

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-S No.1326-SB of 2010

Date of decision: December 07, 2015.

Rohit Dhir

... **Appellant**

v.

State of Punjab

... **Respondent**

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

CORAM: **HON'BLE MRs. JUSTICE RAJ RAHUL GARG**

Present: Ms. Sushma Chopra, Advocate for the appellant.

Shri Surjeet Singh Choudhary, Dy. Advocate General, Punjab.

Raj Rahul Garg, J. (Oral):

This appeal is directed against the judgment of conviction dated 19.1.2010 and the order of sentence of even date, whereby he has been sentenced to undergo RI for 8 years under Section 376 IPC as also to pay fine of Rs.5,000/-, in default whereof to undergo further RI for a period of six months. He has been further sentenced to undergo RI for one year for an offence under Section 506 IPC as also to pay a fine of Rs.1,000/- and on his failure to do so, to undergo further RI for two months. However, both the sentences have been ordered to run concurrently.

The criminal law was set in motion on the statement Ex.PC got recorded by the prosecutrix and Ex.PG recorded under Section 164 Cr.P.C. She stated to the effect that she was a student of 10+1; her parents were employed in Education Department whereas her elder brother was studying at Ludhiana and putting up there. Prior to her matriculation examination, she used to take tuition daily in the evening at about 5 p.m. by passing through Mehatpur Adda where the shop of the accused was located. The accused used to follow her; stop her forcibly and compelled her to have friendship with him. He even extended threats. On the fateful day of 21.7.2007 at about 9.30 a.m. when she was alone, the accused made his forceful entry into her house, took out a knife from his pocket of pants and threatened her. After bolting the door of the room from inside, gave knife blows on the right and left arms and ravished her. On 24.8.2007, the accused ravished her again in the same manner after entering her house. On 31.8.2007 when she had gone to the book shop to bring a note book, the accused met her and caught hold of her from her arm and asked her to accompany him to his shop. She became nervous and tense and upon return to her house, narrated the entire incident to her parents. On her statement Ex.PC recorded by ASI Joginder Singh, formal FIR was registered as Ex.PC/2. After preparing site plan Ex.PD of the house of the prosecutrix, she was produced before the SDJM, Nakodar where her statement under Section 164 cr.P.C. was recorded. In the course of investigation, the police took into possession the school certificate of the prosecutrix. The accused was formally arrested and at his instance knife was got recovered vide

memo Ex.PO. The accused was got medically examined from Civil Hospital, Nakodar. On receipt of report Ex.PB of the chemical examiner, on completion of investigation and other necessary formalities, challan was prepared and presented before the learned Illaqa Magistrate.

After completion of investigation, the accused was charge sheeted for an offence under Sections 376, 506 IPC.

In order to establish its case, the prosecution examined as many as five witnesses and thereafter closed its evidence.

Thereafter, statement of the accused was recorded under Section 313 Cr.P.C. and all the incriminating material appearing in the prosecution version were put to him, to which he denied; pleaded innocence and false implication.

At the outset, learned Counsel for the appellant contended that she does not contest the findings of the learned trial court recorded on merits of the case. However, it was prayed that in the matter of sentence, the sentence awarded to the appellant-accused be reduced to the one already undergone.

Custody certificate has been placed on file. It be taken on record.

As per the custody certificate, the appellant-accused has already undergone 7 years and 2 months actual sentence.

Shri Surjeet Singh Choudhary, Dy. Advocate General, Punjab, appearing for the respondent-State, did not raise serious objection in the matter of reduction of sentence of the appellant-accused though it was

contended that the offence is serious in nature.

Learned Counsel for the appellants-accused contended that in fact at the time of commission of the offence, the parties were adolescent, not mature enough. The appellant has already suffered a lot. He has undergone 7 years and 2 months of sentence. Presently he is on bail and has also got married. The prosecutrix has also got married. Both the parties are leading their married life at their own places happily. The ends of justice would be met in case the matter is finished for ever.

It is also on the record that the original record of the trial court file is not traceable. The learned Sessions Judge has sent a communication to this Court and the last communication is dated 11.12.2012 whereby it was reported that the record of the lost file could not be reconstructed. Efforts for reconstruction has been made from all possible sources. Concerned Ahlmad, Tilak Raj Singh has already expired, as such it is not even possible to fix his responsibility for loss of judicial record. Though such is the situation, yet from perusal of the aforesaid letter dated 11.12.2012, it transpires that no effort has been made for reconstruction of the file by calling the counsel for the accused. The name of the counsel finds mention in the impugned judgment as Shri Naval Sehgal, Advocate. Even there is nothing on record to show that if any effort has been made by calling the police record for the purpose of reconstruction.

Keeping in view the above discussed circumstances on the file and particularly the fact that both the parties are leading their married life happily, I have no hesitation in accepting the prayer of learned Counsel for

the appellant-accused for reducing the period of sentence. As such, since learned Counsel for the appellant did not contest the findings of the trial court recorded on merits of the case, therefore, the impugned judgment of conviction dated 19.1.2010 is maintained whereas the order on sentence of the even date is modified to 7 years and 2 months. However, the sentence of fine shall remain intact.

The appellant-accused is directed to deposit the amount of fine if not already deposited, failing which he shall undergone the sentence in lieu of fine, which has already been awarded by the learned trial court.

Thus, this order of reduction in sentence is subject to the deposit of fine.

The appeal stands disposed of in the above terms.

Copy of this order be sent to the learned trial court, concerned jail authorities and Chief Judicial Magistrate concerned for information and necessary compliance.

December 07, 2015.
kadyan

[Raj Rahul Garg]
Judge