

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

**CRA-S-3091-SB of 2010
Date of Decision: 16.09.2015**

Gajender

.....Appellant

Vs

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE MAHAVIR S. CHAUHAN

Present: Mr. Manoj Kaushik, Advocate
for the appellant.

Mr. Pawan Kumar, AAG, Haryana.

- 1. Whether Reporters of local papers may be allowed to see the judgment? (Yes/No)**
- 2. To be referred to the Reporters or not? (Yes/No)**
- 3. Whether the judgment should be reported in the Digest? (Yes/No)**

Mahavir S. Chauhan J. (Oral)

The appellant in this appeal has challenged his conviction and order of sentence passed by learned Additional District & Sessions Judge (for short the 'trial Court') vide judgment of conviction and order of sentence dated 5.10.2010 under Section 366 and 376 of the Indian Penal Code 1860 (for short 'IPC').

The appellant was tried on the allegations that he (alongwith co-accused Hem Lata who has been acquitted by the learned trial Court) allured two girls, both aged about 16 years,

and subjected them to sexual intercourse against their wishes and consent.

After the full-fledged trial, the learned trial Court concluded that the prosecution was able to prove appellant's guilt beyond reasonable doubt and, accordingly, convicted / sentenced the appellant to rigorous imprisonment for 5 years with fine of ₹ 10,000/- and in default of payment of fine to further rigorous imprisonment for one year under Section 366, IPC, and rigorous imprisonment for 10 years with fine of ₹ 40,000/- and in default of payment of fine to further rigorous imprisonment for 2 years under Section 376, IPC.

During the course of hearing, learned counsel for the appellant has placed on record custody certificate of the appellant, according to which, he had already spent 8 years and 12 days in custody as on 05.12.2014. This fact is not disputed on behalf of respondent-State. Learned counsel for the appellant also states that the appellant does not dispute the correctness of the judgment of conviction passed by the learned trial Court and seeks leniency as regards quantum of sentence only on the plea that he has already reached the age of more than 50 years and has spent his youthful years in custody and has undergone the agony of tough investigation, protracted trial and consequent proceedings since the date of registration of FIR on 16.09.2008. It is also stated that the appellant is the only bread earner for his family, comprising his wife and old parents.

In view of the above, while maintaining the judgment of conviction, the order on quantum of sentence is modified and substantive sentence awarded to the appellant is restricted to the period already spent by him in custody. However, the sentence as regards fine, is enhanced to ₹ 1,50,000/- which shall be inclusive of the fine imposed by the learned trial Court. If and when amount of fine is realised, 2/3rd of it, shall be paid to both the victims in equal shares, through their parents.

With the above modification in the order on quantum of sentence, the appeal fails and is dismissed.

From the records, it transpires that the appellant is in custody, he be released forthwith, if not required in any other case.

(MAHAVIR S. CHAUHAN)
JUDGE

September 16, 2015
Suresh Kumar