

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRA-S-111-SB-2002 (O&M)
Date of Decision: January 28, 2015

Balbir Singh

...Appellant

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE NARESH KUMAR SANGHI

Present: Mr. S.S. Siao, Advocate,
for the appellant.

Mr. K.S. Pannu, DAG, Punjab,
for the respondent.

NARESH KUMAR SANGHI, J (Oral)

1. Present appeal has been filed by Balbir Singh, son of Amar Singh, resident of village Hussainpur Dulowal, Tehsil Sultanpur Lodhi, District Kapurthala, challenging the judgment of conviction and the order of sentence, dated 6.11.2001, passed by learned Sessions Judge, Kapurthala, whereby the appellant was held guilty for the offences punishable under Sections 363/511/34, 366/511/34, 376/511 and 506/511/34, IPC, in a case arising out of FIR No. 140, dated 25.7.2000, registered at Police Station, Sultanpur Lodhi, District Kapurthala, and he was ordered to undergo the following sentences:-

Under Section	Sentence (R.I.)	Fine (in Rs.)	In Default (R.I.)
363/511/34, IPC	5 years	5,000/-	4 months
366/511/34, IPC	5 years	5,000/-	4 months
376/511, IPC	10 years	5,000/-	4 months
506/511/34, IPC	1 year	--	--

All the substantive sentences were ordered to run concurrently.

2. At the very outset, learned counsel for the appellant submits that the appellant has suffered incarceration for more than nine years, therefore, he does not challenge the conviction of the appellant. However, in view of totality of the facts and circumstances of the case and taking into consideration the substantive sentences suffered by him (Balbir Singh), the remaining sentence be reduced to the period already undergone by him.

3. Learned counsel for the State has produced the affidavit of the Superintendent, Central Jail, Ludhiana, showing the period of incarceration suffered by the appellant, Balbir Singh, which is taken on record.

4. Perusal of the affidavit reveals that the appellant has

suffered 4 years, 8 months and 23 days of actual sentence and earned remission of 4 years, 5 months and 18 days and, as such, the total period of sentence including remission would come to 9 years, 2 months and 11 days as on 14.1.2015. The affidavit further reveals that the appellant is neither required nor involved in any other case. The remission earned during incarceration would further reveal that the appellant was improving himself in the jail.

5. Though the learned counsel has proposed not to contest the conviction of the appellant, but to satisfy the conscience of this Court, the material available on record has been re-scanned and it is found that the prosecutrix (name concealed), aged about 12 years, was a student of 6th Class in a government school at Talwandi Chaudharian. On 25.7.2000, at about 2:00 p.m., when she was coming back to her house after school hours and reached one kilometer ahead towards her village, then she noticed that the appellant and his co-convict, Jagtar Singh, were sitting near the heaps of grass and as soon as she reached there, the appellant and his co-accused stood up and caught hold of the cycle of the prosecutrix. Jagtar Singh, co-convict of the appellant, remained standing by holding the cycle of the prosecutrix while the appellant dragged her in the nearby

field. The prosecutrix was threatened by the appellant that if she raised hue and cry, then she would be done to death. The appellant put off her *salwar* and also removed her undergarment and attempted to commit sexual intercourse without her consent. She raised hue and cry and on hearing the same, Sulakhan Singh (PW7) and Karamjit Singh (not examined) arrived at the spot. On seeing them, the appellant ran away from the spot after taking his clothes. Sulakhan Singh (PW7) and Karamjit Singh brought the prosecutrix to her house and narrated the incident to Mukhtiar Singh (PW8), father of the prosecutrix. Later on, Mukhtiar Singh (PW8) reported the matter to the police, vide his statement (Ex. PW8/A). The matter was investigated and after completion of the investigation, charge-sheet (report under Section 173, Cr.P.C.) was presented.

6. In order to substantiate its allegations, the prosecution examined Balwinder Singh, Patwari, as PW-1, who proved the scaled site plan (Ex.PA) of the place of occurrence.

