

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

**Criminal Appeal No. S-1332-SB of 2004
Date of decision: 24.02.2016**

Surinder Singh @ Happy and another

..Appellants

Versus

State of Punjab

..Respondent

CORAM: HON'BLE MRS. JUSTICE DAYA CHAUDHARY

- ✓1. Whether reporters of local newspapers may be allowed to see judgment?
- ✓2. To be referred to reporters or not?
- ✓3. Whether the judgment should be reported in the Digest?

Present: Mr. A.P.S. Mann, Advocate
for the appellants.

Mr. Rupam Aggarwal, DAG, Punjab
for the respondent – State.

Daya Chaudhary, J.

The present appeal has been filed to challenge the judgment of conviction and order of sentence dated 11.06.2004 passed by the Additional Sessions Judge (Adhoc), Fast Track Court, Hoshiarpur, whereby, the accused-appellants have been convicted for offence punishable under Sections 354 and 342 of Indian Penal Code (for short 'IPC') and sentenced to undergo RI for a period of one year and to pay fine of ₹500/- each with default clause under Section 354 IPC and RI for a period of six months each under Section 342 IPC.

Briefly, the facts of the case are that complainant-

Mandeep Kaur @ Moni made a statement before the Police stating therein that she was studying in Government Senior Secondary School, Nangal Behala in 10+1 class. On 04.12.2002 at about 8.30 am, when she was going to school on her cycle and entered the road for Dasuya, a white coloured Tata Sumo bearing registration No. HR-31-A-9431 came from back side and went ahead of her. After about 100 yards ahead from Badala crossing, driver of the Tata Sumo stopped the vehicle and came closer to her. One Prem Chand was also sitting with him on the front seat of the vehicle. Accused-Happy came out of the car and tried to forcibly lift her into the car with the help of accused Prem Chand. She was put in Tata Sumo and glasses of the vehicle were closed. She raised alarm but nobody heard. Both the accused molested her and even tried to take off her clothes. The accused then stopped the vehicle near the Tilla. She raised hue and cry and her uncle-Balwant Singh, who was going on scooter saw her and stopped his scooter in front of Sumo. The accused threw her out of the Sumo and went towards village Jugiala. She was brought back to her house on scooter by her uncle. Thereafter, the matter was reported to her father, who took her to the Police Station and her statement was got recorded by the Police, on the basis of which, FIR No.70 dated 04.12.2002 was registered under Sections 376, 511, 363, 366, 342, 323 read with Section 34 IPC at Police Station Hajipur. The victim was medico legally examined by doctor, who found two injuries on her person, which were simple in nature. The Investigating Officer visited the spot and prepared a rough site plan. The accused were

arrested and medically examined. Tata Sumo was also taken into possession. Statements of witnesses were recorded and on completion of investigation, challan was presented.

Copies of the documents relied upon by the prosecution were supplied to the accused. On finding a prima facie case under Section 376 read with Section 511 and 342 IPC against both the accused, they were charged for said offences.

The prosecution examined as many as eight witnesses i.e., PW1 Mandeep Kaur, PW2 Balwant Singh, PW3 Jagir Singh, PW4 Dr. Lashkar Singh, PW5 Dr. Shashi Khera, PW6 Jagan Nath, PW7 Joginder Singh and PW8 SI Ashwani Kumar to prove its case.

Thereafter, statements of accused under Section 313 Cr.P.C. were recorded wherein they denied the allegations and claimed innocence and false implication.

In defence, accused examined DW1 Mr. Satinder Rishi, Advocate, DW2 Sudesh Kumar, DW3 Roshan Lal, DW4 Dilbagh Singh, DW5 Shamsher Singh, DW6 Kuldeep Singh and DW7 Capt. Mohinder Singh.

On perusal of statement of prosecution witnesses as well as defence witnesses, the trial Court came to the conclusion that the prosecution has failed to prove its case under Sections 376, 511 IPC but the offence under Sections 354 and 342 IPC was made out against accused persons. Accordingly, charges already framed under Sections 376 and 511 IPC were converted to Sections 354 and 342 IPC, which were proved and both the accused were convicted and

sentenced for said offences as detailed hereinabove. Both the sentences were ordered to run concurrently.

