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HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 769 of 2003

Roop Rai @ Kolhu Koshle

Versus

The State Of Chhattisgarh

C A V JUDGMENT

Post for pronouncement of judgment on: 30/10/2017

Sd/-
SHARAD KUMAR GUPTA



HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on 27/10/2017

Delivered on 30/10/2017

Criminal Appeal No. 769 of 2003

(Arising out of judgment/order dated 11/07/2003 in S.T. No. 97/2003 of the learned First Additional Session Judge, Baloda Bazar)

- Roop Rai @ Kolhu Koshle S/o Sukhram Koshle, aged about 55 years, R/o Chhadia, P.S. Palary, Distt – Raipur (C.G.)

---- Appellant

Versus

- State Of Chhattisgarh, Through P.S. Palary, Distt. Raipur (C.G.)

---- Respondent

For Appellant	:	Mr. R.K. Pali, Advocate
For State	:	Mr. Sameer Behar, Panel Lawyer

Hon'ble Shri Justice Sharad Kumar Gupta

CAV JUDGMENT

1. In this Criminal Appeal the challenge levied is to the judgment of conviction and order of sentence passed by the First Additional Session Judge, Baloda Bazar on 11.07.2003 in S.T. No. 97/2003 whereby and whereunder the appellant was convicted for the offence under Section 354 of the Indian Penal Code (hereafter called as 'IPC') and sentenced to undergo rigorous imprisonment of 1 year.

2. It is admitted by the appellant that PW/1 Kesri Bai, PW/2 Gonda Kumari, PW/3 Sukhwantin Bai are familiar with him, the agricultural farm of PW/1 and PW/2 is in village Chhadiya, on the date of incident i.e. 01.02.2003 they had gone to their farm for care of the crop.



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3. In brief the prosecution case is that the prosecutrix was a 12 year old minor girl studying in class 7th and residing in village Chhadiya. On 01.02.2003 in the evening, after returning back from the school she had gone along with her elder sister PW/2 to their aforesaid farm for driving away the cattle. The agricultural farm of the appellant is adjoining with the farm of the Prosecutrix's family. The appellant was also present in his field for care of his crop. Near about 05:30 pm PW/2 had gone to their Khar to drive away the cattle. At that moment, the appellant came in the farm of the Prosecutrix, thrown her down on the earth, removed her skirt forcefully, gagged her mouth by his scarf, removed his Lungi and was trying to remove her underwear. At that time, PW/2 reached there and caused one blow by a stick to the appellant and separated the Prosecutrix. The Prosecutrix came to her house and told the incident to her mother. A village meeting was held. Due to night at that time, the Prosecutrix went to Police Station Palary next day and lodged the FIR. After completion of the investigation, a charge-sheet was filed against the appellant. Charge under Section 376/511 IPC was framed against him. He abjured the allegation leveled against him and faced the trial.

4. To bring home the charge, the prosecution examined as many as 6 witnesses. The appellant examined 2 witnesses on his defence. After conclusion of the trial, he was convicted as mentioned herebefore.

5. Shri R.K. Pali, counsel for the appellant urged at this stage that he is not challenging the conviction of the appellant, rather, he is



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challenging only the aforesaid period of sentence of rigorous imprisonment. He further submits that appellant has already spent his sentence for 19 days, now the appellant is near about 70 years old, thus the period of rigorous imprisonment may be reduced upto the period undergone by him.

6. Shri Sameer Behar, 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.

7. 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. ”

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



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8. In **SPS Rathore v. Central Bureau of Investigation and Another** {(2017) 5 SCC 817} while dealing the punishment under Section 354 of the IPC 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 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."

9. 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 01.02.2003 i.e. more than 14 years have elapsed. Now the appellant is near about 70 year old. He has spent around 19 days in jail. Now he is in 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





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imprisonment of one year to the appellant would be altered to the period already undergone and adequate fine is imposed.

10. Therefore, the rigorous imprisonment of one year under Sections 354, IPC awarded to the appellant is reduced to the period already undergone by him. A fine of Rs. 6000/- (Rupees six thousand only) is imposed on the appellant. In default of payment of fine, the appellant should undergo rigorous imprisonment of two months. The Appellant should deposit the fine before the trial Court within a period of two months from the receipt of this judgment. The Prosecutrix will get the entire fine amount so deposited as compensation under Section 357 of the Cr.P.C.

11. 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