

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

CRR No. 1198 of 2017 (O&M)

Date of Decision: 11.08.2017

Krishan

..... Petitioner

Versus

State of Haryana

..... Respondent

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. R.K.Agnihotri, Advocate
for the petitioner.

Mr. Anmol Malik, AAG., Haryana.

LISA GILL, J.

Petitioner has been convicted for the offence punishable under Section 354 of Indian Penal Code, 1860 (for short-'IPC') and sentenced to undergo simple imprisonment for a period of 1 year and 6 months by the learned trial Court, vide judgment and order of conviction dated 29.01.2015 /30.01.2015.

Petitioner's appeal against his conviction and sentence has been dismissed by the learned Additional Sessions Judge, Karnal, vide judgment dated 21.01.2017.

Brief facts of the case are that FIR No. 280 dated 11.09.2009 was registered against the petitioner on a complaint submitted by the complainant on 11.09.2009. The complainant averred that she was going towards the field of Dharma from her village for harvesting the crop at about 07.30 a.m. on 09.09.2009. When, she reached near the Dera at Balla Road, the present petitioner came in front of her and caught hold of her arm. He

dragged her to the fields with an intent to outrage her modesty. She raised hue and cry, on which, her brother-in-law namely Satpal arrived at the spot and rescued her. The petitioner fled from the spot. Formal FIR was registered on this complaint. Final report under Section 173 Cr.P.C was presented after completion of investigation.

Charge under Section 354 IPC was framed against the petitioner, to which he pleaded not guilty and claimed trial. The prosecution examined as many as five witnesses to prove its case.

The petitioner in his statement under Section 313 Cr.P.C, denied the incriminating evidence put to him. He pleaded innocence and false implication. No evidence was led in defence.

Learned trial Court on considering the entire facts and circumstances of the case as well as the evidence on record concluded that the prosecution successfully proved its case against the petitioner beyond all reasonable doubt. It is specifically held that the version put-forth by the complainant is consistent and could not be shattered despite searching and lengthy cross-examination. It is observed that the defence was not able to impeach her credit. The complainant's stand was fully corroborated by the evidence of Satpal (PW-2). It is further held that the delay of two days in lodging of the FIR did not detract from the prosecution case in any manner. Accordingly, the petitioner was convicted for the offence punishable under Section 354 IPC and sentenced as detailed above.

Learned Additional Sessions Judge, Karnal, while dismissing the appeal preferred by the petitioner observed that the specific allegations against the petitioner have been duly proved on record by the prosecution beyond any reasonable doubt. In respect of the question of delay of two days in lodging the FIR, it is specifically observed that there could not be any

ritualistic formula for discarding the prosecution version merely on the ground of delay. There should be a failure on the part of the prosecution to satisfactorily explain the same to prove the delay to be fatal. Testimony of complainant who is herself the victim in this case has been found to be unimpeachable. Satpal (PW-2), her brother-in-law is a natural witness and his presence on the spot could not be doubted. Conviction of the petitioner and sentence imposed upon him was accordingly upheld.

Learned counsel for the petitioner does not seriously address any arguments on the merits of the case. However, it is vehemently argued that the petitioner is not involved in any other criminal case. He is a first offender and has been facing the agony of trial since the year 2009. Moreover, the petitioner, it is submitted is a poor person and the sole bread winner of his family. He has two children and an old aged mother. There is no one to look after them. Therefore, it is prayed that the benefit of probation be extended to the petitioner or the quantum of sentence imposed on the petitioner be reduced to that of already undergone. It is further submitted that as the FIR in question is of the year 2009, the amended provisions of Section 354 IPC are not applicable. Therefore, there is no impediment in either extending the benefit of probation or of reduction of sentence imposed upon the petitioner. It is thus, prayed that this revision petition be allowed.

Learned counsel for the State while refuting the above said arguments submits that the prosecution has duly proved its case against the petitioner beyond all reasonable doubt. There is no infirmity or illegality in the impugned judgments. Moreover, there are no such mitigating circumstances for either releasing the petitioner on probation or reduction of the sentence imposed upon him. It is however not denied that the petitioner

is not involved in any other criminal case. Learned counsel for the State is also unable to deny that the FIR in this question was lodged on 11.09.2009 i.e. prior to the amendment in Section 354 IPC (03.02.2013).

I have heard learned counsel for the parties and have gone through the record of the case with their able assistance.

Learned counsel for the petitioner is unable to point out any illegality or infirmity in the findings of the learned trial Court or the First Appellate Court in respect to the conviction of the petitioner. The prosecution has indeed proved its case against the petitioner beyond reasonable doubt. The impugned judgments do not call for any interference in this regard. However, there is merit in the argument raised by learned counsel for the petitioner regarding quantum of sentence imposed upon the petitioner though there is no ground for extending the benefit of probation to the petitioner in the facts and circumstances of the case.

Amendment in the provisions of Section 354 IPC in February 2013 subsequent to the registration of the FIR in question on 11.09.2009 cannot be an impediment to the reduction in the sentence imposed upon the petitioner in respect to an offence committed in 2009. Reference in this respect can be gainfully made to the judgment passed by the Hon'ble Supreme Court in **State through CBI Delhi Vs. Gian Singh 1999 (4) RCR (Criminal) 193** wherein it is held that no ex-post facto legislation is permissible for escalating the severity of punishment. Decision of this Court in **Shobha Mandal Vs. State of Haryana 2007 (3) R.C.R. (Criminal) 356** is to the same effect.

It is not in dispute that the petitioner is not involved in any other criminal case. Petitioner is the sole bread winner of his family, having two children and an old aged mother to care for. This Court in **Roshan Lal Vs.**

State of Haryana 2006 (4) R.C.R. (Criminal) 318 reduced the sentence imposed upon the accused in that case from 1 year to 6 months under Section 354 IPC while declining to grant the benefit of probation.

It is considered just and expedient in the facts and circumstances of this case to reduce the sentence of 1 year and 6 months imposed upon the petitioner to nine months. The amount of fine of ₹ 1000/- is enhanced to ₹ 25,000/- and in default thereof, the petitioner shall undergo simple imprisonment for one month. A sum of ₹ 20,000/- out of the fine imposed be paid as compensation to the complainant/victim in this case.

While upholding the conviction of the petitioner for the offence punishable under Section 354 IPC and modification in the sentence as detailed above this revision petition is disposed of.

11.08.2017
s.khan

[LISA GILL]
Judge

Whether speaking/reasoned : Yes/No

Whether reportable: Yes/No