

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

**CRA-S-641-SB-2011
Date of Decision:- 17.10.2016**

Gobind

....Appellant

Versus

State of Haryana

....Respondent

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

**Present: Mr. Sudhir Sharma, Advocate,
for the appellant.**

Mr. D.R. Singla, DAG, Haryana.

RITU BAHRI, J. (Oral)

Present appeal has been filed against judgment of conviction and order of sentence dated 28.01.2011 passed by the learned Sessions Judge, Palwal whereby the appellant has been convicted and sentenced to undergo rigorous imprisonment under Sections 452, 376 and 506 IPC for a period of 10 years and fine of ₹20,000/-.

The trial Court, vide judgment of conviction dated 28.01.2011, convicted the accused-appellant under Sections 452, 376 and 506 IPC and sentenced him as under:--

Under Sec. 452 IPC

Three years R.I. and to pay fine of ₹5,000/- and in default of payment of fine, to further undergo R.I. for 09 months.

Under Sec. 376 IPC	Ten years R.I. and to pay fine of ₹10,000/- and in default of payment of fine, to further undergo R.I. for 02 years and 6 months.
Under Sec. 506 IPC	Two years R.I. and to pay fine of ₹5,000/- and in default of payment of fine, to further undergo R.I. for 06 months.

On 02.06.2009, when the prosecution was sleeping in her house along with her children aged 5 and 8 years and her husband Hari Kishan @ Pappu had gone to attend his night duty, accused Gobind scaled wall of compound of prosecutrix and pounced upon her. When the complainant tried to raise alarm the accused pointed out a knife by which the prosecution became furious and the accused committed rape upon her. On going back he threatened the prosecution that in case she will report the matter any where her husband and children will be done to death. The prosecution called her husband at 3.48 a.m. and then husband of prosecutrix came to know about commission of rape upon her. Hari Kishan (since deceased), husband of prosecutrix, moved an application Ex.PD to the police on the basis of which FIR No.196 dated 03.06.2009 was lodged in Police Station Sadar Palwal. Endorsement Ex.PD/1 was made on the application. The prosecutrix was examined medico-legally, vide MLR Ex.PA, on the basis of application Ex.PH, moved by the police. Salwar, swab and MLR of prosecutrix were taken into police possession, vide memo Ex.PE. Police prepared rough site plan Ex.PI.

After arresting of accused on 13.06.2009, he was medico-legally examined, vide MLR Ex.PC. His underwear was taken into police possession, vide seizure memo Ex.PE. Scaled site plan Ex.PJ was prepared on 09.07.2009. The recovered clothes of prosecutrix and other material

and report Ex.PK was issued by Forensic Science Laboratory, Madhuban.

Challan was presented and charge under Sections 452, 376 and 452 IPC was framed by the Additional Sessions Judge, Palwal on 10.10.2009.

Thereafter, the prosecution, in order to substantiate the crime against the accused, has examined PW1 Dr. Ritu Asthana, who had proved MLR Ex.PA of prosecutrix. The prosecution has examined PW2 Dr. Sachin Gupta, who had proved application Ex.PB and MLR Ex.PC of accused. The prosecution has examined PW3 prosecutrix, who had proved her case and categorically stated that the accused Gobind had committed rape upon her as claimed in application Ex.PD. The prosecution has further examined PW4 Constable Sandeep Kumar, who is a link witness. The prosecution has examined PW5 ASI Narain Singh, who has conducted investigation in this case after 13.06.2009. The prosecution has also examined PW6 Constable Amit Kumar, who is a witness of special report. The prosecution has further examined PW7 Constable Ved Parkash, who had remained associated in investigation of this case with PW9 ASI Paras Ram and PW12 Lady Constable Beena Kumari when the prosecutrix was medico-legally examined. The prosecution has further examined Head Constable Gajraj, then MHC, Police Station, Sadar Palwal and is a witness to prove link evidence. The prosecution has also examined PW10 head constable Anoj Kumar who had proved scaled site plan Ex.PJ. The prosecution has further examined PW11 Head Constable Surender Kumar who is a link witness and lastly prosecution has examined PW12 Lady Constable Beena Kumari, who remained associated in this case when the prosecutrix was medico-legally

Parkash.

PWs Hari Kishan (husband of prosecutrix) and Narender Kumar SI/SHO were given up as unnecessary and the prosecution has closed its evidence on 04.11.2010.

Statement of accused under Section 313 Cr.P.C was recorded on 26.11.2010 in which he has completely denied his involvement in the crime.

Defence examined DW1 Rajender Singh, who deposed that at the time of occurrence accused-Gobind remained present in the marriage of his daughter Poonam. DW2 Narender Singh has deposed that on the day of occurrence Gobind was not present at the place of occurrence, rather he was present in marriage of daughter of Rajender Singh on 02.06.2009.

