

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

CRA-S-1006-SB-2004 (o&m)
Date of Decision: 01.03.2016

Sanjay @ Billu

...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. P.R. Yadav, Advocate
for the appellant.

Mr. Surender Singh, D.A.G., Haryana,
counsel for the respondent-State.

ANITA CHAUDHRY, J.

1. The appellant herein was tried by the Additional Sessions Judge, Fast Track Court, Gurgaon and was sentenced to undergo rigorous imprisonment for a period of 7 years along with a fine of Rs.1,000/- for commission of offence under Section 376 IPC. In default of payment of fine he was to further undergo rigorous imprisonment for a period of 6 months. He was also sentenced to undergo rigorous imprisonment for a period of 3 years along with a fine of Rs.500/- for commission of offence under Section 325 IPC. In default of payment of fine he was to further undergo rigorous imprisonment for a period of 3 months. However, both the sentences were ordered to run concurrently.

2. The case of the prosecution was that on 14.07.2002, the prosecutrix, a married woman went to the fields near their colony to ease herself and accused came and gagged her mouth with a Dhoti worn by the prosecutrix and raped her. The victim cried for help but there was no-one around. She returned home and waited for her husband, who returned from duty at 9:30 P.M. The occurrence was narrated to him. The matter was thereafter, reported to the police. The victim was medically examined. The accused was arrested. He was also medically examined. The radiological report was received. There was a fracture on the victim. Challan was presented under Section 376 and 325 IPC.

3. The prosecution in order to prove its case had examined 10 witnesses. The accused denied the allegations but failed to lead any evidence in defence.

4. The appellant was convicted and sentenced to the punishment mentioned here-in-before.

4. I have heard both the sides.

5. The counsel appearing for the appellant initially wanted to impeach the judgment but finding no answer to the injuries and to the FSL report, did not assail the judgment on merits and instead made the prayer for reduction on the quantum of sentence. Developing his arguments, it was submitted that the incident was of 2002 and the appellant was then only 22 years old and now after 14 years, he has got married and had children. It was urged that the appellant had remained in custody for 3 years, 4 months and 19 days out of 7

years and he had faced ordeal of protracted trial of 14 years and if he is again sent to jail, it would certainly affect his family life. A prayer was made for reduction of the sentence to already undergone. Reliance was placed upon ***Rajpal Vs. State of Haryana 2005(3) Cri.CC 394, Narender Singh Vs. State of Haryana 2003(4) AICLR 608, Ram Kishan Vs. State of Haryana 2007(4) RCR (Crl.) 169 and Balkar Singh Vs. State of Haryana 2008(2) Cri.CC 819.***

6. The incident took place around 8:30 PM on 14.07.2002. The victim was taken to the hospital the same night and she was examined by the Medical Officers at 2:30 AM on 15.07.2002. The Medical Officers had found injury on the back. There was edema on the lower lip. The prosecutrix while stepping into the witness box as PW-5 gave a detailed account of the unfortunate incident. While narrating the incident in the Court, she had stated that the accused raped and ran away from the spot and left her crying and she returned home and was ashamed of the act mustered courage and narrate the incident to her husband. Her husband took her to the police station. She had stated that the statement was given to the police in the intervening night of 14/15 July, 2012. The statement Ex.PA was recorded by the police at 12:15 AM. The special report reached the Magistrate at 3:00 AM. The radiological examination showed that there was a fracture of the vertebra. The prosecution had fully established the guilt of the appellant. The statement of the prosecutrix was clear, trustworthy and sufficient to convict him. In these

circumstances, it is held that the appellant was rightly convicted and the finding is affirmed.

7. Regarding the quantum of sentence, the appellant was sentenced to 7 years' imprisonment. Keeping in view the fact that the appellant has undergone a protracted trial of 14 years and that he is now married and has children, therefore, the sentence is reduced to 4 years. There would be no change in the fine. The appellant has already undergone 3 years, 04 months and 19 days of custody before he was bailed out in December, 2005. The appellant would surrender within 3 weeks to undergo the remaining sentence. The appeal stands disposed of on the above terms.

A copy of this order be sent to CJM, Gurgaon. In case, the appellant fails to surrender, it would take necessary steps for the arrest of the accused and commit him to jail to undergo the remaining part of the sentence.

(ANITA CHAUDHRY)
JUDGE

01.03.2016
sunil