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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR-4097-2015 (O & M)
Date of decision: 30.07.2024

BIJENDER

V/S

SAPNA DEVI AND ANOTHER

...PETITIONER

...RESPONDENTS

CORAM: HON’BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Rahul Vats, Advocate
for the petitioner.

Mr. Sandeep Kumar Yadav, Advocate
for respondent No.1.

Mr. Vikas Bhardwaj, AAG, Haryana.

HARPREET SINGH BRAR J. (ORAL)

1. This revision has been preferred against the judgment dated 05.10.2015 passed by learned Additional Sessions Judge, Narnaul, vide which, judgment of conviction dated 12.11.2011 and order of quantum of sentence dated 14.11.2011 passed by learned Additional Chief Judicial Magistrate, Narnaul, in complaint bearing No.96 dated 25.09.2006 registered under Sections 376, 511, 452 and 506 of IPC has been upheld.
2. The petitioner was sentenced as under:

Offence	Sentence
354 IPC	RI for 02 years with a fine of Rs.1000/-, in default of which, to undergo RI for 03 months.
452 IPC	RI for 02 years with a fine of Rs.1000/-, in default of which, to undergo RI for 03 months.

3. The complainant filed the present complaint against the petitioner



on the allegations that on 25.08.2006 at about 10:00 AM, she was all alone in her house. Her husband had been doing service in Dubai. The accused-petitioner, who is RMP doctor by profession, entered her house and closed the door. Petitioner tied her mouth and both hands with a cloth. Petitioner tried to open the string of her '*salwar*' and remove the '*jampher*' worn by her with an intention to commit rape upon her. Petitioner forcibly started kissing her cheeks. At the same time, her '*devar*' Om Parkash and one Rattan Singh came there and called her. When they did not hear any voice from inside, Om Parkash and Rattan entered the house from back door. At that point of time, petitioner had already removed her clothes and was kissing her cheeks. On seeing Om Parkash and Rattan Singh, petitioner ran away from the spot. The matter was reported to the *Sarpanch* of the village, who assured the complainant to take strict action against the petitioner and asked her not to report the matter to police. However, in the end, *Sarpanch* refused to take any action against the petitioner. The complainant approached the local police and got registered FIR No.128 dated 02.09.2006 under Sections 376, 511, 452 and 506 of IPC. The police did not take any action against the petitioner and on 05.09.2006, the petitioner met the complainant and threatened to kill her. Finding no other alternative, she filed the present complaint.

4. The petitioner was convicted vide judgment dated 12.11.2011/14.11.2011 by the learned trial Court, which has also been upheld by lower Appellate Court vide judgment dated 05.10.2015.

5. Learned counsel for the petitioner contends that he is not assailing the impugned judgment of conviction and order of sentence dated 12.11.2011/14.11.2011 on merits and restricts his prayer to modification of the order of quantum of sentence to that of the sentence already undergone by the



petitioner. He has undergone a period of 03 months and 05 days and he is not involved in any other criminal activity.

6. Per contra, learned State counsel opposes the prayer of the petitioner as the learned trial Court has passed a well-reasoned judgment based on correct appreciation of evidence available on record, which has also been upheld by the learned lower Appellate Court and as such, he do not deserve any leniency.

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

8. 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 v. 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.

9. 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. Moreover, learned counsel for the petitioner has not assailed the judgment of conviction on merits, rather he has restricted his prayer only qua quantum of sentence.

10. The complaint in the present case was lodged on 25.09.2006 and the petitioner has been suffering the agony of protracted trial for more than last 17 years. Since his conviction, the petitioner has grown into a law-abiding citizen and desires to live a peaceful life. As per his custody certificate, he is not involved in any other case and has undergone total sentence of 03 months and 05 days out of total sentence of 02 years, in the instant case.

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

12. Consequently, the present petition is disposed of in the following terms:-

(i) The judgment dated 05.10.2015 passed by the learned Additional Sessions Judge, Narnaul, affirming the judgment of conviction is upheld, however, the order of sentence dated 14.11.2011 is modified to the extent that the 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.

(ii) The sentence of fine of an amount of Rs.2,000/- imposed upon the petitioner by the trial Court is increased to Rs.10,000/-. 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 one month.

13. Pending miscellaneous application(s), if any, also stand(s) disposed of.

July 30, 2024

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(HARPREET SINGH BRAR)

JUDGE

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