



214 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

1) CRA-S-106-SB-2015
Reserved on: 23.07.2024
Pronounced on: 24.07.2024

SomeshAppellant

Versus

State of Haryana ...Respondent

2) CRR-985-2015

MamanAppellant

Versus

State of Haryana and another ...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Surinder Gandhi, Advocate
for the appellant in CRA-S-106-SB-2015

Mr. Mohit, Advocate for
Mr. Sumit Sanwan, Advocate
For the petitioner in CRR-985-2015

Mr. Vikas Bhardwaj, AAG, Haryana

HARPREET SINGH BRAR, J.

1. This common judgment of mine shall dispose of both the aforementioned cases as they arise from identical factual matrix. However, for the sake of brevity, the facts are being extracted from CRA-S-106-SB-2015.

2. The appeal bearing No. CRA-S-106-SB-2015 has been preferred against impugned judgment of conviction and order of sentence dated 09.12.2015 passed by learned Additional Sessions Judge, Bhiwani in FIR No.225 dated 28.04.2014 registered under Sections 354 of IPC, 1860 and



Section 8 of POCSO Act, 2012 at Police Station Sadar Dadri, whereby, the appellant-Somesh was ordered to undergo sentence as under: -

Offence under Section	Sentence (concurrent)
354 IPC	Rigorous imprisonment for 1 year and fine of Rs.5,000/-, in default of which further simple imprisonment for 1 month
8 POCSO Act	Rigorous imprisonment for 3 years and fine of Rs.5,000/-, in default of which further simple imprisonment for 1 month

3. Whereas, the petition bearing No. CRR-985-2015 has been preferred by the father of the victim praying for enhancement of the sentence awarded to the accused in the present case.

4. Succinctly, the facts are that the victim moved a complaint before the concerned police, wherein, it was alleged that on 27.04.2014 she was at her home watching television and her younger brother, grand-mother, and a boy from the neighbourhood namely Somesh (accused) were also present in the house. After some time, her brother along with her grandmother went outside to fetch water leaving the victim and the accused alone at home. Thereafter, the accused started to molest her. The accused also pressed her breast and then fell upon her against her wishes. When she raised hue and cry about the same, her brother came inside due to which the accused fled away from the spot. On the basis of this complaint, the FIR (supra) came to be registered and investigation commenced. After following due procedure, the accused was arrested on 29.04.2014. Upon completion of the necessary legal formalities, police report was presented against the accused. Consequently, the learned trial Court framed charges against the accused for offence punishable under Section 354 IPC and Section 8 POCSO Act, to which he pleaded not guilty and claimed trial. Criminal trial ensued and ultimately culminated into the accused being



convicted for the same and was sentenced as mentioned above. Aggrieved, he has approached this Court by way of the present appeal. Simultaneously, father of the victim, affronted by the quantum of sentence awarded to the accused, has approached this Court seeking enhancement of the same.

5. Appellant-Somesh also filed an application bearing No.CRM-669-2015 under Section 389 seeking grant of bail and suspension of sentence and vide order dated 09.01.2015, this Court extended the period of interim bail granted to him till further orders.

6. Learned counsel for the appellant in CRA-S-106-SB-2015 at the outset submits that he is not challenging the judgement of conviction and has limited his prayer that the appellant be released on probation in accordance with the provisions of Probation of Offenders Act, 1958. He has placed reliance on the judgements rendered in *Chhanni vs. State of Uttar Pradesh, 2006(3) RCR (Crl.) 753* and *State of Haryana vs Prem Chand, 1997(7) SCC 756*.

7. Learned counsel for the petitioner in CRR-985-2015 contends that the learned trial Court erred by not awarding the accused the maximum prescribed sentence under the provisions in which he was convicted, taking into account the gravity of the offence committed.

8. Learned State counsel argues that considering the age of the victim and other facts and circumstances of the case, the appellant-accused does not deserve any leniency and hence the appeal filed by him is worthy of dismissal.

