

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRA-S-41-SB-2012 (O&M)
Date of Decision: 11.04.2016

Ashok Kumar

...Appellant(s)

Versus

State of Haryana

...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. Jarnail Singh Saneta, Advocate
for the appellant.

Ms. Vibha Dhiman, A.A.G., Haryana,
counsel for the respondent-State.

ANITA CHAUDHRY, J.

1. This appeal is directed against the judgment and order dated 12.11.2011, passed by the Sessions Judge, Yamuna Nagar at Jagadhri, vide which the appellant was sentenced to undergo the following punishment:-

Under Sections	Simple Imprisonment for a period of	Fine	In default of payment of fine
363 IPC	3 years	Rs.500/-	15 days
366-A IPC	7 years	Rs.1000/-	1 month
354 IPC	1 year	-	-

2. For the sake of brevity few facts are only being mentioned as the appellant had restricted his prayer only to the quantum of sentence. The complainant's daughter who was just two and a half years old was taken away by the accused. The complainant returned home and learnt that his daughter was

missing. The family started searching for her. After an hour they came to know that some persons had apprehended a person along with a child in the fields of Sunil Gulati. He reached the spot and learnt that the person had been taken to Bal Bhawan along with the child. The complainant went to Bal Bhawan and came to know that Ashok Kumar had been taken into custody and the girl was being taken by him on the motorcycle with an intent to commit a wrong act but was caught. The police registered the case under Section 363, 366-A, 376 & 511 IPC.

3. Charge was framed under Sections 363, 366-A, 376 read with Section 511 IPC. The accused pleaded not guilty. At the trial, the prosecution had examined the Medical Officer who proved the MLR and stated that the parents had refused the internal check-up.

The prosecution had also examined Manisha Khanna, the District Child Welfare Officer who stated that Sunil Gulati and Randeep brought the child and the accused before her and Sunil Gulati had told her that Ashok had taken the girl.

The star witness for the prosecution namely Sunil Gulati – PW11 had stated that he saw the accused attempting to commit rape on the child near his tube-well and when he along with other labourer tried to apprehend him, he ran away with the child but he caught him at a distance and handed him over to the police.

Besides this, the prosecution had examined the Investigating Officer and Randeep, the eye-witness to the occurrence.

4. In the statement under Section 313 Cr.P.C, the accused had stated that he had stopped to attend to the call of nature and he heard the voice of a child weeping and he reached the spot and the child was crying and in the meantime, some persons reached there and started beating him and they were shouting that he was running away with the child and in the meantime Sunil Gulati reached there and some whispering took place between the villagers and he was taken to Bal Bhawan. No evidence was led in defence.

5. The trial Court did not find any evidence to record a conviction under Section 376 IPC, however, the appellant was convicted under Sections 363, 366-A & 354 IPC and was sentenced to the punishment mentioned here-in-before.

6. The counsel for the appellant urges that the bail application of the appellant had been dismissed and they were only pressing for release of the accused after restricting the sentence to already undergone, which was over five years. It was urged that no internal medical examination was carried out on the child and the only act attributed to him was that he was removing the clothes of the child but the trial Court did not believe that statement and no conviction was recorded under Section 376/511 IPC. The counsel contended that the appellant was in custody for the last five years and he had two children and he belonged to lower strata of the society and was the only earning member and a lenient view be taken.

7. The circumstances of the case have been considered. Keeping in view the fact that the appellant is in custody since 30.03.2011 and has completed 5 years of his

sentence. The custody certificate shows that the total sentence undergone including remission is 6 years, 7 months and 22 days as on 22.02.2016, which is just few months short of seven years, therefore, the sentence is reduced to already undergone. However, there will be no change/modification in the quantum of fine.

8. The appeal is disposed of with the above modification in the sentence.

(ANITA CHAUDHRY)
JUDGE

11.04.2016
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