

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 437 of 2014**

Bhuneshwar @ Sonu S/o Rajendra Patel, aged about 18 years, R/o. Badi Dafai Ladari, P.S. Jhagarakhand, Civil & Revenue District- Korla (C.G.).

----Appellant**Versus**

State of Chhattisgarh through P.S. Jhagarakhand, Civil and Revenue District Korla (C.G.)

---- Respondent

For Appellant	:	Mr. D.K. Vishwakarma, Advocate
For Respondent	:	Ms. M. Asha, Panel Lawyer

Hon'ble Shri Justice Arvind Singh Chandel**Judgment on Board****24/02/2018**

1. This appeal has been preferred under Section 374 (2) of Cr.P.C against the judgment dated 10/02/2014 passed in Special S.T. No. 18/2011 by the learned Special Judge, Schedule Caste and Schedule Tribe (Prevention of Atrocities) Act, 1989, Korla, Baikunthpur (C.G.) convicting the accused/appellant under Section 377 of IPC and sentenced to undergo RI for 10 years and to pay fine of Rs. 1000/- with default stipulation.
2. Case of the prosecution, in brief, is that on 14/05/2011 at about 4:30 pm, the complainant/victim-Vivek Kumar Das, aged about 10 years, was returning from market. Near Sarai Dafai Girls School, on the way, the accused/appellant met him and asked him to come inside the school. Thereafter, the appellant asked Vivek to open his paint. When Vivek started weeping, then the appellant by giving threaten committed

unnatural sexual intercourse with him. After returning home, Vivek narrated all the facts to his mother-father and neighbour. The matter was reported by Vivek vide FIR (Ex.P-11). The complainant/victim was medically examined by Dr. S.S. Singh (PW3) who gave his report Ex.P-10, wherein it was stated that there was abrasion and wound on the anus area of the complainant/victim having pain, which seems to be caused by any hard and slippery object. The accused/appellant was also medically examined by Dr. L.P. Mravi (PW2) who gave his report vide Ex.P-7, wherein it was stated that the accused/appellant was capable to perform sexual intercourse. Underwear of the complainant was also seized vide seizure memo Ex.P.-1, which was examined by Dr. S.S. Singh (PW3), who gave his report Ex.P-10. Statement of witnesses under Section 161 Cr.P.C were recorded. After investigation, a charge-sheet under Section 377 of IPC and Section 3 (2) (5) of SC/ST (Prevention of Atrocities) Act, 1989 was filed. Charges were framed under Section 377 of IPC and Section 3 (2) (5) of SC/ST (Prevention of Atrocities) Act, 1989. To guilt the accused/appellant, the prosecution has examined as many as 9 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 present case. After trial, the trial Court has convicted and sentenced the accused/appellant as mentioned in paragraph 1 of this judgment. Hence, this appeal.

3. Learned Counsel appearing for the appellant submits that he does not want to press this appeal on merits and confines his argument to the sentence part only. He further submits that the matter is of the year 2011

and there is no criminal antecedent of the appellant. It is further submitted that out of total jail sentence of 10 years, the appellant has already undergone about 6 years, 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 2011 and there is no known criminal antecedent of the appellant. Moreover, out of total jail sentence of 10 years, he has already undergone about 6 years.
7. Considering the above facts and circumstances, 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 Section 377 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. 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