

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

**CRA-S-421-SB of 2010 (O & M)
Date of decision : 13.2.2015**

Kuldeep Singh

.....Appellant

v.

State of Punjab

.....Respondent

CORAM : HON'BLE MRS. JUSTICE RAJ RAHUL GARG

Present : Mr. Onkar Singh, Advocate, for the appellant

Ms. Minakshi Goyal, AAG, Punjab

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

Raj Rahul Garg, J.

In brief, facts of the prosecution case are like this; that the prosecutrix of this case is a 80 years old lady, resident of village Ghot Pokhar. She has lost her husband about 20 years back. She has two married daughters. On June 18, 2008, her elder daughter Kirpal Kaur (PW) and son-in-law Boor Singh (PW) came to see her. They stayed with her that night. As usual, prosecutrix slept in a room while her daughter and son-in-law went to sleep in another room. Around mid night when the prosecutrix was asleep in her room, door of the room was lying open. A zero watt bulb was on. Kuldeep Singh @ Teeta appellant entered the room, gagged mouth of the prosecutrix and subjected her to rape. He also inflicted bruises on the face of the prosecutrix while attempting to prevent her from making a noise and on her abdomen while

removing her salwar. However, prosecutrix raised a noise which attracted her aforesaid daughter and son-in-law to her room. On seeing them, the accused had run away. The matter was brought to the notice of the respectables of the village in the morning. As prosecutrix was not finding herself well, therefore, she was taken to Civil Hospital, Gurdaspur. On receipt of medical legal report of the prosecutrix, on 19.6.2008, SI Parmod Kumar, officer in charge of the police station, had gone to the hospital and recorded her statement. Ruka was sent to the police station for registration of the case, whereupon, formal FIR was recorded by ASI Desh Kumar. Rough site plan of the spot was prepared. Accused was arrested and after completion of necessary investigation, the challan was put in the Court against the accused/appellant.

The accused-appellant was charge sheeted for committing offence punishable under Sections 376, 452 and 323 IPC. After taking evidence, recording the statement of accused under Section 313 Cr.P.C. and after hearing both the counsel for the parties and appraisal of the entire evidence and material coming on record, the learned trial Court convicted the accused-appellant for committing offence punishable under Section 323, 452 and 376 IPC and sentenced as under :-

Section 323 IPC : RI for six months and fine of ₹ 500/-

Section 452 IPC : RI for two years and a fine fo ₹ 2000/-

Section 376 IPC : RI for ten years and a fine of ₹ 10,000/-

(The accused was sentenced with default stipulation and all the substantive sentences were ordered to run concurrently).

I have heard Mr. Onkar Singh, counsel for the appellant, Ms. Minakshi Goyal, AAG, Punjab for the State and have appraised the entire material coming on record.

During the course of hearing of arguments, learned counsel for the appellant has contended that the appellant has already spent more than six years in custody, the case is about seven years old, he, in fact, does not contest the findings of the learned trial Court recorded on merits, and prayed that lenient view may be taken against the appellant while awarding sentence. Learned counsel for the appellant has also drawn my attention towards the statement of prosecutrix, who appeared as PW 1 (name withheld). He pointed out that prosecutrix did not depose a word about commission of rape upon her. Prosecutrix simply stated that she was present in the courtyard of her house. Accused came there, caught her by her neck and hairs and gave pushes, undressed her and humiliated her. She then raised an alarm which attracted her daughter Kirpal Kaur and son-in-law Boor Singh. Thus, prosecutrix did not depose anything about the commission of rape by the accused on her.

It was further contended that though there are statements of daughter and son-in-law of the prosecutrix and medical evidence on record yet he does not contest the findings of the learned trial Court recorded on merits of the case but only pray for leniency in the matter of sentence. It was also contended that accused-appellant is not even in his sound disposing mind. He is languishing in jail. About 7 years have passed. In support of his contention he has also cited :-

1. **Sarup Singh v. State of Punjab 2005 (4) RCR (Criminal) P & H 327;**
2. **State of Madhya Pradesh v. Babu Lal AIR 1960 (V 47 C 73) MP 155;**
3. **Bakhtaur Singh @ Kaura v. State of Punjab 2006 (3) RCR (Criminal) P & H 642;**

Without going into the merits of the case but taking into consideration the above discussed material on the file and further, the fact that the counsel for the appellant did not choose to contest the findings of the learned trial Court

recorded on merits of the case, I have no hesitation in reducing the sentence of the appellant as appellant has already undergone more than 6 years of sentence. I also feel that the end of justice would be met if his sentence is reduced to the one already undergone.

In such circumstances, while maintaining the conviction recorded under Sections 376 IPC against appellant Kuldeep Singh son of Mohan Singh, his sentence is reduced to six years already undergone. As the sentences awarded for committing offences punishable under Sections 452 and 323 IPC are less than 6 years, therefore, these need not be reduced, hence, the same are maintained. However, the sentence of fine imposed stands maintained. All the substantive sentences shall run concurrently.

In view of the above discussion, this appeal is dismissed with the above modification.

(RAJ RAHUL GARG)
JUDGE

13.2.2015
Ashwani