that out of the said sentence, the appellant has already undergone the substantive sentence of rigorous imprisonment of ten months and twelve days in all. Further, he has prayed that sentence of the appellant may be reduced to the extent he has already undergone in the interest of justice. Then it is also his submission that the appellant is ready to pay reasonable compensation.

10. So this appeal so far it relates to the conviction of the appellant stands dismissed. As per the custody certificate produced by the learned State counsel, the appellant has already undergone the sentence of

about ten and a half months out of the above-said sentence of rigorous imprisonment of two years. The occurrence in this case was dated 20.1.2004. Since then a period of more than 11 years has already elapsed. The appellant had to face incarceration for a period of more than 11 years during the trial of the case as well as the appeal. Moreover, the very object of law is reformatory i.e. to reform the culprits and not retributory generally. So the substantive sentence of the appellant is reduced to the extent he has already undergone but subject to the condition that he will pay compensation of a sum of Rs.20,000/- to the parents of victim and deposit the same within three months from today in the Court of Chief Judicial Magistrate, Rewari or in the trial Court, failing which, to undergo the sentence as imposed upon him by the learned trial Court vide the impugned judgment and order of sentence. In case this amount of compensation is deposited within the said stipulated time, then the same be disbursed to the parents of the victim after giving them due notice. So with this modification in the sentence, this appeal stands disposed of accordingly.

A copy of this order be sent to the Court of learned Chief Judicial Magistrate, Rewari and trial Court concerned for strict compliance.

15.12.2015
Brij

(GURMIT RAM)
JUDGE

1. To be referred to the Reporters or not? Yes
2. Whether the judgment should be reported in the Digest? Yes