

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

**Criminal Revision No.3945 of 2015 (O&M)
Date of decision: 11.01.2016**

Sandeep Singh @ Sunny

..Petitioner

Versus

State of Haryana

..Respondent

CORAM: HON'BLE MRS. JUSTICE DAYA CHAUDHARY

- 1. Whether reporters of local newspapers may be allowed to see judgment? Yes/No**
- 2. To be referred to reporters or not? Yes/No**
- 3. Whether the judgment should be reported in the Digest? Yes/No**

Present: Mr. Sanjeev K. Panwar, Advocate
for the petitioner.

Ms. Trishanjali Sharma, AAG, Haryana
for the respondent – State.

Daya Chaudhary, J.

The present revision petition has been filed to challenge the judgment dated 15.09.2015 passed by the Additional Sessions Judge, Faridabad, whereby, appeal filed by the petitioner against judgment of conviction and order of sentence dated 13/16.03.2015 passed by the Principal Magistrate, Juvenile Justice Board, Faridabad, has been dismissed.

Briefly, the facts of the case as made out in the revision petition are that the petitioner along with children of DW1-Santokh Singh, prosecutrix and her friend, namely, Lado went to see Mangal Bazar and there the prosecutrix and her friend Lado called Sandeep

and taunted him. The children of Santokh Singh and Sandeep disclosed the said incident to him. Santokh Singh along with Atam Singh, the father of present petitioner, Charn Singh, Rambir and Gurdeep Singh @ Deepa went to the house of the prosecutrix for complaining the same. The parents of the prosecutrix assured them that such incident would not be repeated again. Thereafter, the father of the prosecutrix made a complaint against the petitioner. On the basis of said complaint, a formal FIR was registered. Statement of the prosecutrix was recorded under Section 164 Cr.P.C. by Illaqa Magistrate. The accused, who was juvenile, was apprehended and thereafter, his statement was recorded under Section 161 Cr.P.C. On completion of investigation, the challan was presented under Section 173 Cr.P.C. before Juvenile Justice Board, Faridabad.

On finding a *prima facie* case under Section 354-D IPC against the petitioner, notice of accusation was served upon him to which he pleaded not guilty and claimed enquiry.

The prosecution examined as many as seven witnesses. Thereafter, the statement of accused under Section 313 Cr.P.C. was recorded wherein he pleaded innocence and false implication.

In defence, the accused-petitioner examined two witnesses.

On appreciation of evidence and after enquiry, the accused-petitioner was convicted for offence punishable under Section 354-D IPC vide judgment dated 13.03.2015 and was ordered

to be sent to Special Home, Ambala for a period of six months vide order dated 16.03.2015.

Aggrieved by said judgment and order dated 13/16.03.2015, the petitioner filed an appeal before the Additional Sessions Judge, Faridabad, which was dismissed on 15.09.2015.

Learned counsel for the petitioner submits that both the judgments of the lower Court are based on presumption and surmises and are not based on proper appreciation of evidence. There are serious contradictions in the statements of the prosecution witnesses. PW2- Ram Shankar-complainant has stated in his statement that he made a complaint to the Police on 06.05.2014 whereas as per statement of SI Surender Singh PW5, the Investigating Officer of the case, no such complaint was made to the Police prior to 09.05.2014. Learned counsel further submits that there was no eyewitness of the alleged incident and as such, the version of the prosecution cannot be believed. The petitioner has produced defence witnesses, namely, Santokh Singh and Gurdeep Singh as DW1 and DW2 and they have stated that the allegations levelled against the accused-petitioner are false and baseless. Santokh Singh-DW1 has stated in his statement that it was the daughter of the complainant, who misbehaved with the petitioner and because of that grudge in mind, the said FIR was got registered against the petitioner. There was unexplained delay in lodging of the FIR as the occurrence took place on 06.05.2014 and the FIR was lodged on 09.05.2014. Learned counsel also submits that

the daughter of the complainant was major but the FIR was lodged on the basis of statement of her father whereas it could have been lodged by the victim herself. The petitioner was juvenile at the time of occurrence.

Learned counsel also submits that the petitioner has undergone actual sentence of four months against total sentence of six months and no other case is pending against him. In the end, learned counsel for the petitioner submits that he will not contest the conviction in case, the sentence is reduced to the period already undergone.

Learned State counsel has not disputed the custody period undergone by the petitioner.

Heard arguments of learned counsel for the petitioner as well as of learned State counsel and have also perused the relevant record of the case including judgments of both the Courts below.

The judgment of conviction and order of sentence has been challenged on the ground of delay in lodging of the FIR and also that there are serious contradictions and discrepancies in the statements of the prosecution witnesses. Earlier the complaint was made as the victim misbehaved with the petitioner. But subsequently, the complaint was made by father of the victim as he was having grudge in his mind.

On perusal of judgments of both the Courts and the evidence available on the file, it appears that only minor contradictions

and inconsistencies are there, which do not affect the case of the prosecution being immaterial. The statement of the complainant has been corroborated by the statements of other witnesses. It has also been submitted by learned counsel for the petitioner that he will not contest the conviction in case, the sentence is reduced to the period already undergone.

Keeping in view the limited prayer of the counsel for the petitioner that he does not want to contest the conviction in case, the sentence is reduced to the period already undergone as the petitioner is facing the agony of trial since registration of FIR i.e., 09.05.2014; and also has undergone actual sentence of four months against total sentence of six months, no other case is pending against him, the conviction of the petitioner is upheld but his sentence is reduced to the period already undergone by him. He be released forthwith if not required in any other case.

The revision petition is disposed of with the modification in sentence by upholding the judgment of conviction.

11.01.2016
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(DAYA CHAUDHARY)
JUDGE