

**389 IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****CRR No. 2098 of 2009 (O&M)
Decided on : 14.10.2015.**

Sanjay Kumar

.....Petitioner

Versus

State of Haryana

.....Respondent

Coram: Hon'ble Mr. Justice Jitendra ChauhanPresent: Mr. Maharaj Kumar, Advocate,
for petitioner.

Mr. Arun Luthra, AAG, Haryana.

JITENDRA CHAUHAN, J.

This revision petition has been filed against (i) the Judgment dated 6.07.2009, passed by the Additional Sessions Judge, Jind and (ii) the judgment of conviction dated 14.01.2009 and the order of sentence dated 16.01.2009, vide which the accused-petitioner was convicted and sentenced as under:-

Offence	Sentence	Fine	In default
354 IPC	RI for one year	Rs.1000/-	SI for 3 months
506 IPC	RI for one year	Rs.1000/-	SI for 3 months

Both the substantive sentences were ordered to run concurrently.

In brief, the case of the prosecution is that the complainant, Balwan Singh made a statement that he had four children.

Manisha, aged 10, was one of them. On 26.9.2005 at about 1.00 p.m.

he sent his daughter Manisha to feed the cattle in the cattle shed. When she did not turn up, he along with his wife went to the cattle shed, she was not found there. In the meantime, from the adjacent field of maize crop of one Dariya son of Prehlad, they heard screams of their daughter. Both of them entered the field and found that the accused, their neighbour Sanjay, was opening the cord of the salwar worn by their daughter Manisha and was holding her with the intention to outrage her modesty. A push was given to him by them and the victim, Manisha was lifted and brought home. Thereafter, the complainant visited the house of the accused to lodge his protest regarding this indecent action of accused but the accused instead of expressing any repentance came out armed with 'jeli' in order to hurt the complainant and further threatened him that he will be killed. An effort was made to settle the dispute through compromise but the compromise could not be reached. On the complaint, the present FIR was registered against the accused under Section 354 and 506 IPC. After investigation challan/report under Section 173 Cr.P.C was presented before the Court.

The provisions of Section 207 Cr.P.C were complied with.

Charges under Sections 354 and 506 IPC were framed against the accused to which the accused did not plead guilty and claimed trial.

In order to bring home the guilt of the accused, the

prosecution examined four witnesses and closed its evidence.

The complainant, Balwan appeared as PW-1 and fully supported the case of the prosecution. He further proved his statement Ex.PW1/A, on the basis of which, the FIR against the accused had been registered. He further deposed about the mode and manner in which his daughter, Manisha was sexually assaulted by the accused, with an intention to outrage her modesty.

PW-2, Suneheri, the mother of victim Manisha also supported the case of the prosecution with regard to the indecent assault launched by the accused on her daughter Manisha in the fields of Dariya.

PW-3, Manisha, the victim of offence, recounted the sequence of events by throwing light on the mode and manner in which she happened to be present in her cattle shed 'Gher' to give fodder to the cattle. The accused Sanjay took her to a 'Bajra' field and he gagged her mouth with cloth and tried to open the cord of her 'Salwar' and when she screamed for her safety, her parents attracted to the scene of the occurrence and rescued her from the accused.

PW-4, ASI, Laxmi Narain, the Investigating Officer deposed with regard to various steps taken by him during the course of investigation. He also proved the site plan Ex.PW4/B. He further deposed that on completion of investigation, challan was prepared by Darshan Singh SI/SHO.

Statement of accused was recorded under Section

313 Cr.P.C and all incriminating circumstances appearing in the prosecution evidence were put to the accused. The accused denied the same and pleaded his false implication.

No evidence was led in the defence.

After appraisal of evidence, the learned trial Court vide the impugned judgment of conviction dated 14.1.2009, and the order of sentence dated 16.1.2009, convicted and sentenced the accused-petitioner as stated above by observing that the prosecution has established the guilt against the accused Sanjay that on 26.9.2005 during after-noon time in the area of village Buwana outraged her modesty and hurled a threat of death upon Balwan complainant.

