

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

**CRA-S-287-SB-2005
Date of decision: 4.05.2018**

Inder Sain alias Nikku

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. H.S. Diwana, Advocate, and
Mr. N.S. Diwana, Advocate,
for the appellant.

Mr. I.P.S. Doabia, Addl. A.G., Punjab.

JAISHREE THAKUR, J.

1. The instant appeal has been filed seeking to challenge the judgment dated 24.12.2004 whereby the Addl. Sessions Judge, Patiala has convicted the appellant under Sections 366 & 376 IPC and sentenced him to undergo rigorous imprisonment for five years with fine of ₹ 5,000/- for offence under Section 366 IPC and ten years with fine of ₹ 10,000/- for offence under Section 376 IPC.

2. In brief, the facts are that a complaint was registered at the behest of the mother of the prosecutrix wherein she stated that on 02.07.1992 at about 12.30 p.m. her daughter came home crying and on enquiry has told that the accused had taken her to *Khola* in that vicinity on the pretext of lighting *dhoop* there. He broke the elastic of her underwear, opened the zip of his pant and put his private organ into her private organ after making her to lay down on the

ground. The matter was immediately reported to the police and a medical examination of the prosecutrix was done and in the opinion of the doctor the young prosecutrix had been raped. After registration of the case, the police arrested the accused-appellant and on completion of investigation, challan was presented.

3. Copies of the documents as required under Section 207 Cr.P.C. were supplied to the accused and on perusal of the report presented under Section 173 Cr.P.C. a prima facie case under Section 366 & 376 IPC was made out against the accused and he was accordingly charge-sheeted, to which he pleaded not guilty and claimed trial.

4. In support of the case, the prosecution examined PW-1 Dr. Arvinder Kaur, PW-2 Dr. P.D. Sharma, PW-3 Chanchal Rani, PW-4 Prem Chand and PW-5 SI Gurcharan Singh. The prosecutrix being of tender age and on account of the fact that she got stunned in the Court after answering some questions, was not examined and notings were made to this effect.

5. The statement of the accused was recorded under Section 313 Cr.P.C., wherein he denied all the allegations and pleaded innocence and in his defence he examined DW-1 Gian Chand and DW-2 Gokal Chand.

6. The appellant was acquitted of the charges framed against him by judgment dated 27.02.1993 but against the order of acquittal, an appeal was preferred before the High Court bearing Criminal Appeal No. 309 DBA of 1993. On appreciation of the evidence, the High Court in Division Bench set aside the judgment and the matter was remanded back on 05.07.2004 to the Sessions Court to decide the case in accordance with law. The appellant, thereafter preferred Special Leave Petition before the Supreme Court bearing

CRIMP No. 11134 of 2004 challenging the remand, which was dismissed vide judgment dated 16.11.2004. The Addl. Sessions Judge after hearing the case afresh held that the Division Bench of the Punjab and Haryana High Court in its judgment dated 05.07.2004 convicted the appellant for an offence under Section 376 IPC by taking note of the fact that it was proved on the file, the accused had kidnapped the prosecutrix to take her to the *khola* where he committed the offence of rape and accordingly pronounced the sentence of five years and fine of ₹ 5,000/- for the offence under Section 366 IPC and ten years and fine of ₹ 10,000/- for an offence under Section 376 IPC.

7. Learned counsel appearing on behalf of the appellant does not press the appeal on merits, but prays for leniency and reduction of the sentence so awarded on the ground that the appellant has already faced the agony of protracted trial for 25 years. It is argued that accused-appellant has a right of speedy trial under Article 21 of the Constitution of India and, therefore, there should be reduction in the sentence so awarded to the period already undergone by him. In support of his argument, he places reliance upon ***Behari Lal vs. State of (U.T.), Chandigarh, 2001(1) RCR (Crl.) 223 (P&H)***, ***Harjit Singh vs. State of Haryana, 2001(1) RCR (Crl.) 311 (P&H)*** and ***Mohan Lal vs. State, 2001(2) RCR (Crl.) 20, Delhi High Court.***

8. Per contra, Mr. I.P.S. Doabia, learned Additional Advocate General Punjab appearing on behalf of the respondent-State submits that the appellant herein has been convicted under Sections 366 and 376 IPC which is a heinous crime. In fact, the prosecutrix was of a tender age of six years and medical evidence on the record would substantiate that the offence had been committed upon her. It was argued that the appellant herein had appealed

against the judgment rendered by the High Court setting aside the acquittal by the Addl. Sessions Judge which too has been dismissed and, therefore, in the special circumstances of the instant case there is no ground made out for reduction of the sentence.

