

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRA-S-3192-SB-2009
Date of Decision : 01.03.2019

Suraj Bhan and others Appellants

VERSUS

State of Haryana and others..... Respondents

CORAM : HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

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Present: Mr. S.S.Mor, Advocate
 for the appellants.

 Mr.Vijesh Sharma, DAG, Haryana.

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MANJARI NEHRU KAUL, J.

1. The instant appeal has been preferred against the impugned judgment of conviction dated 17.12.2009 and order of sentence dated 18.12.2009 passed by the Addl. Sessions Judge, Hisar, vide which the accused/appellants were convicted under Sections 365 and 323 read with Section 149 IPC and sentenced as under:-

<i>Under Section</i>	<i>Sentence</i>
365/149 IPC	Rigorous imprisonment for three years and fine ₹ 2,000/- each, in default of payment of fine, to further undergo rigorous imprisonment for one month each.
323/149 IPC	Rigorous imprisonment for six months each.

Both the sentences were ordered to run concurrently.

2. As per the prosecution case, there had been a litigation between the appellants and the complainant pertaining to the sale of land qua which

the matter had been compromised in the Court on 07.09.2004, but later due to some dispute the compromise could not fructify. The accused persons had thus kidnapped her son in order to grab her land forcibly. On the basis of the said application, investigation was carried out leading to the recovery of Anil, son of the complainant, from the custody of the accused and registration of the FIR Ex.P3.

3. The learned trial Court convicted the accused/appellants under Sections 365 and 323 read with Section 149 IPC and sentenced them as already detailed above.

4. At the very outset, learned counsel for the appellants as well as the complainant submitted that a compromise had been arrived at between the parties and though the offence under Section 365 IPC was non compoundable, but in view of the compromise if a lenient view could be taken for reducing the sentence to the period already undergone by the appellants in view of the fact that the occurrence pertained to the year 2004 and almost 15 years had elapsed since then with no untoward incident having been reported between the parties.

5. In the light of the submissions made by the parties, this Court vide order dated 24.01.2019 had directed them to present themselves before Chief Judicial Magistrate, Hisar, for recording of their statements with regard to the authenticity of the compromise, if any. The Chief Judicial Magistrate, Hisar had been directed to submit a detailed report regarding the genuineness of the compromise, as also whether the same had been arrived at, out of the free will of the parties without any threat, coercion or undue pressure. The Chief Judicial Magistrate was also directed to intimate whether any other case was pending against either of the parties.

6. Pursuant to order dated 24.01.2019, the parties appeared before the learned Chief Judicial Magistrate, Hisar, and their statements were recorded on 30.01.2019.

7. As per report dated 06.02.2019 received from the learned Chief Judicial Magistrate, Hisar, a compromise had indeed been effected between the parties. Further, the Chief Judicial Magistrate, Hisar recorded its satisfaction that the said matter has been amicably settled without any threat, coercion or undue pressure. Statements of the parties alongwith their duly sworn affidavits are appended along with the said report as Annexures 'A' and 'B'.

8. Learned counsel for the State has stated that the appellants have undergone 03 months and 08 days of actual imprisonment till date.

9. After hearing the counsel for the parties and taking into account the compromise between the parties particularly as they are co-villagers, reduction in sentence can be ordered, though no ground for interference with the conviction of appellants is called for.

10. It is not in dispute that as per the provisions of Section 320 Cr.P.C., offence under Section 365 IPC is not compoundable. Hon'ble the Supreme Court in ***Unnikrishnan @ Unnikuttan v. State of Kerala*** 2017 AIR (SC) 1745 has held that if an offence is not compoundable within the scope of Section 320 of Code of Criminal Procedure the Court may, in view of the compromise arrived at between the parties, reduce the sentence imposed while maintaining the conviction.

11. In view of the above, while maintaining the conviction of the

appellants, their sentence is reduced to the period already undergone.

12. Appeal is disposed of accordingly.

01.03.2019
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(MANJARI NEHRU KAUL)
JUDGE

Note: Whether speaking/reasoned	Yes / No
Whether Reportable:	Yes / No