Against the judgment dated 14.1.2009 and the order dated 16.1.2009, the accused petitioner preferred an appeal before the Additional Sessions Judge, Jind which was dismissed vide the judgment dated 6.7.2009 by observing that the learned trial Court has rightly held guilty and convicted the accused under Sections 354 and 506 IPC and its finding does not suffer from any kind of illegality or infirmity and the same is hereby affirmed.

In the present revision petition, the challenge has been laid to the aforesaid judgments and the order.

On behalf of the petitioner, it is contended that there was considerable delay of 10 days in lodging the FIR. The incident took place on 26.9.2005 whereas, the FIR was lodged on 5.10.2005. It

has come in the cross-examination of the complainant, Balwan Singh

that an application had been submitted by him regarding the incident on the third day of the occurrence. Therefore, it is contended that the FIR was lodged after consultations and deliberations to falsely implicate the petitioner in the present FIR which the Courts below failed to appreciate. He further states that the prosecutrix was more than 15/16 years of age as against the projection of 10 years in the FIR. He further submits that the prosecutrix was allegedly taken to the field after her mouth was gagged with cloth. Certain scratch marks were allegedly noted on the face of the prosecutrix however, no MLR was carried out on the prosecutrix. The incident took place during day time and no independent witness has been examined in the present case. The petitioner has been falsely implicated in the present FIR as the complainant used to object the visit of accused Sanjay at the residence of one Tejpal in the neighbourhood.

On the other hand, the learned State counsel contends that both the Courts below are against the appellant and no leniency should be shown in such cases.

I have considered the contentions of the parties and perused the paper book with their able assistance.

The incident in the present case took place on 26.9.2005 whereas, the FIR was lodged on 5.10.2005. Admittedly, there is delay of 10 days in lodging the FIR. However, the same is not fatal to the case of the prosecution. It has specifically come in the FIR

as well as deposition of the complainant Balwan Singh that an effort

was made to settle the dispute through Panchayat. The complainant did not stand to gain to delay the matter. However, the complainant being the father of the prosecutrix was under a tremendous pressure to save the honour of his daughter and the stigma attached to such an incident to the family, therefore, he made an effort to settle the dispute through the deliberations by the Panchayat. Therefore, this Court feels that in the circumstances, the question of delay is not very material.

The complainant PW-1 and PW-2 his wife Sunehari along with the victim Manisha, who appeared as PW-3 have fully supported the case of the prosecution. The prosecutrix have given the complete detail and the manner in which she was taken to the Bajra crop after her mouth had been gagged by the petitioner. The victim resisted the effort of the accused and raised alarm which attracted her parents who ultimately, saved her while the petitioner was trying to open the cord of her salwar with the intention to rape her. The trio were subjected to lengthy cross-examination but nothing could be elicited to shake their veracity. The Court also rejects the argument raised by the learned counsel for the petitioner that the petitioner has been falsely implicated in the present case as the complainant used to object the visits of accused Sanjay at the residence of one Tejpal as no parents would put the honour and prestige of their daughter at stake on such a trivial issue particularly when there is nothing on record with regard to the history of strained relations between the family of the accused and family of the victim. Rather, the registration of the FIR and the

subsequent proceedings, in our set up of society, may entail adverse consequences for the victim. There is nothing on the record which could demolish the case of the prosecution or even point out towards the false implication of the accused.

No other point has been urged.

Keeping in view the fact that the prosecutrix has fully supported the case of the prosecution which is fully corroborated by the statements of the complainant PW-1 Balwan Singh and his wife Sunehari. This Court has minutely scanned the case file and gone through the judgment of the trial Court and the appellate Court and is of the considered opinion that the judgments and the order passed by the Courts below do not suffer from any illegality and perversity. Therefore, the present revision petition is dismissed. The accused is stated to be on bail, he be taken into custody to serve the remaining part of the sentence. His bail bonds and surety bonds stand cancelled.

14.10.2015.
SN

(JITENDRA CHAUHAN)
JUDGE