9. I have heard learned counsel for the parties and with their assistance have perused the record of the case.

10. Learned counsel for the appellant does not impugn the judgment holding the appellant guilty of the charges framed under Sections 366 & 376 IPC, but prays for leniency and reduction of sentence to one already undergone. As regards the question of reduction of sentence, the judgment referred to by counsel for the appellant i.e. **Behari Lal** case (supra) pertains to a case under Prevention of Food Adulteration Act, 1954, where the Single Judge reduced the sentence imposed upon the appellant therein to one already undergone on account of the mitigating circumstances that the petitioner has undergone the agony of the protracted trial for more than 15 years while noting judgments in **Chander Bhan v. State of Haryana, 1996(1) Recent Criminal Reports 125**, wherein it has been held that “*an accused has a right of speedy trial under Article 21 of the Constitution of India*”. Similarly, in **Harjit Singh's** case (supra) it was held that the accused had faced trial for 8 years and the sentence was reduced to already undergone. In another matter, the Delhi High Court in **Muna Lal** case (supra) also reduced the sentence to one already undergone as the appellant had been facing trial and prosecution for more than 24 years.

11. Rape is a heinous offence which not only leaves physical scars upon a woman/child but also has a deep psychological impact upon her mental

well being, scaring all her life. The victim, loses her sense of self-worth and dignity which is difficult to compensate in the long run. Not only is there physical and mental scaring, there is also a stigma attached to the victim for no fault of her's.

12. The question regarding reduction of sentence in a rape case, came up for hearing in a judgment rendered in State of **Rajasthan vs. Vinod Kumar, 2012(6) SCC 770**, wherein the accused persons were convicted and sentenced to 7 years each by the trial Court, which is minimum sentence prescribed under Section 376 IPC. The High Court reduced the sentence of one of the accused to one already undergone (11 months 25 days) on the ground that he had not himself committed the rape, but had only accompanied the co-accused. The High Court reduced the sentence by observing that it was a fit case for reduction of the sentence. The Supreme Court set aside the order and restored the order of the trial Court by holding that no such special reasons have been set out to reduce the sentence while further holding that deciding the case in such a casual manner reduces the criminal justice delivery system to mockery. The Hon'ble Supreme Court in **State of Rajasthan v. Vinod Kumar** case (supra) while dealing with a judgment of awarding of lesser punishment held as under :-

“19. Awarding punishment lesser than the minimum prescribed under [Section 376](#) IPC, is an exception to the general rule. Exception clause is to be invoked only in exceptional circumstances where the conditions incorporated in the exception clause itself exist. It is a settled legal proposition that exception clause is always required to be strictly interpreted even if there is a hardship to any individual. Exception is provided with the object of

taking it out of the scope of the basic law and what is included in it and what legislature desired to be excluded. The natural presumption in law is that but for the proviso, the enacting part of the Section would have included the subject matter of the proviso, the enacting part should be generally given such a construction which would make the exceptions carved out by the proviso necessary and a construction which would make the exceptions unnecessary and redundant should be avoided. Proviso is used to remove special cases from the general enactment and provide for them separately. Proviso may change the very concept of the intendment of the enactment by insisting on certain mandatory conditions to be fulfilled in order to make the enactment workable. (Vide: S. Sundaram Pillai, etc. v. V.R. Pattabiraman, AIR 1985 SC 582; [Union of India & Ors. v. M/s. Wood Papers Ltd. & Anr.](#), AIR 1991 SC 2049; [Grasim Industries Ltd. & Anr. v. State of Madhya Pradesh & Anr.](#), AIR 2000 SC 66; Laxminarayan R. Bhattad & Ors. v. State of Maharashtra & Anr., AIR 2003 SC 3502; [Project Officer, ITDP & Ors. v. P.D. Chacko](#), AIR 2010 SC 2626; and [Commissioner of Central Excise, New Delhi v. Hari Chand Shri Gopal & Ors.](#), (2011) 1 SCC 236).

