

BALDEV SINGH & ORS.

v.

STATE OF PUNJAB

(Criminal Appeal No. 749 of 2007)

FEBRUARY 22, 2011

**[MARKANDEY KATJU AND GYAN SUDHA MISRA, JJ.]**

*Penal Code, 1860 – ss. 376(2)(g), proviso and 342 – Punishment for rape and wrongful confinement – Prosecutrix raped and beaten by three accused – Conviction u/ss. 376(2)(g) and 342 – Imposition of 10 years rigorous imprisonment with fine of Rs. 1,000/- – Upheld by High Court – On appeal, held: Accused have already undergone about 3 ½ years imprisonment each – Section 376 is a non-compoundable offence – However, considering the fact that the incident is 14 years old and that the parties have themselves entered into a compromise, while upholding conviction of the accused-appellants, the sentence is reduced to the period of sentence already undergone in view of the proviso to s. 376(2)(g) which for adequate and special reasons permits imposition of a lesser sentence – However, fine enhanced to Rs. 50,000/- – Sentence/Sentencing.*

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 749 of 2007.

From the Judgment & Order dated 27.4.2005 of the High Court of Punjab and Haryana at Chandigarh in Criminal Appeal No. 242-SB of 1999.

Rakesh Tiwari, Rajat Sharma and A.P. Mohanty for the Appellants.

Kuldip Singh for the Respondent.

The following Order of the Court was delivered

A

## ORDER

This appeal has been filed against the impugned judgment dated 27.04.2005 IN CRLA No. 242 of 1999 of the High Court of Punjab & Haryana at Chandigarh.

B

The facts of the case have been set out in the judgment of the High Court and hence we are not repeating the same here, except where necessary.

C

The prosecution case is that on 03.03.1997 at about 6.30 A.M. the prosecutrix was coming to her house after answering the call of nature. The three appellants caught her and took her into a house and raped her and beat her. After police investigation the appellants were charge sheeted, and after a trial were convicted under Section 376 (2) (g) and Section 342 I.P.C. and sentenced to 10 years R.I. and to pay a fine of Rs. 1,000/- each. The sentence was upheld by the High Court, and hence this appeal.

D

E

Admittedly the appellants have already undergone, about 3 and = years imprisonment each. The incident is 14 years old. The appellants and the prosecutrix are married (not to each other). The prosecutrix has also two children. An application and affidavit has been filed before us stating that the parties want to finish the dispute, have entered into a compromise on 01.09.2007, and that the accused may be acquitted and now there is no misunderstanding between them.

F

Section 376 is a non compoundable offence, However, the fact that the incident is an old one, is a circumstance for invoking the proviso to Section 376 (2) (g) and awarding a sentence less than 10 years, which is ordinarily the minimum sentence under that provision, as we think that there are adequate and special reasons for doing so.

G

H

On the facts of the case, considering that the incident happened in the year 1997 and that the parties have themselves entered into a compromise, we uphold the conviction of the appellant but we reduce the sentence to the period of sentence already undergone in view of the proviso to Section 376 (2) (g)

which for adequate and special reasons permits imposition of a lesser sentence. However, we direct that each of the appellants will pay a sum of Rupees 50,000/- by way of enhancement of fine to the victim envisaged under Section 376 of the IPC itself. The fine shall be paid within three months from today. In the event of failure to pay the enhanced amount of fine it will be recovered as arrears of land revenue and will be given to the victim.

The appeal is disposed off.

N.J.

Appeal disposed of.