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

CRA-S-3410-SB of 2012 (O&M)

Date of decision: May 16, 2017

Sunner Mehto @ Sunder

.....Appellant

Versus

State of Haryana

....Respondent

CORAM: HON'BLE MR. JUSTICE A.B. CHAUDHARI

Present: Mr. S.K. Choudhary, Advocate the appellant.

Ms. Tanushree Gupta, DAG Haryana.

A.B. CHAUDHARI, J (Oral)

Being aggrieved by the judgment and order dated 15.10.2012/17.10.2012 in Session Case No.30 of 2011 passed by the learned Additional Sessions Judge, Faridabad, by which the appellant was convicted for offence punishable under Section 376 of Indian Penal Code, 1860 (for short 'IPC') and was sentenced to undergo Rigorous Imprisonment for 7 years and fine of ₹3,000/-, and also convicted for offence punishable under Section 363 IPC and was sentenced to undergo Rigorous Imprisonment for 1 year and fine of ₹2,000/-; in default of payment of fine, further undergo Rigorous Imprisonment for 3 months, the present appeal was filed by the appellant.

In support of the appeal, learned counsel for the appellant contended that the trial Court committed an error in convicting the appellant for offences as aforesaid. According to him, the findings

recorded by the trial Court that the prosecutrix was minor, is wrong, illegal and contrary to the evidence on record. He submitted that at any rate, the prosecutrix was major and therefore, the conviction could not have been recorded against the appellant. He further submitted that according to the prosecution, the prosecutrix had moved with the appellant at various places, but still it is admitted fact that she did not raise any hue and cry anywhere nor tried to get attraction of any people during the period which she was moving with the appellant. According to him, that was clearly an indicator of the fact that she was the consenting party and therefore, the appellant could not have been convicted for any offence. In the alternative, he submitted that the appellant is in jail from the date of his arrest, namely February 2011 and was in jail even during trial. He invited my attention to the custody certificate dated 04.02.2016 and submitted that by now, the appellant has already completed the sentence of 5 years and 4 months.

Per contra, learned State counsel opposed the appeal and supported the impugned judgment and order so also the reasons recorded in the judgment. She submitted that the trial Court has not make any mistake in recording the finding of conviction. The prosecution had proved that the girl was enticed away by the appellant and therefore, she was taken away from the lawful custody of her guardian and therefore, the appellant was rightly convicted for offence under Section 363 IPC. Her evidence as to the rape was committed is corroborated by the evidence of doctor as found by the trial Court and therefore, the finding of conviction

is legal, correct and proper. She submitted that there is no need to interfere with the sentence as prayed for by the learned counsel for the appellant.

I have gone through the entire judgment recorded by the trial Court and so also the findings. In so far as the age of the prosecutrix is concerned, the trial Court has relied upon the evidence of the prosecutrix herself so also the Middle School Examination Certificate (Exhibit P-11) on record. The submissions made by the learned State counsel that the said documentary evidence was not seriously challenged by the appellant. Therefore, there is documentary evidence to show on record that the prosecutrix was minor at the time she abducted by the appellant. The finding therefore, that the appellant was guilty for offence under Section 363 IPC is legal, correct and proper. In so far as the finding about rape is concerned, the sworn testimony of the prosecutrix about the said aspect of the matter has been corroborated by the evidence of doctor and therefore, the prosecution clearly proved its case beyond any doubt. Thus, in my opinion, the finding recorded by the trial Court about conviction of the appellant on both above offences is legal, correct and proper and there is no reason for me to interfere with the finding of conviction recorded by the trial Court. Thus, the findings regarding conviction of the appellant deserves to be confirmed.

The next question is about the sentence awarded to the appellant. The trial Court awarded the sentence of 7 years and fine of ₹3,000/- for offence punishable under Section 376 IPC and sentence of 1 year and fine of ₹2,000/- for offence punishable under Section 363 IPC.

The sentence was to run concurrently. The appellant has, by now, undergone the sentence of about 5 years and 4 months. The custody certificate on record shows that including remission, as on 04.02.2016, he has undergone 6 years, 3 months and 22 days. That clearly shows that including remission, the appellant has already undergone the entire sentence awarded to him. Hence, the sentence awarded to the appellant deserves to be reduced to one which he has already undergone. In that view of the matter, I make the following order:-

ORDER

- (i) CRA-S-3410-SB of 2012 is partly allowed;
- (ii) The impugned judgment and order of conviction of the appellant for offence punishable under Sections 376 and 363 IPC, is confirmed;
- (iii) The impugned judgment and order of sentence is set aside and modified to one which the appellant has already undergone;
- (iv) The appellant be set at liberty forthwith, if not required in any other case.

(A.B. CHAUDHARI)
JUDGE

May 16, 2017
mahavir

Whether speaking/ reasoned: Yes/No

Whether Reportable: Yes/No