

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Criminal Appeal No. S-1581-SB of 2004 (O&M)
Date of decision : May 03, 2019

Harjinder Singh alias Baddu

....Appellant

versus

State of Punjab

....Respondent

Coram: Hon'ble Mr. Justice Fateh Deep Singh

Present : Mr. Gurveer Sidhu, Advocate as Amicus Curiae
for the appellant

Mr. Rakeshinder Singh Sidhu, AAG, Punjab for the State

Fateh Deep Singh, J. (Oral)

This is an appeal by the convict-appellant Harjinder Singh alias Baddu challenging the judgment of conviction dated 27.3.2004 of the court of learned Additional Sessions Judge (Adhoc), Amritsar whereby the appellant was found guilty for commission of offence under Section 376 IPC and sentenced to undergo rigorous imprisonment for seven years with fine of Rs 500/- and in default of payment of fine to further undergo rigorous imprisonment for three months.

Heard Mr. Gurveer Sidhu, Advocate as Amicus Curiae for the appellant and Mr. Rakeshinder Singh Sidhu, AAG, Punjab for the State and perused the records of the case.

The allegations of the prosecution have come about from the statement of complainant a married lady who happens to be aged around 45 years and wife of PW8 Inderjit Singh. In her testimony as PW7, the prosecutrix states that accused Harjinder Singh was known to them and had been visiting their house. On 10.10.2002, the accused had visited their house and wanted to take liquor with her husband and at the instance of accused she was sent by her husband along with the accused to bring liquor and the accused took her through a kacha passage and at an abandoned place, he committed rape upon her against her wishes and thereafter the accused ran away. On reaching home the prosecutrix narrated the entire incident to her husband leading to registration of the present FIR Ex. PG/2.

In order to prove its case, the prosecution examined PW1 Dr. Davinder Pal, Medical Officer who medico legally examined the prosecutrix and proved copy of MLR Ex. PA/1; PW2 Dr. Sawinder Singh, who medico legally examined accused Harjinder Singh and proved copy of MLR Ex. PC/1; PW3 Constable Lakhwinder Singh, who proved his affidavit Ex. PD; PW4 Rishi Ram, Draftsman who

proved site plan Ex. PE; PW5 HC Amarjit Singh who proved his affidavit Ex. PF; PW6 ASI Rabinder Singh, Investigating Officer who proved his endorsement Ex. PG/1 and FIR Ex. PG/2. He also proved site plan Ex. PH; PW7 Radha Rani, who had fully supported the prosecution case and proved her statement Ex. PG on the basis of which present case was got registered; PW8 Inderjit Singh husband of the prosecutrix who also supported the prosecution version and proved his signatures Ex. PG/3 and the prosecution has also tendered into evidence report of the Chemical Examiner Ex. PB.

Upon closure of the prosecution evidence the accused was put the incriminating evidence oral as well as documentary in his statement recorded under Section 313 Cr.P.C. who denied the allegations. In defence, the accused examined DW1 Jagtar Singh to prove that there was some money dispute between him and husband of the complainant and thereafter the defence evidence was closed leading to the passing of the impugned findings.

At the very onset, learned Amicus Curiae for the appellant stated that he does not wish to assail the findings recorded by the learned trial court and would be satisfied if the sentence awarded to the appellant is reduced to the one already undergone. However, the prayer has been opposed by the learned State counsel on the ground of heinousness of the offence committed by the accused.

As per custody certificate produced by the learned State counsel, the appellant has undergone 06 years, 04 months and 16 days out of awarded sentence of 07 years.

Appreciating the submissions, though as per the report of Chemical Examiner Ex. PB, semen was detected in the vaginal swabs of the prosecutrix but on account of the admitted fact that the prosecutrix is a married lady and no test as to DNA profiling of the semen has been undertaken. As per the medico legal report Ex. PA/1, no sign of struggle on the body of the victim has come about is illustrative of doubt over the authenticity of the allegations together with the fact that admittedly there is a money dispute as per the statement of complaint Ex. PG recorded before the police which forms FIR Ex. PG/2 and the fact that it is the own stand of the complainant in statement made before ASI Rabinder Singh that her husband was very much present in the house but she has accompanied the accused to buy liquor are circumstances which puts the Court on its guard.

Keeping in view that for more than 16 long years the appellant had been suffering for this and has also undergone substantial period of incarceration and at the time of commission of offence was young and by now must have entered into middle age with family to support, the ends of justice would be met if the

sentence awarded to appellant is reduced to the period already undergone by him, maintaining the imposition of fine.

With the aforesaid modification in the quantum of sentence, the appeal stands dismissed.

May 03, 2019
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(Fateh Deep Singh)
Judge

Whether speaking/reasoned ?
Whether Reportable ?

Yes/No
Yes/No