

**IN THE HIGH COURT FOR THE STATES OF PUNJAB &
HARYANA AT CHANDIGARH**

Crl. Appeal No. S-351-SB of 2015 (O&M)

Date of Decision: August 24, 2016.

Sandeep

...Appellant

VERSUS

State of Haryana

...Respondent

CORAM : HON'BLE Ms. JUSTICE RITU BAHRI.

Present: Mr. Rakesh Gupta, Advocate,
for the applicant-appellant.

Mr. Anmol Malik, AAG, Haryana

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RITU BAHRI, J.

The applicant-appellant has filed CRM No. 13020 of 2016 seeking permission to visit Italy for 06 months for tourist purpose.

Since as per custody certificate, the applicant has already sentence of 10 months and 20 days including remission of 15 days, the appeal is taken on board by today itself.

Impugned in this appeal is the judgment of conviction dated 13.01.2015 and the sentence order dated 19.01.2015 passed by the learned Additional Sessions Judge, Ambala, whereby appellant was convicted and sentenced under Sections 354/356/452 of the Indian Penal Code (for short 'the Code'). The appellant was sentenced to undergo rigorous imprisonment substantially for a period of one year

As per facts of the prosecution case, on 01.04.2014, the

appellant finding the prosecutrix alone entered the house and tried to use force against her and with the intention to commit rape upon her, he laid her on the floor and used force against her. When she raised alarm, her mother in law and other women from the neighbourhood came and rescued her from the appellant and thereafter, the appellant fled away from the spot.

After investigation, challan was presented and the charges were framed under Section 452/376/511/356/506 IPC to which he pleaded not guilty and claimed trial

Prosecution examined as many as 14 witnesses to prove the case beyond the shadow of doubt. The appellant in defence examined two defence witnesses i.e Manjeet Singh and Karnail Singh

Accused was examined under Section 313 Cr.P.C and entire incriminating evidence appearing against him were put to him, who denied the same and pleaded his false implication.

The learned trial Court after going through the entire evidence, convicted and sentenced the appellant as mentioned above.

Learned counsel has submitted that the present accused is a first time offender and is a sole bread earner in the family. There is no other male member in the family to look after his old aged parents.

A prayer is made that the appellant be released on probation of Good Conduct.

As per custody certificate dated 23.08.2016, the appellant has undergone 10 days and 20 days including remission of 15 days in custody out of total conviction period of one year.

The appellant has been facing the agony of protracted trial since 2014 i.e for almost 2 years. There is nothing on the record that he had committed this offence earlier.

Reference at this stage can be made to a judgment of Hon'ble the Supreme Court of India in a case of **Roshan Lal vs. State of Haryana, 2006(4) RCR (Crl.) 318** wherein Hon'ble this Court while considering a case of an accused who outraged the modesty of the girl and was sentenced to undergo for a period of one year, reduced the sentence to the period already undergone by him.

Hon'ble the Supreme Court in a case of **Daljit Singh and others vs. State of Punjab through Secy Home Affairs, 2006(3) R.C.R (Crl) 869** has remitted the matter back to the High Court to consider the question of releasing the accused on probation. The conviction was under Section 324 IPC. It was held that it is obligatory on court to apply one or other beneficial provisions except for special reasons. Where the provisions of the Probation Act are applicable, the employment of Section 360 of the Cr.P.C is not to be made.

After considering the submissions made by learned counsel for the appellant and taking into account the fact that the appellant has already undergone incarceration for more than ten months, I think no useful purpose will be served in sending the appellant to prison again at this stage.

Therefore, the judgment of conviction, recorded by the Court below is upheld but the appeal is dismissed on merits. Further, an amount of Rs.25,000/- is ordered to be given to the complainant as compensation by the accused-appellant and the appellant is allowed concession of probation

for a period of six months on his entering into a bond in the sum of Rs.20,000/- with one surety of the like amount to the satisfaction of the trial Court/Appellate Court undertaking therein that he shall keep peace and maintain good behaviour and shall appear and receive sentence as and when called upon to do so during the said period.

August 24, 2016.
G Arora

(RITU BAHRI)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	No