Learned counsel for the appellants submits that there are material contradictions and inconsistencies in the statements of the prosecution witnesses. It was a case of consent as many love letters were written by the victim to accused-Surinder Singh @ Happy. Learned counsel further submits that two different registration numbers of Tata Sumo were got recorded by the prosecutrix. In the first statement before the Police, the registration number of Tata Sumo was stated to be as HR-31-A-9431 but later on, while appearing before the Court as PW-1, she stated that the registration number of Tata Sumo was HR-31-A-9459. On being questioned with regard to her conflicting statements, she stated that she had stated the correct number after noticing the Tata Sumo, which was parked in the Police Station. The love letters Ex.DC and Ex.DD were written by the prosecutrix herself to accused-Surinder Singh @ Happy and the same have been admitted by her. Learned counsel also submits that from a bare perusal of contents of love letters, it is apparent that it was a case of love affair between the prosecutrix and accused-Surinder Singh @ Happy. As per the affidavit Ex.DA/1 given by the prosecutrix as well as affidavit Ex.DE given by her father, it is clear that no such incident had ever taken place and false allegations have been levelled against the accused-persons. Subsequently, an explanation was given by the prosecutrix that she was forced to enter into a compromise by executing an affidavit. It has been proved on record from the

statements of defence witnesses i.e., DW1 to DW5 that the prosecutrix executed the affidavit as per her free will and without any pressure from any corner. Learned counsel also submits that the prosecution version appears to be false as in her statement, complainant has stated that she was going on her cycle and she was lifted by the accused and taken away in Tata Sumo but no such cycle was recovered by the Police from the place of occurrence. Even no medical examination of the prosecutrix was got conducted and it has been proved from statement of Dr. Shashi Khera (PW5) that the prosecutrix refused to get herself medically examined. It is also the argument of learned counsel for the appellants that the appellants have been convicted for offence punishable under Sections 354 and 342 IPC but no charge for the aforesaid offence was framed against the appellants. While convicting the accused-appellants, the statements of defence witnesses have not been considered by the trial Court. At the end, learned counsel for the appellants submits that the sentence imposed upon the appellants be reduced to the period already undergone as they are young persons; have faced agony of trial since registration of FIR i.e., 04.12.2002 and they have remained in custody for a considerable period.

Learned State counsel submits that the judgment passed by the trial Court is well reasoned and the same is based on proper appreciation of evidence. No interference is required by this Court keeping in view the age of the prosecutrix as she was less than 18 years of age at the time of occurrence.

Heard arguments of learned counsel for the appellants as well as learned State counsel and have also perused the original record of the trial Court and all other documents available on the file.

Admittedly, earlier the FIR was registered under Sections 376, 511, 363, 366, 342, 323 read with Section 34 IPC but ultimately, the accused-appellants were tried and convicted for offence punishable under Sections 342 and 354 IPC. Although certain arguments have been raised by learned counsel for the appellants on merits stating that there are contradictions and discrepancies in the statements of the prosecution witnesses and even the version of the prosecutrix appears to be false as two different registration numbers of Tata Sumo were mentioned by her. It has also been proved on record that two affidavits i.e., one given by the victim as well as the other given by her father stating therein that no such incident had taken place but subsequently, the prosecutrix made a statement before the Court against the accused persons. Love letters have also been proved on record.

Since the girl was less than 18 years of age, so consent is irrelevant but keeping in view the submissions made by learned counsel for the appellants that the appellants are facing the agony of trial since registration of FIR i.e., 04.12.2002; they are not previous convicts; no other case is pending against them; the maximum sentence is one year, the appellants are first offenders and young persons, the request of learned counsel for the appellants is accepted. The conviction is upheld and the sentence awarded to the

appellants is reduced to the period already undergone by them. The amount of fine has already been deposited with the trial Court. The appellants are on bail as their sentence was suspended during pendency of the appeal.

The appeal is disposed of with the modification in sentence by upholding the judgment of conviction.

24.02.2016
neetu

(DAYA CHAUDHARY)
JUDGE