

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

CRA-S-1407-SB-2004 (O&M)
Date of Decision: 20.05.2016

Mukand Singh

...Appellant(s)

Versus

State of Punjab

...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

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

Present: Mr. Aman Dhir, Advocate
for the appellant.

Mr. Deep Singh, AAG, Punjab.

Mr. S.S. Sarwara, Advocate
for the complainant.

ANITA CHAUDHRY, J.

The appellant was sentenced to undergo rigorous imprisonment for a period of 7 years along with fine of Rs.1,000/- for commission of offences punishable under Sections 363, 366, 376 IPC. In default of payment of fine, he was to further undergo rigorous imprisonment for a period of 6 months and the sentence on each count was to run concurrently.

Though the appellant has not contested the judgment on merits but it is necessary to give few facts. The complainant's daughter was 15 years old. In the intervening night of 2-3.12.2002, she was enticed and was taken away by the appellant. The prosecutrix

remained with the appellant from 02.12.2002 up to 12.01.2003 and they had been roaming to different places. The victim was a student of 9th Class. She was found missing from the house at about 5:00 AM by her brother's wife. The family searched in the neighbourhood but failed to find her. Their neighbour Ghogi son of Parkash was also missing since morning, therefore, the family suspected the accused to have kidnapped the daughter. The appellant was arrested along with the victim on 12.01.2003 and the medical was got done.

After the completion of investigation, challan was presented and charge was framed. The prosecution examined nine witnesses.

The accused took the defence that the girl was major and it was a case of consent and both of them were in love with each other and the girl was insisting for marriage and the girl had filed an affidavit in the Court of CJM, Shahjahanpur (Uttar Pradesh) and she had also filed a complaint against her father at Shahjahanpur but later on the relatives and parents influenced her and she turned around.

In defence, the accused had examined a lawyer from Shahjahanpur (Uttar Pradesh) who had executed an agreement of marriage and he identified the victim and the accused. He stated that the affidavit was attested by the Notary in District Courts at Shahjahanpur and he identified his signatures. He had stated that the victim had given her age as 20 years and based on the information that was given, he had filed a complaint on the asking of the victim and she had stated that she was not under any pressure and she had also provided her photograph.

The trial Court based on the documents i.e. the admission record, the result card and the Board certificate held that the girl was less than 16 years of age. Some letters had been put to the victim. She admitted her handwriting but stated that the accused had obtained the writing and had given threats and she was tortured and beaten.

The trial Court rightly took the view that the girl was under 16 years and as the girl was minor, therefore, the plea of consent was not available.

I have heard the counsels of both the sides.

The counsel for the appellant has urged that a compromise had been effected and the girl had given an affidavit and she had also got married and the appellant had undergone custody of 2 years 9 months before he was allowed bail in January, 2006. It was urged that the incident was 14 years old and the accused had entered into a compromise and the prosecutrix does not want to proceed with the case and both of them are settled in life, therefore, the sentence may be reduced to already undergone. The counsel had placed reliance upon ***Ravindra Vs. State of Madhyapradesh***, CrI. Appeal No. 1410 of 2013, decided by Supreme Court on 26.02.2015. It was urged that the sentence was reduced to already undergone by the Apex Court as matter was 20 years old and both parties had married. The Apex Court in ***Ravindra's*** case observed as under:-

“The fourth ground of defence taken by the appellant is that under proviso to Section 376(2) of IPC, the legislature has empowered the Court to award lesser sentence where “adequate and special

reasons" exist. The incident in the present case had taken place 20 years ago. The victim (prosecutrix) and the accused have entered into a compromise stating therein that the prosecutrix does not want to proceed with the case against the accused and wants to close the case. Both of them are married (not to each other) and have settled in life. Learned counsel for the appellant contends that this is an "adequate and special reason" for awarding lesser sentence.

This Court has in the case of Baldev Singh & Ors. v. State of Punjab, (2011) 13 SCC 705, invoked the proviso to Section 376 (2) (g) of IPC on the consideration that the case was an old one. The facts of the above case also state that there was compromise entered into between the parties.

In light of the discussion in the foregoing paragraphs, we are of the opinion that the case of the appellant is a fit case for invoking the proviso to Section 376(2)(g) of IPC for awarding lesser sentence, as the incident is 20 years old and the fact that the parties are married and have entered into a compromise, are the adequate and special reasons. Therefore, although we uphold the conviction of the appellant but reduce the sentence to the period already undergone by the appellant. The appeal is disposed of accordingly."

The incident is 14 years old. The prosecutrix is now married. The parties have entered into a compromise. The conviction of the appellant is maintained, however, invoking the Proviso A to Section 376(2)(g) IPC, the sentence is reduced to already undergone. There would be no modification, so far as the fine is concerned.

The appeal is dismissed with the aforesaid modification only in the sentence. The fine be deposited within one month. In case of failure to pay the fine, the appellant will have to surrender to undergo the remaining sentence awarded as a default clause.

(ANITA CHAUDHRY)
JUDGE

20.05.2016
sunil