

**IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH**

**CRA-S-447-SB-2012
Date of Decision: 31.03.2018**

Boota Singh

...Appellant

Versus

State of Punjab

...Respondent

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Amaninder Preet, Advocate
for the appellant.

Mr. I. P. S. Doabia, Addl. A.G., Punjab.

JAISHREE THAKUR, J. (Oral)

Appellant-Boota Singh assailed the judgment of conviction dated 29.09.2011 and order of sentence dated 30.09.2011, passed by the Additional Sessions Judge, Bathinda, whereby he was convicted for committing offence punishable under Sections 376, 323 and 342 of the Indian Penal Code and was sentenced as under:

Under Section 376 IPC	To undergo rigorous imprisonment for a period of 07 years and to pay a fine of Rs. 50,000/- and in default of payment of fine, to further undergo rigorous imprisonment for 1 ½ years.
Under Section 323 IPC	To undergo rigorous imprisonment for a period of 01 year.
Under Section 342 IPC	To undergo rigorous imprisonment for 01 year.

All the substantive sentences were ordered to run concurrently and it was also ordered that the amount of fine i.e. ₹50,000/-, if recovered,

would be paid to the victim as compensation.

In brief, the facts as per prosecution are that on 26.12.2010 at about 01.30 PM, ASI Gurmeet Singh along with other police officials from Police Station City Kotakpura was present at the Traffic Lights Chowk, Kotapura when the prosecutrix along with her sister and brother met the police party and made her statement Ex. PF. In her statement, the prosecutrix stated that she was residing at Devi Wala Road near Power House, Street No. 06, Kotakpura and was aged around 36 years and that in the year 2003, her husband had died. She also stated she was living along with her two children and was working as a maid in various houses for livelihood. She further alleged that on 24.12.2010 around 11.00 AM, she was coming after working at the house of Khiba Singh and was returning to her house. When she reached outside her home near *Pulli* (small bridge), her neighbour Boota Singh was standing there and told her that his mother had called her to their house and when the prosecutrix entered into the house of the accused, the accused pushed her into a room and bolted the door from inside. When the prosecutrix tried to raise *raula*, he threatened her and started beating her with a stick as a consequence of which, the prosecutrix received injuries. Eventually, the accused committed rape upon her against her wishes. It was further alleged by the prosecutrix that at that time she did not see the mother of the accused in the house and out of fear, she did not disclose the incident to anyone. However, after calling her relatives, she narrated the incident to her sister and brother who firstly took her to Civil Hospital, Kotakpura on 25.12.2010 and since there was no lady doctor, she was referred to Medical Hospital, Farikot on the same day, however, the

lady doctor, who was available there, did not admit her and told her to bring the police. On account of night time, her relatives took her back and on 26.12.2010, the incident was brought to the notice of the police. On the statement of the prosecutrix, a formal FIR was registered and all the necessary investigation was carried out. After completion of the investigation, challan was presented against the accused. Finding a prima-facie case, charges under Sections 376, 323 and 342 of the IPC were framed against the accused to which he pleaded not guilty and claimed trial.

Both the parties led their respective evidence and after hearing both the parties and appraising the entire material and evidence on record, learned trial Court convicted appellant-Boota Singh as mentioned in the earlier part of this judgment. Aggrieved against the said judgment, the appellant preferred the instant appeal.

During the pendency of the appeal before this Court, the appellant moved an application bearing CRM-120-2013 seeking suspension of his sentence, however, on 08.01.2013, the same was dismissed as withdrawn with liberty to move the same at a later stage. Again on 12.02.2014, the appellant moved another application bearing CRM-4305-2014 seeking suspension of his sentence, however, by an order dated 12.08.2014, this Court dismissed the said application too and the main appeal was ordered to be fixed for hearing on 10.09.2014.

On 23.09.2017, the appeal was taken up for hearing, on which date, a custody certificate was filed by the counsel for the respondent-State. In the said custody certificate, it was submitted that the appellant was released on four weeks' parole on 02.01.2015 and was directed to surrender

on 31.01.2015 by an order dated 02.02.2015 by the District Magistrate, Faridkot, however, till date neither has he surrendered nor has he taken in custody. In such a situation, the respondent-State was directed to make every effort to secure the presence of the appellant. However, he has not been arrested nor has he surrendered so far. The appeal has been taken up for hearing today and the situation is the same.

Learned counsel for the respondent-State argues that since the appellant is voluntarily absconding and not making himself available to the judicial process, it shows that he has no faith in justice delivery system, hence, his appeal should be dismissed by this Court.

I have heard learned counsel for the parties and have also perused the record of the case.

The present appeal has been preferred against the judgment and order passed by the trial Court wherein the appellant has been convicted for committing offence punishable under Sections 376, 323 and 342 of the Indian Penal Code. Offence under Section 376 IPC is a grievous offence and considered as an offence against the society. The appellant was released on four weeks' parole on 02.01.2015 and was directed to surrender on 31.01.2015, however, till date neither has he surrendered nor has he been arrested. His act in escaping from jail is a wilful, deliberate and gross violation of the judicial process and it amounts to a defiance of the system of criminal administration of justice and he is, therefore, not entitled to any indulgence from this Court. *Sine qua non* for the hearing of the appeal is that the accused-appellant is not absconding and the accused must be available either before Court or before the jail. This Court does not want to

encourage the absconding accused for continuing to abscond by hearing his criminal appeal on merits. It can encourage convicts, who are in jail, to jump bail or furlough.

Counsel for the respondent-State has filed custody certificate which shows that the appellant has undergone 04 years, 08 months and 12 days of his sentence including remissions. However, since the appellant has misused the concession of parole allowed to him and has not surrendered, his appeal itself is likely to be dismissed on the ground that he is not keen on its adjudication.

In view of the above facts and circumstances, the instant appeal is hereby dismissed. However, in case the appellant surrenders to the jail or he is taken in custody, it will be open to him to move an application for restoration of this appeal, which shall be considered in accordance with law.

(JAISHREE THAKUR)

JUDGE

31.03.2018

Waseem Ansari

*Whether speaking/reasoned
Whether reportable*

Yes/No

Yes/No