

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Crl. Appeal No. S-653-SB of 2004

Date of decision : 15.07.2015

Harinder Singh

..... Appellant

versus

State of Haryana

... Respondent

CORAM:- HON'BLE MRS. JUSTICE ANITA CHAUDHRY

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?

**Present: Mr. Mahavir Sandhu, Advocate
for the appellant**

Mr. Swaran Tiwana, Legal Aid Counsel

Mr. Deepak K. Grewal, DAG Haryana

ANITA CHAUDHRY, J. (ORAL)

The appellant alongwith Jaswinder Singh @ Montu were tried in FIR No. 32 dated 19.03.2003 registered under Section 376/34 IPC which ended in conviction under Section 376(2)(g) IPC. Both the accused were sentenced to 10 years rigorous imprisonment alongwith fine of ₹ 1000/-.

Learned counsel for the appellant has limited his submissions only to the quantum of sentence on the ground and states that allegations of rape were not levelled against the appellant and the allegations were that he had caught hold of the prosecutrix. It would be necessary to give the story put forth by the victim.

The FIR was registered on the basis of statement made by the prosecutrix relating to the incident which occurred on

19.03.2003. The prosecutrix left the house to make cow dung cakes when two persons came from behind and caught hold of her. One person caught her mouth. She tried to free herself. She noticed that one of them was Haridner while the other was Montu, nephew of Satish resident of Village Ambli. As her mouth was gagged, she was unable to raise alarm and was forcibly taken to a nearby ditch. Montu opened the string of her salwar and committed rape upon her. The allegation against Harinder were that he had gagged her. The victim managed to free herself and raised alarm which attracted Satish who rescued her. The prosecutrix was escorted home by Satish. The incident was narrated to the mother and to her father on his return. The matter was reported to the police.

The prosecutrix was medico legally examined. Vaginal swabs were taken. After completion of investigation, challan was presented and charge was framed against both the accused.

In support of the allegations the prosecution examined 12 witnesses. In the statement under Section 313 Cr.P.C. both the accused pleaded false implication. Accused Harinder stated that he had been falsely implicated by the prosecutrix on account of enmity with father of Satish (witness) who was a declared history sheeter on the complaint made by his grand father. Accused Jaswinder took the plea that brother of the prosecutrix was caught red handed in a theft case which occurred in the shop of his brother. Two witnesses were examined in defence. After considering the evidence available on record, the trial Court convicted and sentenced both the accused to the punishment mentioned herein before.

Learned counsel for the appellant had urged that he was limiting his submissions to the sentence but would refer to the evidence. It was urged that the allegations against the appellant was that he had caught hold of the prosecutrix and no allegations of rape were made against him and the appellant had undergone 2 years, 5 months and 28 days of custody and he is now married with two children and the prosecutrix had got married 6 months after the incident. He urges that he is the only bread winner and the sentence be reduced to already undergone as sending him again to the prison would adversely affect their life and career. The counsel seeks support from ***Rajpal vs. State of Haryana, 2005(1) RCR(Criminal) 635, Keshar Singh vs. State of Haryana, 2005(2) RCR(criminal) 933, Ram Kumar vs. State of Haryana, 2007(2) RCR(Criminal) 305, State of Chhattisgarh vs. Derha, 2004(2) RCR(Criminal) 714, Ravinder Kumar vs. State of Punjab, 2013(2) RCR(Criminal) 807 and Lillu alias Rajesh and others vs. State of Haryana, 2011(2) RCR(Criminal) 814.***

It was urged that the Hon'ble Apex Court in ***Keshar Singh's case (supra)*** had reduced the sentence from 7 years to 3 years in a rape case.

I have gone through the statement of the prosecutrix and other witnesses. The allegations against the appellant are that he had gagged her mouth while the main accused dragged her to the ditch and raped her. The medical evidence supports the ocular version given by the prosecutrix. The act of rape had been proved by the prosecution and the defence was rightly rejected by the trial

Court. The finding with respect to the allegation are confirmed.

Learned counsel for the appellant submits that the appellant was 35 years old and the incident was 12 years old and he had got married and had two children and the only bread winner.

The appellant has faced trial for almost 12 years and the prosecutrix has got married. In ***Rupavath Moti Ram vs. State of Andhra Pradesh, 2004(1) RCR(Civil) 885***, offence of rape was witnessed by the mother and brother of the victim, a sentence of 4 years was awarded. Accused was a labourer. His parents were old and the children were of tender age. It was observed that social factor had also to be considered.

In the case of ***Rajpal vs. State of Haryana, 2005(1) RCR (Crl.) 635***, the appellant was convicted under Section 376 IPC. He had faced trial for 9 years and was the sole bread earner of the family. The sentence was reduced from 7 years to already undergone (4 years). In the case of ***Hariram vs. State of Haryana, 1992(1) Recent Criminal Reports 326***, the appellant was convicted under Section 376 IPC and the prosecutrix was below 16 years. He was aged about 21 years. The sentence was reduced to already undergone i.e. more than one year.

In the case of ***Narender Singh vs. State of Haryana, 2003(4) RCR (Crl.) 346***, the appellant was convicted under Section 376 IPC. He had faced trial for 14 years. The prosecutrix was married and settled in life. Accused was also married and had children. The sentence was reduced to already undergone i.e. 9 months.

The appellant is not a previous convict. During this period, he has not committed any offence and has led a peaceful life. The prosecutrix has also settled in life. The appellant has undergone 2 years and 5 months of custody. I am of the view that interest of justice would meet if the sentence is reduced to 4 years.

Ordered accordingly.

The appellant is presently on bail. He would surrender within three weeks to undergo the remaining part of the sentence.

July 15, 2015

reena

**(ANITA CHAUDHRY)
JUDGE**