



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

**CRR-498-2008 (O&M)
Date of decision: 26.11.2024**

NARESH KUMAR

...PETITIONER

V/S

STATE OF HARYANA

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Harjinder Singh, *amicus curiae*
for the petitioner.

Mr. Vikas Bhardwaj, AAG Haryana.

HARPREET SINGH BRAR, J. (ORAL)

1. This revision has been preferred by the petitioner against the judgment dated 19.02.2008 passed by learned Additional Sessions Judge, Karnal upholding the judgment and order on quantum of sentence dated 17.04.2007 passed by learned Judicial Magistrate Ist Class, Karnal, vide which petitioner has been convicted under Sections 354, 454 and 506 of Indian Penal Code and awarded substantive sentence to undergo rigorous imprisonment for two years and fine of Rs. 2000/- was imposed with default mechanism in case bearing FIR No. 71 dated 28.04.2001 registered at Police Station Kunjpura, District Karnal.

2. Stated briefly, the case of the prosecution is that on 26.4.2001, the husband of the complainant had gone for labour at about 10 p.m. The complainant Sunita along with her five children were sleeping in the room. The complainant was sleeping on the bed whereas her five children were sleeping on the floor. At about 11/11:30 p.m., she heard a noise of scaling the wall and after few minutes, some body entered the room and switched off the light as



well as the fan. She was caught by the shoulder by that person and she tried to free herself but the present petitioner after breaking the string of her Salwar tried to outrage her modesty. She switched on the light and saw that it was the present petitioner, who had tried to outrage the modesty after scaling the wall and entering the room. The children of the complainant also started crying and the present petitioner tried to forcibly assault her and dragged the complainant to the outside the room. When the complainant raised noise, Kamlesh wife of Shish Pal and Shish Pal came there and asked the complainant as to what had gone wrong. She narrated the whole incident to them and in the meantime, the present petitioner slipped away when Shish Pal tried to catch him.

3. On assessing all the material available on the record, the petitioner was convicted vide judgment dated 17.04.2007 by learned JMIC, Karnal. Aggrieved by the same, the petitioner preferred an appeal, which was dismissed by learned lower Appellate Court vide judgment dated 19.02.2008.

4. Learned counsel (*amicus curiae*) *inter alia* contends that there is a delay of two days in reporting the matter to the jurisdictional police authorities and the said delay remained unexplained. As such, the delay creates a serious doubt on the case set up by the prosecution. Further, as per the deposition of the complainant, two witnesses have come to her rescue, when she had raised hue and cry and out of those two, only one had been examined, who admitted of having previous enmity with the family of the petitioner. He further submits that the petitioner has already undergone custody of 02 months and 21 days and is not involved in any other criminal activity.

5. *Per contra*, learned State counsel opposes the prayer of petitioner as the learned JMIC, Karnal has passed a well-reasoned judgment based



on correct appreciation of evidence available on record and the same has also been upheld by the learned lower Appellate Court. As such, the petitioner does not merit any leniency.

6. I have heard learned counsel for the parties and perused the record with their able assistance.

7. In ***Deo Narain Mandal v. State of UP (2004) 7 SCC 257***, a Three Judge Bench of the Hon'ble Supreme Court has opined that awarding of sentence is not a mere formality in criminal cases. When a minimum and maximum term is prescribed by the statute with regard to the period of sentence, a discretionary element is vested in the Court. Background of each case, which includes factors like gravity of the offence, manner in which, the offence is committed, age of the accused, should be considered while determining the quantum of sentence and this discretion is not to be used arbitrarily or whimsically. After assessing all relevant factors, proper sentence should be awarded bearing in mind the principle of proportionality to ensure the sentence is neither excessively harsh nor does it come across as lenient. Further, a two Judge Bench of the Hon'ble Supreme Court in ***Ravada Sasikala vs. State of AP AIR 2017 SC 1166***, has reiterated that the imposition of sentence also serves a social purpose as it acts as a deterrent by making the accused realise the damage caused not only to the victim but also to the society at large. The law in this regard is well settled that opportunities of reformation must be granted and such discretion is to be exercised by evaluating all attending circumstances of each case by noticing the nature of the crime, the manner in which the crime was committed and the conduct of the accused to strike a balance between the efficacy of law and the chances of reformation of the accused.



8. A perusal of the judgment of conviction passed by the learned trial Court indicates no perversity in its findings and the same is based on correct appreciation of evidence available on record.

9. The FIR in the present case was lodged on 28.04.2001 and petitioner has been suffering the agony of protracted trial for more than last 23 years. Since his conviction, petitioner has grown into a law-abiding citizen and desires to live a peaceful life. As per his custody certificate, has undergone actual sentence of 02 months and 21 days out of total sentence of rigorous imprisonment of two years, in the instant case.

10. Accordingly, this Court is of the opinion that it would be in the interest of justice, if the sentence awarded to petitioner is reduced to the period already undergone by him.

11. Consequently, the present revision petition is disposed of in the following terms:

(i) The judgment dated 19.02.2008 passed by learned Additional Sessions Judge, Karnal affirming the judgment of conviction dated 17.04.2007 passed by learned JMIC, Karnal is upheld, however, the order of sentence dated 17.04.2007 is modified to the extent that substantive sentence of rigorous imprisonment for 02 years along with default mechanism awarded to the petitioner is reduced to the period of sentence already undergone by him and the amount of fine i.e. Rs.2000/- imposed upon the petitioner is enhanced to Rs. 10,000/-.

(ii) The petitioner is directed to deposit the amount of fine in the trial Court within one month from the date of receipt of certified copy of this order and in case of default of payment of fine, the petitioner shall be liable to be taken into custody and



made to undergo rigorous imprisonment for 15 days.

12. High Court Legal Services Committee is directed to pay remuneration to *amicus curiae* as per rules.

November 26, 2024
Ajay Goswami

(HARPREET SINGH BRAR)
JUDGE

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|------|---------------------------|--------|
| (i) | Whether speaking/reasoned | Yes/No |
| (ii) | Whether reportable | Yes/No |