

In the High Court of Punjab and Haryana at Chandigarh

Crl. Appeal No. S-601-SB-2013 (O&M)
Date of Decision: 07.12.2016

Irfan @ Aminudin @ Chhote @ Jabruddin and anotherAppellants

Versus

State of HaryanaRespondent

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. H.S.Randhawa, Advocate
Amicus Curiae for the appellants.

Mr. Devindedr Pal Singh, Advocate for
Mr. Anoop Sheoran, Advocate
for appellant No. 2.

Mr. Apoorv Garg, DAG, Haryana.

ANITA CHAUDHRY, J (ORAL)

The appellants are aggrieved of the judgment and order of conviction and sentence vide which they had been sentenced to the following imprisonment:-

Under Section 328 IPC	Rigorous imprisonment for a period of five years and to pay a fine of Rs. 1000/- each. In default of payment of fine or a part thereof they were to further undergo rigorous imprisonment for a period of 15 days.
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Under Section 363 IPC Rigorous imprisonment for a period of five years and to pay a fine of Rs. 2000/- each. In default of payment of fine or a part thereof they were to further undergo rigorous imprisonment for a period of one month.

Under Section 366-A IPC Rigorous imprisonment for a period of five years and to pay a fine of Rs. 2000/- each. In default of payment of fine or a part thereof they were to further undergo rigorous imprisonment for a period of one month.

Under Section 376(2)(g) IPC Rigorous imprisonment for a period of ten years and to pay a fine of Rs. 5000/- each. In default of payment of fine or a part thereof they were to further undergo rigorous imprisonment for a period of two months.

Under Section 3 (1)(XI) of SC/ST Act Rigorous imprisonment for a period of one year and to pay a fine of Rs. 1000/- each. In default of payment of fine or a part thereof they were to further undergo rigorous imprisonment for a period of 15 days.

Appellant Irfan was also sentenced to rigorous imprisonment for a period of seven years and to pay a fine of Rs. 5000/- under Section 376 IPC. In default of payment of fine or a part thereof he was to further

undergo rigorous imprisonment for a period of two months.

The facts which are necessary to be delineated are that minor daughter of Maina Devi was missing from the house since 13.4.2010. She had gone to see her friend at 12.30 P.M. but failed to return. The mother suspected that Irfan and his younger brother Annu @ Alauddin who were living in a rented house in front of their house had enticed her minor daughter. They were also missing from their house. She had also disclosed in her complaint that Irfan had earlier made advances towards her daughter when she was alone at home and she had rebuked them and had asked them not to visit her house.

The police registered the case under Section 328, 363, 366-A, 376, 376(2)(g) IPC and 3(1)(xii) of SC/ST Act.

The girl was recovered on 21.4.2010. Her statement under Section 164 Cr.P.C. was recorded. She named both the accused. Her medical was conducted. After completion of investigation challan was presented.

The prosecutrix supported the prosecution case at the trial. She stood by her statement made before the Magistrate. The medical officer found the hymen torn. The Clerk in the office of SDM, Gurgaon produced scheduled caste certificate to show that the prosecutrix belonged to a schedule caste and considering the evidence, the trial Court convicted both the appellants to the sentence mentioned hereinbefore.

Custody certificate dated 19.7.2016 has been placed on record which shows the actual custody of 06 years, 02 months and 28 days as on 19.7.2016. The total sentence with remission is 08 years, 08 months and 18 days as on 19.7.2016.

Counsel for the appellants restricted their prayer only to the quantum of sentence. It was urged that both the appellants had completed more than nine years and one month of custody and would have earned more remissions and therefore the sentence be reduced to the period already undergone. The submission was also made that it was a case of elopement and Annu was not involved and his sentence be reduced if the Court was not inclined to accept the prayer with respect to Irfan.

State counsel submits that it is a case of gang rape and the girl had named both of them and both of them were missing from the house and the girl had been recovered after eight days and the girl was a minor and no leniency should be shown.

There is no challenge to the findings of conviction. The conviction has not been assailed on merits. Even otherwise the prosecution had been able to successfully prove the charges. The medical evidence also supports the prosecution version. I find no infirmity in the findings recorded by the Court below.

So far as the quantum of sentence is concerned, no doubt that total sentence including remission is over 09 years and 01 month but I am not inclined to reduce the sentence. The girl had not even completed the age of 13 years. The offence has been committed with a minor. The trauma undergone by the victim is enormous. It is often said that the rapist not only violates the victim's privacy but causes psychological as well as emotional trauma to the victim. A rapist degrades and destroys the very soul of the victim. The Court will be failing in its duty if appropriate punishment is not awarded. No leniency can be shown.

The appeal is dismissed.

(ANITA CHAUDHRY)
JUDGE

December 07, 2016
Gurpreet

Whether speaking/reasoned : Yes
Whether reportable : Yes