9. I have heard learned counsel for the parties and perused the paper book with their able assistance. The theory of reformation and rehabilitation aims at separating the criminal from the crime and compels us to look beyond the one fateful act committed by him. In a civilised society like ours, it would be truly unfortunate if an offender is not given the opportunity to realise and



fully fathom his mistake and channel that awareness into making fruitful contributions in society. A Co-ordinate bench of this Court in ***Nasri v. State of Haryana 2023(2) Law Herald 2203***, speaking through Justice Arun Monga, made the following observations:

“11.2. Objectives and principles of criminal law as envisioned in the provision ibid, apart from deterrence against committing crime against society, are inter-alia focused on the reformation of offenders, which inheres the concept of probation. Modern criminal justice system often aims to balance punishment with rehabilitation, emphasizing the potential for positive change in individuals who have committed crime. The goal of criminal law extends beyond mere punishment. While punishment serves to deter and hold individuals accountable for their actions, there is a growing recognition of the importance of addressing the underlying factors that contribute to criminal behaviour. This perspective emphasizes the potentials of offenders to reform and reintegrate into society as law-abiding citizens. Probation is one of the mechanisms used to achieve this reformation objective. In certain cases, certain offenders may be asked to remain under community supervision rather than being incarcerated. During such probation period, the offender can be put to follow certain conditions, such as regular reporting to a probation officer, participating in counselling or treatment programs and maintaining employment or education. The aim is to provide support, guidance and opportunities for the offender and to address the root causes of their criminal behaviour and develop positive life skills. Close monitoring and guidance provided during probation can help the offender make positive changes in their life and reduce the likelihood of re offending.”

10. Sections 3 and 4 of the Probation of Offenders Act empower the courts to release the offenders on probation of good conduct in the cases and circumstances mentioned therein. Similarly, Sections 360 and 361 of the Cr.P.C also empower the courts to release the offenders on probation of good conduct



in the cases and circumstances mentioned therein. A two Judge Bench of the Hon'ble Supreme Court in **Som Dutt and others Vs. State of Himachal Pradesh (2022) 6 SCC 722** speaking through Justice Bela M. Trivedi, has held as under:-

“6....having regard to the fact there are no criminal antecedents against the appellants, the court is inclined to give them the benefit of releasing them on probation of good conduct. In that view of the matter, while maintaining the conviction and sentence imposed on the appellants, it is directed that the appellants shall be released on probation of good conduct.....”

11. A two Judge Bench of the Hon'ble Supreme Court in **Lakhvir Singh Vs. State of Punjab (2021) 2 SCC 763** speaking through Justice Sanjay Kishan Kaul, has held as under:-

“6. We may notice that the Statement of Objects and Reasons of the said Act explains the rationale for the enactment and its amendments: to give the benefit of release of offenders on probation of good conduct instead of sentencing them to imprisonment. Thus, increasing emphasis on the reformation and rehabilitation of offenders as useful and self-reliant members of society without subjecting them to the deleterious effects of jail life is what is sought to be subserved.”

12. In view of the above, the judgment of conviction and order of sentence dated 09.12.2015 passed by learned Additional Sessions Judge, Bhiwani in FIR No.225 dated 28.04.2014 registered under Sections 354 of IPC, 1860 and Section 8 of POCSO Act, 2012 at Police Station Sadar Dadri apropos the case at hand, are upheld. However, having regard for the facts and circumstances of the case, this court is inclined to give appellant-Somesh the benefit of probation for good conduct.



13. Consequently, the present petitions are disposed of in the following manner: -

- i. CRA-S-106-SB-2015 is partly allowed. While maintaining the conviction and sentence imposed on appellant-Somesh, it is directed that he be released on probation for good conduct on furnishing a personal bond of Rs. 20,000/- with a surety of the like amount, and on further furnishing an undertaking to keep the peace and good behaviour for a period of two years, to the satisfaction of the concerned trial court. The appellant shall remain under the supervision of the concerned Probation Officer(s) during the aforesaid period. It is further directed that if the petitioner fails to comply with the said directions or commits breach of the undertaking given by him, he shall be called upon to undergo the remaining period of sentence imposed upon him in the present case.
- ii. CRR-985-2015 is dismissed since the findings recorded by the learned trial Court indicate no perversity which would inspire this Court to interfere and enhance the sentence award to appellant-Somesh.

14. All the pending miscellaneous application(s), if any, shall stand disposed of.

(HARPREET SINGH BRAR)
JUDGE

24.07.2024
Neha

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No