

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

CRR No.2872 of 2010.
Decided on:-22.09.2016.

Parveen.

.....Petitioner.

Versus

State of Haryana.

.....Respondent.

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA.

Present:- Mr. Krishan Singh, Advocate
for the petitioner.

Mr. Manish Bansal, DAG, Haryana
for the respondent-State.

HARI PAL VERMA, J.

The petitioner has filed present revision petition challenging the judgment dated 6.10.2010 passed by learned Sessions Judge, Yamuna Nagar, vide which the criminal appeal preferred by him against the judgment of conviction dated 27.5.2009 and order of sentence dated 29.5.2009 passed by learned Judicial Magistrate 1st Class, Yamuna Nagar at Jagadhri, was dismissed.

Learned Magistrate vide judgment dated 27.5.2009 convicted the petitioner for offence punishable under Sections 354 and 323 IPC and vide separate order dated 29.5.2009, sentenced him to undergo rigorous imprisonment for a period of six months for the commission of each offence.

However, both the substantive sentences were ordered to run concurrently.

Briefly stated, prosecution version is that on 30.1.2000, a V.T. Message was received in the Police Station, Burira from Police Post, Rakshak Vihar regarding admission of the prosecutrix (name withheld) in injured condition at Civil Hospital, Jagadhri. On receiving said message, ASI Ishwar Singh reached Police Post, Rakshak Vihar and collected Ruqqa from there. Thereafter, he visited the Civil Hospital, Jagadhri where the doctor opined that the prosecutrix was unfit to make her statement.

ASI Ishwar Singh again visited the aforesaid hospital on the next day i.e. 31.1.2000 and after seeking opinion of the doctor regarding fitness of the injured-prosecutrix to make the statement, recorded her statement. The prosecutrix in her statement had stated that Manoj Kumar and Arun Kumar sons of Jagdish alongwith their sister Dolly have been residing in a rented house at Buria. She is the grandmother (Naani) of all the three children. Both the grandsons, namely, Manoj Kumar and Arun Kumar are employed with Shiv Shambhu Plywood Factory, Buria, whereas her granddaughter, namely, Dolly used to prepare the meal for them. Since Dolly is a young girl, she used to sleep at night at her (prosecutrix's) residence and daily used to go to the premises taken on rent by her brothers.

Dolly had slept in the house of prosecutrix and on the next day, when she along with Dolly was going towards the room of Manoj to leave her there and reached near the rented room at about 6.40 a.m., petitioner-accused Parveen who is her neighbour came from the market side and

caught hold of her both the breasts with his hands. Thereafter, he also started touching her private parts. When she started crying and asked him not to misbehave with her, he immediately picked up a small brick and gave blows thereof on her forehead as well as on left and back sides of her head. He also gave her slap and fist blows on her stomach, back and shoulder. When she raised alarm, her grandson Manoj Kumar and granddaughter Dolly came in the street and they rescued her from the clutches of the accused. Thereafter, the accused fled away from the spot and the prosecutrix was got admitted in the hospital by her husband.

On the basis of statement of the complainant, FIR No.7 dated 31.1.2000 under Sections 354 and 323 IPC was registered against the petitioner-accused. Investigation proceedings were initiated. The accused was arrested. Statements of the witnesses were recorded. After completion of necessary formalities, Challan against the accused was presented in the Court.

On presentation of Challan, copies of the same were supplied to the accused as required under section 207 Cr.P.C. On finding a prima facie case, the petitioner-accused was charge-sheeted on 3.7.2000 for offence under Sections 354 and 323 IPC to which he pleaded not guilty and claimed trial.

In order to prove its case, the prosecution examined as many as six witnesses including the prosecutrix as PW1, eye-witnesses Dolly as PW2 and Manoj Kumar as PW4, Dr. Anita Sethi as PW3, Barkha Ram as PW5

and investigating officer ASI Ishwar Singh as PW6.

Thereafter, statement of petitioner-accused Parveen was recorded under Section 313 Cr.P.C. wherein the accused had denied all the allegations levelled against him and pleaded his innocence. He has examined Narender Kumar as DW1 in his defence.

Considering the evidence so adduced, the trial Court vide its judgment dated 27.5.2009 and order dated 29.5.2009 had convicted and sentenced the petitioner-accused in the manner as mentioned above.

Feeling aggrieved, the petitioner preferred an appeal against the said judgment of conviction and order of sentence before the Court of Session. However, the appeal was dismissed by learned Sessions Judge, Yamuna Nagar vide judgment dated 6.10.2010.

It is in the aforesaid circumstances, the petitioner has filed the present revision petition.

During the course of arguments, learned counsel for the petitioner has not challenged the conviction of petitioner and has confined his arguments qua the quantum of sentence only. He has contended that as against the awarded sentence of six months, the petitioner has remained in custody for a period of 2 months and 9 days. There is no other criminal case pending against him. He has further contended that the petitioner is a first time offender and is 50 years old. The FIR in question was registered against him on 31.1.2000 and in this manner, he has been suffering the agony of criminal proceedings for the last more than 16 years. Thus, he has prayed

that sentence of the petitioner may be reduced to the period already undergone by him.

On the other hand, learned State counsel has not disputed the custody of petitioner Parveen, but opposed the plea of taking liberal view, as raised by learned counsel for the petitioner. The custody certificate produced by learned State counsel in the Court today, is taken on record.

I have heard learned counsel for the parties.

On perusal of the judgments of both the Courts below, this Court is of the considered view that the trial Court has rightly appreciated the evidence on record while holding the petitioner guilty of the charge framed against him. The appellate Court has also rightly dismissed the appeal. There is no infirmity, illegality or perversity in the findings given by both the Courts below which may warrant interference of this Court. Even otherwise, during the course of arguments, learned counsel for the petitioners has not assailed the judgments of conviction and restricted his arguments qua the quantum of sentence only. The conviction of the petitioner is, thus, affirmed.

However, as regards plea of the petitioner that he is a first time offender; no other case is pending against him; has been suffering the agony of criminal proceedings as far back as on 31.1.2000, the date when the FIR in question was registered against him, and as against the awarded sentence of six months, he has already undergone 2 months and 9 days, this Court finds that prayer made by learned counsel for the petitioner for reduction of

sentence of the petitioner to the period already undergone by him, carries weight.

Therefore, taking into consideration the submissions raised by learned counsel for the petitioner, this Court feels that the ends of justice would be met in case the sentence awarded to the petitioner is reduced to the period already undergone by him. Ordered accordingly.

With the aforesaid modification in order of sentence, the present revision petition stands dismissed.

September 22, 2016

Yag Dutt

**(HARI PAL VERMA)
JUDGE**

Whether speaking/reasoned: Yes / No

Whether Reportable: Yes / No