

CRA-S-552-SB-2003

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

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Date of Decision: 08.04.2015

Jitender alias Mitwa

... Appellant (s)

Versus

State of Haryana

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH

- 1) Whether Reporters of the 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: Ms. Meenakshi Poswal, Advocate for
Mr. R.S.Mamli, Advocate,
for the appellant.

Mr. Naveen Sheoran, DAG, Haryana

Paramjeet Singh, J.

Present criminal appeal has been preferred by the appellant against judgment of conviction and order of sentence dated 28.02.2003 passed by the Additional Sessions Judge, Kurukshetra whereby appellant-accused has been convicted for the offence punishable under Section 363 of the Indian Penal Code (for brevity, 'IPC') and sentenced to undergo rigorous imprisonment for a period of five years and to pay a fine of ₹ 3,000/-, in default, to further undergo rigorous imprisonment for a period of six months.

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Brief facts of the case are to the effect that on 10.11.2000, Babu Lal son of Daya Ram approached the police and lodged a report regarding kidnapping of his daughter-prosecutrix (name withheld). He stated that his daughter, aged 16 years, had left the house at about 10.00 a.m on 07.11.2000 for University Dispensary for taking medicines for her ailing mother but did not return. He made search for her, but in vain. He came to know that Jitender alias Mitwa, who was residing in Dayalpur Basti, had enticed away his daughter. On this, FIR was registered under Sections 363 and 366 IPC against the accused. On this, the police undertook investigation and recovered the prosecutrix from the possession of accused at Bus Stand, Pipli, on 22.11.2000. ASI Ashok Kumar joined the prosecutrix in the investigation. She, in her statement under Section 161 Cr.P.C. disclosed that she went to University Dispensary to fetch medicines for her ailing mother on 07.11.2000. The accused met her there and allured her to marry him and enticed her. The accused took her in the forest behind the Engineering College, Kurukshetra and subjected her to forcible sexual intercourse. The accused took her to village Purkaji in District Muzaffar Nagar and kept her there for two days. She also stated that the accused took her to various places in Uttar Pradesh and had been committing rape on her. The police apprehended them at Pipli Bus Stand. On the basis of statement of prosecutrix, Section 376 IPC was added. Statements of witnesses were recorded. On completion of the investigation, final report under Section 173 Cr.P.C. was presented whereupon the case was

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committed to the Court of Sessions.

The accused was charge-sheeted for the commission of offence punishable under Sections 363, 366 and 376 IPC, to which he pleaded not guilty and claimed trial.

In order to bring home guilt of the accused, the prosecution examined Head Constable Mohinder Singh as PW 1, Constable Karambir as PW 2, Mukesh Kumar as PW 3, Sub Inspector Gulab Singh as PW 4, Dr. Madhu Sharma as PW 5, Dr. K.K.Sharma as PW 6, Smt. Sarla as PW 7, Constable Devi Singh as PW 8, Sh.M.C.Mehra, Additional Sessions Judge, Bhiwani as PW 9, prosecutrix as PW 10, Babu Lal as PW 11 and Assistant Sub Inspector Ashok Kumar as PW 12. After tendering report of FSL, Madhubhan (Ex.PJ) in prosecution evidence, the Public Prosecutor closed the prosecution evidence.

When examined under Section 313 Cr.P.C., the accused denied all the allegations levelled against him and pleaded innocence. It was also submitted that accused and the prosecutrix had a love affair with each other and they had left their houses with their sweet will.

I have heard learned counsel for the parties and perused the record.

Learned counsel for the appellant contended that after some time of the occurrence, the appellant as well as prosecutrix got married and they are residing with their respective families. Learned counsel further contended that the appellant has already undergone actual sentence for two years, seven months and seventeen days and has also

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earned remission for two months and twenty days. The criminal trial has been hanging on his head like Damocle's sword for more than 14 years and it should be a sufficient mitigating circumstance to treat him leniently. Learned counsel further submitted that the prosecutrix was a consenting party as both of them had a love affair and the prosecutrix left her home with her own accord. The accused and prosecutrix stayed together for about 15 days but she never made any attempt to bring it to the knowledge of the people residing in the neighbourhood. However, learned counsel has fairly stated that she does not press the appeal on its merits and prayed for taking a lenient view in the matter of sentence. In support of her contentions, learned counsel has relied upon ***Surender Singh vs. State of Haryana*** 2011 (2) R.C.R. (Criminal) 597.

Per contra, learned State counsel submitted that case against the appellant is proved beyond reasonable doubt and prayed for maintaining the judgment of conviction and order of sentence passed by the trial Court.

I have considered the rival contentions of learned counsel for the parties.

In view of the arguments advanced by learned counsel for the appellant, this court is not inclined to go into the merits of the case. Admittedly, both the appellant and prosecutrix have got married. At this stage, if the appellant is sent to jail, it would be a harsh step and not only revive the hostilities which stand blunted with the passage of time but would also affect the matrimonial life of the appellant as well as

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prosecutrix. It would also adversely affect the young children of both the families which is avoidable. In this regard, reliance can be placed upon *Surender Singh (supra)*.

In such circumstances, this Court is of the view that it is a fit case wherein sentence awarded to the appellant can be reduced to already undergone. Ordered accordingly. The impugned order of sentence and conviction stands affirmed with aforesaid modification. The appellant is stated to be on bail as his sentence has already been suspended by this Court vide order dated 04.07.2003. However, if the amount of fine is not paid, the appellant will have to undergo default imprisonment for a period of six months as awarded by the trial Court.

With the observations made above, present appeal is disposed of.

08.04.2015

prince

**(Paramjeet Singh)
Judge**