

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.1003 of 2008

- Sohan Kumar Kenwat, aged about 25 years, Son of Shri Patiram Kenwat, R/o Village- Navapara, Thana - Chandrapur, Tehsil- Sakti, Distt - Janjgeer- Champa (CG)

---- Appellant

Versus

- State of Chhattisgarh, through Police Station Chandrapur, district- Janjgeer-Champa (CG)

----Respondent

For Appellant	:	Mr. Roop Naik, Advocate
For Respondent/State	:	Shri Suryakant Mishra, Panel Lawyer

Hon'ble Shri Justice Sharad Kumar Gupta
Judgment on Board

09.12.2017

1) In this Criminal Appeal, the challenge is levied to the judgment of conviction and order of sentence dated 03.10.2008 passed by the learned Session Judge, Janjgir-Champa (CG), in Sessions Trial No.59 of 2008, whereby and whereunder the appellant has been convicted for the offence punishable under Section 354 of the IPC and sentenced to undergo RI for six months and to pay fine of Rs.500/-; in default of payment of fine amount, to further undergo Simple Imprisonment for one month.

2) In brief, the prosecution case is that the prosecutrix lived in village Nawapara. She was going to the pond to fetch water. The appellant was standing on the road. In an intention to breach her

modesty, the appellant caught hold of her hand. On 24.01.2008, the prosecutrix lodged a report in Police Station, Chandrapur. The trial Court has examined as many as ten witnesses and on completion of the trial, convicted and sentenced the appellant as aforementioned.

3) Shri Roop Naik, counsel for the appellant urged at this stage that he is not challenging the conviction of the appellant, rather, he is challenging only the aforesaid period of sentence of rigorous imprisonment. He further submits that appellant has already spent his sentence for 2 months and 12 days, thus the period of rigorous imprisonment may be reduced upto the period undergone.

4) Shri Suryakant Mishra, Panel Lawyer for the State urged that the said sentence imposed upon the appellant is just and proper and does not call for any interference.

5) In para-13 of judgment of the Division Bench of Madhya Pradesh High Court in **Govinda & Others v. State of M.P. {2006 (2) CGLJ 10}** has observed as under:-

“13. Thus, after considering the totality of the facts and circumstances of the case, we partly allow this appeal, set aside the conviction under Section 302/34 IPC and instead, convict the appellants under Section 326/34 IPC. Conviction of the appellants under Sections 325/34 and 323 of IPC is affirmed. The fine amount so imposed by the Trial Court is also affirmed. So far as the jail sentence is concerned, the appellants have already suffered jail sentence of more than two and half years, which appears to be just and proper,

therefore, they are entitled to be released on undergone jail sentence.”

6) In **Manjappa v. State of Karnataka {(2007) 6 SCC 231}** Hon'ble Supreme Court dealing with the case wherein applicant was sentenced by the High Court under Section 325 IPC for simple imprisonment for 1½ months and fine Rs. 1000/- with stipulation clause, held in para-14 as under :-

“14. At the same time, however, the fact remains that the High Court has reduced substantive sentence to a month and a half. It is also not in dispute that the appellant has undergone and has remained in custody for about fifteen days. Moreover, as on today, he is on bail. Hence, even though we are of the view that in the facts and circumstances of the case, provisions of Section 360 read with Section 361 of the Code are not attracted and Om Prakash¹ does not help the appellant, it would not be appropriate now to direct the appellant to surrender and to suffer the remaining sentence for about a month. The incident is of 1997 and about 10 years have passed. ”

7) In **SPS Rathore v. Central Bureau of Investigation and Another {(2017) 5 SCC 817}** while dealing the punishment under Section 354 of the Indian Penal Code Hon'ble Supreme Court held in paragraph 55 as under :-

“55. With regard to sentence of the appellant-accused, learned Senior Counsel on his behalf has pointed out certain mitigating factors which are - old age of the appellant-accused, health ailments, responsibility of

¹(2001) 10 SCC 477: 2003 SCC (Cri) 799

looking after the unmarried daughter suffering from congenital heart disease, past meritorious service and prolonged trial. Keeping in view the aforementioned factors especially the old age and physical condition of the appellant-accused, we do not think it expedient to put him back in jail. While we uphold the findings as to the guilt of the appellant-accused, we are of the opinion that the cause of justice would be best sub-served when the sentence of the appellant-accused would be altered to the period already undergone. We, therefore, reduce the sentence of the appellant to the period already undergone by him as a special case considering his very advanced age.”

8) Considering the above mentioned observations, this Court finds that at the time of the incident no minimum imprisonment was provided for the offence punishable under Section 354, IPC. The incident happened on 22.01.2008 i.e. around 10 years back. Now the appellant is near about 35 year old. He has spent around 2 months and 12 days in jail. Now he is in the mainstream of society. Sending him again to jail would disturb his as well as his family members' life. Hence, no useful purpose would be served. I am of the opinion that the cause of justice would be best subserved when the rigorous imprisonment of six months to the appellant would be altered to the period already undergone.

9) Therefore, it is ordered that the rigorous imprisonment of six months under Sections 354, IPC awarded to the appellant shall be reduced to the period already undergone by him. However, the imposed fine of Rs. 500/- is enhanced upto Rs. 3,000/-. Appellant

should deposit remaining part of fine before the trial Court within a period of two months from the receipt of this judgment. The prosecutrix will get this additional amount of fine Rs. 2500/- (Rupees Two Thousand Five Hundred only) as compensation.

10) Consequently, the appeal is partly allowed. The bail bond of the appellant should be discharged subject to the provisions contained in Section 437-A of the Cr.P.C.

Sd/
(Sharad Kumar Gupta)
Judge