20. Thus, the law on the issue can be summarised to the effect that punishment should always be proportionate/commensurate to the gravity of offence. Religion, race, caste, economic or social status of the accused or victim are not the relevant factors for determining the quantum of punishment. The court has to decide the punishment after considering all aggravating and mitigating factors and the circumstances in which the crime has been committed. Conduct and state of mind of

the accused and age of the sexually assaulted victim and the gravity of the criminal act are the factors of paramount importance. The court must exercise its discretion in imposing the punishment objectively considering the facts and circumstances of the case. The power under the proviso is not to be used indiscriminately in a routine, casual and cavalier manner for the reason that an exception clause requires strict interpretation. The legislature introduced the imposition of minimum sentence by amendment in the [IPC](#) w.e.f. 25.12.1983, therefore, the courts are bound to bear in mind the effect thereof. The court while exercising the discretion in the exception clause has to record “exceptional reasons” for resorting to the proviso. Recording of such reasons is sine qua non for granting the extraordinary relief. What is adequate and special would depend upon several factors and no straight jacket formula can be laid down.”

13. In ***State of Haryana vs. Janak Singh & etc. 2013(9) SCC 431***, the accused was convicted for offence punishable under Section 376 IPC and sentenced to undergo rigorous imprisonment for 8 years. Before the High Court, the counsel for the accused did not press the appeal on merits but submitted that since he had undergone more than 2 years of actual sentence and that being only bread earner for their family, prayed for reduction of the sentence to one already undergone. The Apex Court while taking note of the fact that the offence of rape being a heinous one held that the High Court could not have reduced the sentence which is below the minimum prescribed by law and the High Court could have done so only if it felt that there were extraneous circumstance by giving reasons there under. It was held that sentence remission is impermissible in a serious offence like rape.

14. Learned counsel for the appellant herein is not pressing for having the conviction set aside, but only prays for reduction of the sentence to one already undergone which as per the custody certificate is of 05 years, 09 months and 04 days out of 10 years. As per the judgment relied upon by counsel for the appellant, the accused appellant is entitled to a reduction of sentence to one already undergone on the ground that there has been protracted trial.

15. However this court is not inclined to grant the relief as sought. It can not be lost sight of the fact that the victim was only 6 years old at the time of the offence and the medical examination conducted read with the statement of the doctor would clearly substantiate that the offence has been committed.

The medical as conducted was as under :-

“From the Local Examination of Minu Rani, I found that her valva was swoolen. There were marks of injuries on valva. 'Four sheatte' was found torn. There was oozing of blood from the injuries in the vagina. On examination per Vaginal Examination was very tender. Uteris infantile and of small size, 2 sticks swabs were taken from the Vagina and were sent for the Chemical Examination.....”

16. The defence as set up by the accused appellant has been disbelieved that he has been falsely implicated as he was in love with the sister of the mother of the victim and that was not to the liking of the family.

17. The sentence for having committed the offence of rape has been specified in Section 376 IPC which is punishable with imprisonment of either description for a term which shall **not be less** than seven years but

which may be for life or for a term which may extend to ten years. Proviso to [Section 376\(1\)](#) states that the Court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than seven years. Thus, a minimum of seven years sentence is provided under [Section 376\(1\)](#) of IPC. However Section 376(2) provides for a more stringent punishment for since it also takes into account the special features indicated in the said sub-Section. The punishment so awarded shall be for a term which shall ***not be less*** than ten years but which may be for life. Proviso to [Section 376\(1\)](#) states that the Court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than ten years. In case the courts are so inclined the same can be reduced but there have to mitigating and compelling reasons for doing so.

18. The present case is covered by Section 376(2)(f) IPC i.e. when rape is committed on a victim when she was 6 years of age and the sentence of ten years was rightly imposed on appreciation of evidence. Finding no merit in the instant appeal, the same is dismissed. The appellant is directed to surrender and serve his remaining sentence.

4.05.2018

Satyawan

**(JAISHREE THAKUR)
JUDGE**

Whether speaking/reasoned
Whether reportable

Yes.
No.