

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Reserved on 29-10-2018****Delivered on 30-10-2018****CRIMINAL APPEAL No. 748/2001**

(Arising out of judgment of conviction and order of sentence dated 25-7-2001 passed by Sessions Judge, Durg, CG in S.T. No. 18/2000)

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Shrawan Kumar son of Nihal Singh Sahu, age about 32 years, R/o. Village Nawagaon, Thana Ranchirai, present address- village Khapri, Thana Smiriti Nagar, Tah. & Distt. Durg (CG)

----Appellant**-Versus-**

State of Chhattisgarh through Thana Pulgaon, Distt. Durg (CG)

----Respondent

For appellant	: Shri Rahil Kochar, Adv.
For State	: Shri Ramakant Pandey, PL

Hon'ble Shri Sharad Kumar Gupta, Judge**CAV JUDGMENT**

1. In this criminal appeal the challenge levied is to the judgment of conviction and order of sentence dated 25-7-2001 passed by Sessions Judge, Durg, CG in S.T. No. 18/2000 whereby and whereunder he convicted and sentenced the appellant as under :-

Sr. No.	Offence u/S.	Sentence
1.	452, IPC	RI for 2 years + fine Rs. 500/- in default of payment of fine RI for 3 months
2.	354, IPC	RI for 2 years

Both the substantive jail sentences have been directed to run concurrently.

2. In brief, case of the prosecution is that on 21-8-1999 prosecutrix was picking rise in her house at B.K. Badi, Junwani

about 11.00 pm. The door of the house was open. Appellant who was watchman of that place entered in the house of the prosecutrix and attempted to rape her. After completing investigation, a charge sheet was filed against him. Trial Court framed the charges against him under Section 450, 376 read with Section 511 of the Indian Penal Code (in brevity 'IPC'). After conclusion of the trial, Trial Court convicted and sentenced him as aforesaid.

3. Shri Rahil Kochar, counsel for the appellant at the outset urged that he is not challenging the conviction of the appellant rather he is challenging only the aforesaid period of sentences of RI of 2 years and 2 years under Sections 354 and 452, IPC respectively. He further submitted that the appellant has already undergone about 15 days thus the period of RI for 2 years and 2 years may be reduced to the period already undergone.

4. Shri Ramakant Pandey, Panel Lawyer argued that aforesaid RI is just and proper and does not call for any interference.

5. At the time of the incident, no minimum imprisonment was provided for the offences punishable under Sections 354 and 452, IPC. The appellant has remained in jail for 15 days. About 19 years have passed after the incident. At the time of incident, appellant was aged 32 years, now he is of 51 years. Now he is in mainstream of society. Sending him jail would disturb his as well as his family members' life. Hence, no useful purpose would be served if he is sent to jail after 19 years of the incident. Looking to these circumstances and observation made by Hon'ble Supreme Court in the matter of **Manjappa -v- State of Karnataka** [(2007) 6

SCC 231] this Court is of the opinion that cause of justice would be sub-served, if RI of 2 years and 2 years for both the offences is reduced to the sentence for the period already undergone by him and suitable fine may be imposed for the offence punishable under Section 352, and fine under Section 452, IPC may be suitably enhanced.

6. Consequently, the appeal is partly allowed. The sentence of appellant for offence under Section 452, IPC, RI for 2 years is reduced to the period already undergone by him and fine of Rs. 500/- of appellant is enhanced to Rs. 10,000/- (Rupees ten thousand only), in default of payment of fine, to further undergo RI for 6 months. The sentence of appellant for offence under Section 354, IPC, RI for 2 years is reduced to the period already undergone by him and fine of Rs. 10,000/- (Rupees ten thousand) is imposed upon the appellant, in default of payment of fine, to further undergo RI for 4 months. The fine amount if already deposited, be adjusted in the fine sentence imposed by this order. Out of the fine amount of Rs. 20,000/-, if deposited, Rs. 15,000/- (Rupees fifteen thousand only) be given to the prosecutrix as compensation, after the expiration of prescribed period of the further legal remedy available to the parties.

7. The appellant is granted two months' time from the date of this judgment for depositing the fine amount.

8. The appellant is reported to be on bail. His bail bonds stand cancelled subject to the provisions of Section 437-A, Cr.P.C.

Sd/-
(Sharad Kumar Gupta)
Judge