The trial Court found that the testimony of PW-3 was reliable as she had medico-legally examined and there was one injury on her chest and this fact was established by Dr. Ritu Asthana and produced MLR (Ex.PA). The incident took place at 2.30 a.m. on 02.06.2009 and the FIR was got registered on 03.06.2009 at 5.30 p.m. The time taken in registration of the FIR would not be a ground which could dent the prosecution version. Neither there was any enmity between prosecution and accused nor there was any cogent explanation or reason to falsely implicate the accused. The matter was reported after a gap of six hours. The prosecutrix was alone adult member of the family at the time of occurrence and her husband had gone to attend his night duty. The trial Court has held that non-recovery of any weapon of offence used by the accused is not fatal to the case of the prosecution and reference has been made to a judgment in case titled **Utpal**

144(SC). Moreover, while committing the heinous crime the accused had threatened the prosecution and her minor children and this threat would be sufficient, she did not resist the able-bodied person for committing rape upon her and did not raise the alarm.

PW1 Dr. Ritu Asthana, who had proved MLR (Ex.PA) and deposed that a bruise of size 2 X 2 cms was found on medial aspect of right breast and mild tenderness was present on right labia minora. Labia minora is inner part of vagina. The tenderness could occur only by forcible intercourse. PW1 Dr. Ritu Asthana was examined but the defence has not cross-examined her on this issue. Moreover, statement (Ex.DA) of the prosecution was recorded under Section 161 Cr.P.C. on 03.06.2009 and the allegations of threat given to the prosecution were found mentioned in Ex.PD application moved by Hari Kishan (husband of the prosecution) and did not show any improvement in her version. Even the version of the prosecution in the Court was bit exaggerated, it was not a ground to reject the testimony of prosecution as held in case titled **Zindar Ali S.K. Vs. State, 2009(2) R.C.R. (Criminal) 26 (SC).**

The trial Court after going through the entire evidence led by the prosecution, came to conclusion that the accused/appellant are guilty of the aforesaid offences, as the prosecution has succeeded in proving on record its case beyond shadow of any doubt.

On 06.11.2015, it was pointed out that the prosecutrix had stated that the person, who had committed rape upon her has murdered her husband and FIR No.82 dated 08.03.2010, under Sections 302/34, 506/1220-B IPC was also registered at Police Station City Palwal, on the

statement of Mahender son of Kiran. The State was directed to file the status

report.

In compliance of above-said order, the status report dated 07.12.2015 has been filed by the Deputy Superintendent of Police, Palwal whereby it has been stated that the FIR No.82 dated 08.03.2010 under Section 302/34, 506 and 120.-B IPC registered at police Station City Palwal has been placed on record as Annexure R-1. After lodging of FIR, the police investigated the matter thoroughly and during course of investigation, the postmortem was conducted by a board of three doctors at General Hospital, Palwal and the board opined that the cause of death was shock and hemorrhage due to anti mortem head injury and the same was sufficient to cause death in ordinary course of life. There was no poison detected as per report (Annexure R-2). Further during course of investigation, seen of crime team from FSL Madhuban was also called at the spot and after examination of the place of occurrence, the crime team has given its opinion that the scooter could have been hit with another vehicle having yellow paint. Thereafter, offence under Section 302 IPC was deleted and Sections 279 and 304-A IPC were added. Initially investigation was conducted by Jaan Mohd. ASI, then the Inspector/SHO Yad Ram from 11.03.2010 to 29.06.2010 and thereafter by Mohd. Illyas, SI/SHO Police Station City Palwal from 02.07.2010 to 21.08.2010 till the un-traced report was prepared and none of the investigation could trace out the vehicle in question which caused the accident with the scooter of the deceased. The un-traced report was prepared and submitted before the learned Illaqa Magistrate, however, on the direction of the learned Illaqa Magistrate case was re-investigated but no clue was found with respect to the vehicle which caused the accident resulting into the death of Hari Kishan deceased or no person could

be found to be involved in the commission of offence, therefore, again un-traced report was submitted. The police contacted to complainant Mahender, who stated that he has filed a petition before the Courts at Palwal and the copy of the statement is Annexure R-4.

This Court vide order dated 08.12.2015 has directed the respondent-State to place on record the copy of the petition filed by complainant-Mahender in the Court at Palwal along with the copy of the summoning order, if any, and the last interim order passed by the Court.

Learned counsel for the appellant, during the course of arguments, does not challenge the conviction on merits and restricts his prayer to reduce the sentence of the appellant to the period already undergone by him.

Having examined the impugned judgments, no illegality, much less irregularity has been found therein warranting interference by this Court. Accordingly, the same is upheld.

As per custody certificate dated 02.11.2015, the appellant has already undergone total sentence of 08 years, 03 months and 29 days including remission, out of the substantial sentence of 10 years awarded to him and till today he has undergone total sentence of more than 09 years and 2 months. No other case is pending against him. However, a lenient view can be taken on the quantum of sentence of the appellant.

Accordingly, keeping in view the submissions made by the learned counsel for the appellant, it is a fit case where the sentence qua imprisonment is liable to be reduced to already undergone by the appellant.

Hence, the conviction of the appellant under Sections 452, 376 and 506 IPC

is maintained and the sentence qua the imprisonment of the appellant is

reduced to the period already undergone by him and a direction is given that the appellant be released to the satisfaction of CJM/Duty Magistrate, Palwal.

With the above modification, the present appeal stands disposed of.

October 17, 2016
naresh.k

(RITU BAHRI)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	No