

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

**CRA-S-73-SB of 2010 (O & M)
Date of decision : 24.3.2015**

Bijender

.....Appellant

v.

State of Haryana

.....Respondent

CORAM : HON'BLE MRS. JUSTICE RAJ RAHUL GARG

Present : Mr. Jagjot Singh Lalli, Advocate, for
Mr. Jagjit Singh Lalli, Advocate, for the appellant

Mr. S.D. Sharma, 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

Raj Rahul Garg, J.

Appellant Bijender has filed this appeal against the judgment of conviction dated 18.11.2009, rendered by Mr. Baljeet Singh, the then Additional Sessions Judge, Panipat, whereby the appellant was convicted for committing offence punishable under Sections 366, 376(2)(g), 368, 323 and 506 read with Section 34 IPC and vide order of even date sentenced RI for 10 years for committing offence punishable under Section 376(2)(g) IPC besides other sentences which are less than 10 years in other offences, for which he was charged.

Brief facts of the prosecution case are like this; that on 13.12.2007, Inspector Hawa Singh along with police officials was on patrol duty at

Hathwala Turning, G.T. Road, Samalkha. Prosecutrix (name withheld) along with her mother Ashia and uncle (tau) Bhura met the police where the statement of prosecutrix was recorded to the effect that she was married to Sharif son of Noora, two months ago. She visited her parental home at Village Hathwala. On 12.12.2007 at about 8.00 P.M. she had gone for answering the call of nature. When she was returning, her uncle (Tau) namely; Bhura, was going for answering the call of the nature. In the meantime, Bijender accused came riding a motor cycle. Bijender was driving the motor cycle whereas Dinesh son of Raj Kumar, resident of Village Hathwala, was sitting on the pillion. They stopped the motor cycle near the prosecutrix. Accused Bijender grappled with the prosecutrix and forcibly made her sit between Dinesh and himself on the motor cycle. Dinesh put cloth on the mouth of prosecutrix. Accused took her to his tubewell kotha. He made her lie on the Takhat (wooden bed), lying inside the tubewell kotha. Dinesh put his hand on her mouth whereas accused Bijender committed rape upon her. She kept on weeping. In the meanwhile, her uncle and mother reached the spot. Accused bolted the door of tubewell kotha from inside and both of them gagged her mouth with the cloth and tied her hands and legs and put her underneath the Takhat (wooden bed) and also give threat to kill her if she raises alarm. As the door of the tubewell kotha was being knocked continuously, therefore, accused Bijender opened the door. Accused as well Dinesh after having dandas in their hands came outside the tubewell kotha and caused injuries to her mother Ashia and uncle Bhura and thereafter, sped away on the motor cycle. As per the prosecutrix, she has narrated the aforesaid incident to her mother and uncle.

Thereafter, she was taken to her home. In-laws of the prosecutrix were also called telephonically. Medical reports of the mother and uncle of the

prosecutrix were also produced before the police.

On the basis of the aforesaid statement of prosecutrix, which is Ex.PE, formal FIR Ex.PH was recorded. Investigation was conducted. During the course of investigation, prosecutrix was got medico legally examined. Opinion of Dr. Shashi Garg, Medical Officer, was obtained, who opined that the possibility of sexual assault on the prosecutrix and intercourse could not be ruled out. Ossification test of the prosecutrix was also got conducted, whereby the age of the prosecutrix was reported as between 16 to 17 years. MLR of Bhura Ex.PO and that of Ashia Ex.PQ were obtained. Rough site plan of the spot was prepared as Ex.PJ. Accused Bijender and Dinesh (juvenile) were arrested. Accused Bijender was also medico legally examined vide MLR Ex.PR by Dr. Mahesh Kumar, Medical Officer, who give opinion that nothing was found suggestive that accused Bijender was incapable in performing sexual intercourse. Scaled site plan of the place of occurrence was also got prepared from Satyawar, Patwari Halqa. Dinesh faced trial before the Juvenile Justice Board. After completion of necessary investigation, challan against accused Bijender was preferred in the Court for commission of offences punishable under Sections 323, 366, 368, 506 and 376(2)(g) read with Section 34 IPC whereas separate challan against juvenile Dinesh was presented before the Juvenile Justice Board, Panipat.

Finding a prima facie case against accused Bijender for committing offences punishable under Sections 366, 368, 376(2)(g), 323 and 506 read with Section 34 IPC, he was charge sheeted accordingly to which, he did not plead guilty but claimed trial.

After taking entire prosecution evidence, recording the statement of accused under Section 313 Cr.P.C. and after hearing both counsel for the parties

and appraisal of the record, the learned trial Court recorded the impugned judgment of conviction against the accused and sentenced him as under :-

Section 376(2)(g) IPC : RI for ten years and fine of ₹ 10,000/-

Section 366/34 IPC : RI for five years and fine of ₹ 1000/-

Section 368/34 IPC : RI for five years and fine of ₹ 1000/-

Section 323/34 IPC : RI for three months

Section 506/34 IPC : RI for one year

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

Aggrieved against the impugned judgment of conviction and sentence, convict/appellant preferred his appeal before this Court.

During the course of hearing of arguments, learned counsel for the appellant has contended that he does not contest the findings of the learned trial Court on the merits of the case. He would feel satisfied if some leniency is shown in the matter of sentence. He further contends that the appellant has already undergone the agony of trial. He has already served sentence more than 8 years till date. He was released on parole but during that period he did not commit any offence. Now he intends to settle down in his life. The best part of his life is going waste. Now he has great repentance of what has been done by him. Learned counsel for the appellant further requested that the ends of justice would be met if some leniency is shown to the accused/appellant in the matter of sentence. As such, his sentence may be reduced to the one already undergone.

Without going into the merits of the case but keeping in view the fact that the accused/appellant has already undergone sufficient period of sentence and further that now he has feeling for the offence committed by him and intends to settle down in his life and further keeping in view the factum of

his age, I find it a case where the reduction of sentence of the accused/appellant would serve the ends of justice. As such, while maintaining the impugned judgment of conviction dated 18.11.2009 against the accused/appellant, the sentence awarded by the trial Court, is reduced to 8 years for committing the offence punishable under Sections 376(2)(g) IPC. However, the sentences awarded to the convict Bijender for other offences i.e. under Sections 366/34, 368/34, 323/34 and 506/34 IPC are maintained as it is. Even sentence of fine awarded to the convict/appellant under Section 376(2)(g) IPC is also maintained. All the substantive sentences shall run concurrently.

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

Learned State counsel has contended that the accused/appellant is in jail. As such, concerned Chief Judicial Magistrate is directed to issue the reduction warrants of the convict/appellant and compliance report be sent to this Court forthwith.

(RAJ RAHUL GARG)
JUDGE

24.3.2015
Ashwani