

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 42 of 2000**

Ayodhya Prasad alias Joida S/o Sukhdas aged about 22 years, R/o Umariya
P.S. Patheriya Distt. Bilaspur

----Appellant

Versus

State of Chhattisgarh

---- Respondent

For Appellant	:	Mrs. Savita Tiwari, Advocate
For Respondent	:	Mr. UKS Chandel, Panel Lawyer

Hon'ble Shri Justice Arvind Singh Chandel
Judgment on Board

17/04/2018

1. This appeal has been preferred under Section 374 (2) of Cr.P.C against the judgment dated 03/11/2000 passed in S.T. No. 261/1998 by the Additional Sessions Judge, Mungeli, Distt. Bilaspur (C.G.) convicting the accused/appellant under Sections 376 and 450 of IPC and sentenced him to undergo RI for 7 years and to pay fine of Rs. 200/- & RI for 3 years and to pay fine of Rs. 1000/-, respectively with default stipulations.
2. Case of the prosecution, in brief, is that the parents of the prosecutrix had gone to Allahabad 3 years ago before the date of incident for their livelihood. On the date of incident i.e. 03/04/1998, her elder brother Santosh Kumar (PW9) had also gone to Bilaspur. It is alleged that on the said date at about 8 pm, when the prosecutrix was alone in her house, the accused/appellant came there and knocked the door, the prosecutrix opened the door and then the accused/appellant entered into the house and locked the door from inside and thereafter committed

forcible rape with the prosecutrix (PW8), aged about 14 years. The accused/applicant also gave threatening of live to the prosecutrix for not disclosing the incident. After returning of her brother on 05/04/1998, she narrated the incident to him. Thereafter, the matter was reported and FIR has been registered vide Ex.P-7. The prosecutrix and accused/appellant were examined by the doctors. Birth certificate of prosecutrix was seized vide Ex.P-16. Statement of the witnesses under Section 161 of Cr.P.C were recorded. To guilt the accused/appellant, the prosecution has examined as many as 12 witnesses. No defence witness has been examined. Statement of accused/appellant under Section 313 of Cr.P.C was recorded, wherein he denied all the charges and pleaded his innocence and false implication in the case. After investigation, a charge-sheet was filed. Charges under Sections 450 & 376 of IPC were framed. After trial, the trial Court has convicted and sentenced the appellant as mentioned in paragraph one of this judgment. Hence, this appeal.

3. Learned Counsel appearing for the appellant submits that she does not want to press this appeal on merits and confines her argument to the sentence part only. She further submits that the matter is of the year 1998 and the appellant is facing the *lis* since last 20 years. It is further submitted that out of total jail sentence of 7 years, the appellant has already undergone about 4 years 4 months, therefore, the jail sentence awarded to him may be reduced to the period already undergone by him.
4. Per contra, learned Counsel appearing for the State supported the impugned judgment and submits that the sentence awarded by the trial Court is just and proper and requires no interference.

5. I have heard learned Counsel appearing on behalf of the parties and perused the record minutely.
6. It is not in dispute that the matter relates to the year 1998 and the appellant is facing the *lis* since last about 20 years. Moreover, out of total jail sentence of 7 years, he has already undergone about 4 years 4 months.
7. Considering the above facts and circumstances and further considering the fact that there was delay of 4 days in lodging the FIR and the doctor who examined the prosecutrix did not find any confirmatory evidence of rape on victim, in the peculiar facts and circumstances of the case, I am of the considered opinion that the ends of justice would be met if, while upholding the conviction imposed upon the appellant, the jail sentence awarded to him is reduced to the period already undergone by him.
8. Consequently, the appeal is partly allowed. The conviction imposed upon the appellant under Sections 376 & 450 of IPC is upheld, but the jail sentence awarded to him is reduced to the period already undergone by him. The fine sentence imposed upon him is also affirmed.
9. It is reported that the applicant is on bail. His bail bond is not discharged at this stage and the same shall remain operative for a further period of 6 months in view of the provisions contained in Section 437-A of Cr.P.C.
10. Records of the Court below be sent back along with a copy of this order forthwith for information and necessary compliance.

Sd/-

(Arvind Singh Chandel)
Judge