

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CRR No. 3210 of 2016

Date of decision : 18.10.2016

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Islam

.....Petitioner

Versus

State of Haryana and another

.....Respondents

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CORAM: HON'BLE MS. JUSTICE RITU BAHRI

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Present: Mr. Rajesh Lamba, Advocate for the petitioner.

Mr. D.R Singla, DAG, Haryana.

Mr. D.S Matya, Advocate for respondent no.2.

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RITU BAHRI, J.

Present revision petition has been filed by the petitioner against the judgment dated 23.8.2016 passed by the Additional Sessions Judge, Palwal vide which the appeal preferred by the petitioner was dismissed. This appeal had been preferred by the petitioner against the judgment dated 31.3.2016 passed by the Sub Divisional Judicial Magistrate, Hathin vide which the petitioner was convicted for commission of offence punishable under Sections 354 and 506 IPC and order dated 5.4.2016 vide which the petitioner was sentenced to undergo rigorous imprisonment for two years for the commission of offences punishable under Sections 354/506 IPC and sentenced to undergo RI for a period of two years under Section 354 IPC

and for a period of two years under Section 506 IPC.

Facts of the case, in brief are that on 1.10.2011, Afsari-respondent no.2 had gone to her fields to take stock of her paddy crop. At that time, she was alone and her husband Razzak was working in another field. When respondent no.2 went to her fields Islam-petitioner was present there and finding her alone, he caught her by hand and dragged her inside the field of *jawar*. The petitioner gagged her mouth and raped her. The petitioner criminally intimidated her not to disclose the incident lest she would be killed. She revealed the incident to her husband but due to the threat given by the petitioner, they did not visit the police station on that day. However on 2.10.2011, respondent no.2 got registered FIR No.273 under Sections 376/506 IPC.

After going through the evidence led by the prosecution and defence, the trial Court convicted the petitioner for the commission of offences punishable under Sections 354 and 506 IPC and sentenced to undergo RI for a period of two years under Section 354 IPC and for a period of two years under Section 506 IPC.

On notice, counsel for the petitioner has put in appearance. Counsel for the petitioner has argued that the alleged incident relates back to the year 2011, whereas an amendment in Section 354 was inserted in the IPC w.e.f 3.2.2013 which substituted the words "*shall be punished with imprisonment of either description for a term which may extend to two years or with fine or with both*" with "*imprisonment of either description for a term which shall not be less than one year but which may extend to five years along with the imposition of fine also*". In the present case maximum conviction of two years has been awarded to the petitioner.

At the outset, counsel for the petitioner does not dispute the petition on merits rather prays for reducing the quantum of sentence awarded to the petitioner. He has referred to a judgment of this Court in Criminal Revision No.2376 of 2011 (Beant Singh vs. State of Punjab) decided on 11.1.2012, wherein the petitioner Beant Singh, who was a juvenile at the time of commission of the crime was extended the benefit of probation under Section 360 Cr.P.C.

Counsel for the respondent does not dispute the abovesaid facts. As per Section 354 IPC before amendment the punishment would be upto two years with fine or both. The conviction could not have been passed for minimum one year or more as the incident relates back to the year 2011 and this amendment has been made in the year 2013.

In the present case, the dispute is between the close relations. The petitioner is brother-in-law of the complainant Smt. Afsari who is wife of Razzak, real brother of the petitioner. As per the jail custody certificate, the petitioner has undergone one month and 25 days in custody. The petitioner could have been convicted for a period of one year or with fine or with both and the benefit of probation can be extended to under Section 360 Cr.P.C. As per Section 360 Cr.P.C. the benefit of probation can be extended when an offence is punishable with fine only or with imprisonment for seven years or less. Section 360 Cr.P.C. is reproduced below:-

“360. Order to release on probation of good conduct or after admonition.

(1) When any person not under twenty-one years of age

is convicted of an offence punishable fine, or with imprisonment for a term of seven years or less, or when any person under twenty-one years of age or any woman is convicted of an offence not Punishable with death or imprisonment for life, and no previous conviction is proved against the offender, if it, appears to the court before which he is convicted, regard being had to the age, character or antecedents of the offender, and to the circumstances in which the offence was committed, that it is expedient that the offender should be released on probation of good conduct, the court may, instead of sentencing, him at once to any Punishment, direct that he be released on his entering into a bond, with or without sureties to appear and receive sentence when called upon during such period (not exceeding three years) as the Court may direct and in the meantime to keep the peace find be of good behaviour :

Provided that where first offender is convicted by a Magistrate of the second class not specially empowered by the High Court, and the Magistrate is of opinion that the powers conferred by this section should be exercised, he shall record his opinion to that effect. and submit the proceedings to a Magistrate of the first class forwarding the accuses to or taking, bail for his appearance before, such Magistrate, who shall dispose of the case in the

manner provided by sub-section (2).

(2) Where proceeding are submitted to the Magistrate of the 1st class as provided in sub-section (1), such Magistrate may thereupon pass such sentence or make such order as he might have passed or made if the case had originally been heard by him, and if thinks further inquiry or additional evidence on any point to be necessary, he may make such inquiry or take such evidence himself or direct such inquiry or evidence to be made or taken.

(3) In any case in which a person is convicted of theft, theft in a building, dishonest misappropriation, cheating or any offence under the Indian Penal Code (45 of 1860) punishable with not more than two years imprisonment or any offence punishable with fine only and no previous conviction is proved against him, the court before which he is so convicted may, if it thinks fit, having regard to the age, character, antecedents or physical or mental condition of the offender and to the trivial nature of the offence or any extenuating circumstances under which the offence was committed, instead of sentences him to any punishment, release him after due admonition.

(4) An order under this section may be made by any

Appellate Court or by the High Court or Court of Session when exercising its power of revision.

(5) When an order has been made under this section in respect of any offender, the High Court or Court of Session may, on appeal when there is a right of appeal to such court, or when exercising its powers of revision, set aside such order, and in lieu thereof pass sentence on such offender according to law:

Provided that the High Court or Court of Session shall not under this sub-section inflict a greater punishment than might have been inflicted by the court by which the offender was convicted.

(6) The provisions of sections 121, 124 and 373 shall, so far as may be apply in the case of sureties offered in pursuance of the provisions of this section.

(7) The court, before directing the release of an offender under sub-section (1) shall be satisfied that an offender or his surety (if any) has a fixed place of abode or regular occupation in the place for which the court acts or in which the offender is likely to live during the period named for the observance of the conditions.

(8) If the court, which convicted the offender, or a court which could have dealt with the offender in respect of his original offence, is satisfied that the offender has failed to observe any of the conditions of his recognizance, it may issue a warrant for his apprehension.

(9) An offender, when apprehended on any such warrant, shall be brought forthwith before the court

issuing the warrant, and such court may either remand him in custody until the case is heard or admit him to bail with a sufficient surety conditioned on his appearing for sentence and such court may after hearing the case, pass sentence.

(10) Nothing in this section shall affect the provisions of the Probation of offenders Act, 1958 (20 of 1958), or the Children Act, 1960 (60 of 1960), or any other law for the time being in force for the treatment, training or rehabilitation of youthful offenders.”

As the essential ingredients for grant of relief of probation have been made out, this Court is of the view that benefit of probation under section 360 Cr.P.C should be extended to the petitioner. The judgment of conviction of both the Courts below are upheld. The petitioner is directed to be released on probation subject to furnishing the

bonds/security to the satisfaction of the trial Court. The petitioner shall keep peace and maintain good behaviour for one year after his release on probation.

The revision petition is accordingly disposed of.

18.10.2016
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(RITU BAHRI)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	No