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HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.31 of 2010

Dharamraj, S/o Manrakhan Nai, aged about 24 years, resident of Village Jabratola, Police Station Manpur, District Rajnandgaon, Chhattisgarh

---- Appellant

versus

State of Chhattisgarh, through Police Station Manpur, District Rajnandgaon, Chhattisgarh

---- Respondent

For Appellant	:	Shri Prakash Tiwari, Advocate
For State/Respondent	:	Ms. Madhunisha Singh, Panel Lawyer

Hon'ble Shri Deepak Gupta, Chief Justice

Judgment on Board

11.11.2016

1. This appeal by the accused is directed against the judgment dated 31.10.2009 passed by the Special Judge, Rajnandgaon in Special Case No.7 of 2009, whereby the accused/Appellant has been held guilty for having committed an offence under Section 377 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for 10 years and to pay fine of Rs.500/-.
2. The case of the prosecution is that on 2.11.2008 at about 8:00 p.m., the Appellant, who was aged about 22-23 years at that relevant time, allured one minor boy (name withheld), aged about 7 years and committed sodomy on him. On the basis of the complaint made by the father of this minor boy, Deviram (PW-2), a report was lodged with the police and on the basis of the report so lodged the accused was arrested two days later on 4.11.2008 and since then the accused is in jail and has spent more than 8 years in jail. This victim was examined as PW-1 and he has in no uncertain terms stated that he was sodomised by the accused.
3. It has been urged by Learned Counsel for the Appellant/accused that in the last portion of the statement of the victim he has admitted that

he received injuries on his anus while playing. No doubt, this fact is true, but when this statement is read as a whole in no manner of doubt this victim received injuries on his anus due to sodomy. This version of the victim is supported by the doctor, who has opined that the victim suffered injuries on his anus due to an unnatural sexual act committed on him. It is no doubt that the doctor has stated that other than this injury there is no evidence of injury being caused by itself is sufficient to corroborate the version of the victim that he was subjected to an unnatural sexual offence by the accused. Therefore, I find no merit in this appeal.

4. Learned Counsel for the Appellant/accused submitted that the accused was aged about 22-23 years at the time when the occurrence took place. He has spent more than 8 years in jail and if he is given benefit of remission, he has almost completed the entire sentence in jail. Therefore, Learned Counsel has prayed that the sentence be reduced to the period of incarceration already undergone by the accused.
5. The purpose of sentencing is both retribution as well as reformation. The Appellant has been sentenced to 10 years' rigorous imprisonment. He was a young boy at the time when the offence was committed. More than 8 years have elapsed and in my opinion he has suffered sufficient period in jail. In this view of the matter, the sentence is reduced to the period of incarceration already undergone by him. The appeal is accordingly partly allowed. The Appellant shall be released forthwith unless otherwise wanted in connection with some other case.

Sd/-
(Deepak Gupta)
CHIEF JUSTICE