7. Dr. Ramesh Kumar (PW2), a medical officer, had medico-legally examined the appellant and found as many as four injuries on his person. The appellant was once again examined by Dr. Ramesh Kumar and thereafter he declared him fit to perform sexual intercourse. He also deposed that the

prosecutrix was also brought before him for medical checkup, but her medico-legal report was not prepared since no lady doctor was available in the said hospital, therefore, she was referred to Government Hospital, Kapurthala, for her medico-legal examination.

8. Dr. Narinder Singh (PW3) had medico-legally examined Jagtar Singh, a co-convict of appellant.

9. Dr. Jatinder Kaur (PW4) had medico-legally examined the prosecutrix and found as many as four abrasions and contusions on her person. However, no injury was found on the inner side of the thighs and private-parts. The hymen was also found intact.

10. Narinder Singh (PW5) deposed that the date of birth of the prosecutrix was 9.3.1988 and he further proved the birth certificate (Ex.PG).

11. The prosecutrix (PW6) fully supported the prosecution case and reiterated the version recorded by the police and she also identified the appellant and his co-convict to be the culprits.

12. Sulakhan Singh (PW7) is an eye-witness of the occurrence and he too supported the prosecution case.

13. Mukhtiar Singh (PW8) is the complainant, who had

reported the matter to the police.

14. Balwinder Singh (PW9) is a teacher and he too reiterated the fact that the date of birth of the prosecutrix was 9.3.1988.

15. SI Pritam Singh (PW10) is the investigating officer of the case and he too stated in detail about the investigation conducted by him.

16. After completion of the evidence of the prosecution, the statements of the appellant and his co-accused, were recorded in terms of Section 313, Cr.P.C., in which they denied the incriminating material appearing against them and pleaded innocence. No evidence in defence was produced by the appellant and his co-convict.

17. After hearing counsel for the parties, learned Trial Court held the appellant and his co-convict guilty and passed the sentences as has been detailed in the initial part of this judgment.

18. After going through the material available on record, this Court is of the considered view that the learned Trial Court has rightly held the appellant guilty for the offences punishable under Sections 363/511/34, 366/511/34, 376/511 and 506/511/34, IPC, and, as such, the learned counsel for the appellant has

correctly opted not to challenge his conviction.

19. However, this Court finds force in the submissions of the learned counsel for the appellant when he submits that including remission the appellant has suffered incarceration for 9 years, 2 months and 11 days; he is neither required nor involved in any other case; during his incarceration, the appellant has earned remission for more than 4 years and 5 months and, as such, he is maintaining good behaviour and improving himself; and that during pendency of the present appeal, the appellant was ordered to be released on bail on 29.3.2005 and even after lapse of approximately 9 years and 6 months, the appellant has not committed any other offence. He further submits that now the appellant, who is a labourer, has joined the main stream of life and behaving like a responsible citizen.

20. Learned counsel for the State, on the basis of the affidavit of the Superintendent, Central Jail, Ludhiana, very fairly concedes that including earned remission, the appellant has suffered incarceration for more than nine years and, as such, he has no objection if the appellant is let off after reducing the period of sentence to the period already undergone by him.

21. In view of the totality of the facts and circumstances of

the case, the present appeal is partly allowed. The substantive sentences for the offences punishable under Sections 376/511, 363/511/34, 366/511/34 and 506/511/34, IPC, awarded to the appellant, Balbir Singh, are reduced to the period already undergone by him. The fine imposed by the learned Trial Court for the offences punishable under Sections 363/511/34, 366/511/34 and 376/511 is reduced to Rs. 1,000/- each. To be more clear, the total fine would be Rs. 3,000/- only. In default of payment of fine, the substantive sentences imposed by the learned Trial Court shall enure. The fine if already deposited, then the excess amount shall be returned to him in accordance with law.

(NARESH KUMAR SANGHI)
JUDGE

January 28, 2015
Pkapoor