

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRA-S-1268 of 2019 (O&M)
Date of Order:29.05.2019

Gagandeep Singh alias Bauna

..Appellant

Versus

State of Punjab

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Balraj Singh Sidhu, Advocate
for the appellant.

Mr. Ramdeep Partap Singh, DAG, Punjab.

ANIL KSHETARPAL, J(Oral)

This appeal has been filed against judgment of conviction and order of sentence passed by the learned Additional Sessions Judge, Moga, dated 12.03.2019, in FIR No.63, dated 30.04.2015, registered under Sections 376(2) (g)/323/325/148/149/120-B of the Indian Penal Code and Sections 66 and 67 of the I.T. Act, at Police Station Baghapurana.

Appellant has been sentenced to undergo rigorous imprisonment for a period of 1 year for commission of offence under Section 325 of the Indian Penal Code and to pay a fine of Rs.1000/-. In default of payment of fine, he shall further undergo rigorous imprisonment for 1 months. He has further been sentenced to undergo rigorous imprisonment for a period of 6 months for the commission of offence under Section 323 of the Indian Penal Code and to pay a fine of Rs.500/-. In default of payment of fine, he shall further undergo rigorous imprisonment for 15 days.

Facts as noticed by the trial Court in para 2 are extracted as under:-

“As per prosecution story, FIR was registered against the accused on the statement of complainant/victim (name not disclosed in order to conceal her identity), wherein she has stated that she is studied upto 10 + 2 and now she is getting training of parlour at Beauty Parlour, Bhagta Bhai Ka. They are two sisters and one brother, who are elder than her. About six months ago, she is having love affairs with Chamkaur Singh son of Ram Singh, resident of Deepa Patti, Vairo Ke. Yesterday, she asked her family members that she is going to beauty parlour and she is going to stay at her friend's house in the night. She and Sarabjit Kaur wife of Jaswant Singh resident of village Mari Mustafa came at Civil Hospital for getting medicine of Sarabjit kaur. After taking medicine, Sarabjit Kaur intimated at her house through mobile phone call that she is speaking Reetu from Romana and is doing the work of beauty parlour with Manpreet Kaur and today they have some work and they both would remain at beauty parlour. Then, she (prosecutrix/victim) made a call to Chamkaur Singh from mobile phone of Sarabjit Kaur and asked him to come at Sarabjit Kaur place as she would spend night at the house of Sarabjit Kaur. At about 10.00 PM, Chamkaur Singh came there and they both settled in a

room. At about 12.00 PM, during night, Jaswant Singh, husband of Sarabjit Kaur along with 8/10 boys came there. They were armed with baseballs and sticks and started beating them after opening their room door forcibly. They dragged them in the courtyard. Chamkaur Singh suffered many injuries. Unidentified persons took her forcibly on a motor and they all raped her without her consent. When she raised hue and cry, all the boys started beating her with legs, baseballs and sticks. Then, three boys took her on a motorcycle and left her at Jaswant Singh's house. Above referred boys in connivance with Jaswant Singh and his wife Sarabjit Kaur raped her without her consent. Out of above boys, names of two are Jassa and Babbu. They also clicked photographs and made video while they were committing rape with her.”

Prosecution after completion of the investigation submitted final report and learned Area Magistrate committed the case to the learned Sessions Judge, Moga. After hearing learned counsel for the parties and perusing contents of the report under Section 173 of the Code of Criminal Procedure along with accompanying documents, a prima-facie case punishable under Sections 376(2)(g)/323/325 read with Sections 149/148/120-B of the Indian Penal Code and Sections 67 of the Information and Technology Act was made out against the accused, who was accordingly charge sheeted to which he pleaded not guilty and claimed trial.

Prosecution in order to prove the charge, has examined 12

witnesses in all. The list of witnesses is available in para 7 of the trial Court judgment. Statement of the accused was also recorded as envisaged under Section 313 of the Code of Criminal Procedure to afford him an opportunity to explain the evidence. In his defence statement he denied all the allegations of the prosecution to be false and pleaded false implication. However he did not lead any defence evidence.

This Court has heard learned counsel for the parties at length and with their able assistance gone through the judgment passed by the learned trial Court.

Learned counsel appearing for the appellant has submitted that the appellant has been falsely implicated in the FIR as earlier the FIR was registered against Jaswant Singh, Sarabjeet Kaur, Jasssa Singh, Babbu and 8-10 unknown persons. He has further submitted that neither the name of the appellant was found mentioned nor any descriptions of whatsoever nature of the appellant was mentioned in the FIR. He further submitted that the learned trial court has already acquitted the appellant and other co-accused from the charges under Sections 376(2)(g)/149/148/120-B and Section 67 of the IT Act and only convicted under Sections 325/323 of the Indian Penal Code.

Learned counsel for the appellant did not dispute the findings of the trial court regarding conviction and only contended on the point of reduction in the quantum of sentence. Learned counsel for the appellant submitted that neither the name of the appellant was found mentioned nor any descriptions of whatsoever nature of the appellant was mentioned in the FIR. He further submitted that the prosecutrix herself when appeared as PW1 did not support the case of the prosecution with regard to allegation of

rape. He further submitted that the appellant has been falsely implicated and has already undergone actual sentence of 09 months and 11 days out of total sentence of 1 year.

Keeping in view the facts and circumstances of the present case, the appellant is facing long protracted criminal proceedings since 2018 and has already undergone actual sentence of 9 months and 11 days out of total sentence of 1 year, the sentence imposed upon the appellant is ordered to be reduced to the period already undergone by him and be released forthwith, if he is not required in any other case.

With the aforesaid modification, the present appeal is partly allowed.

May 29, 2019
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No