

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Reserved on 22-8-2019****Pronounced on 23-8-2019****CRA No. 840 of 2002**

(Arising out of judgment of conviction and order of sentence dated 19/07/2002 passed by the 4th Additional Sessions Judge, Durg (CG) in S.T. No. 242/2000)

1. Tilakchand Bhimte aged about 58 years, S/o Datriba Mahar

2. Panchkula, aged about 50 years, W/o Tilakchang Bhimte

Both residents of near Machhli(fish) Market, Indira Nagar, Supela, District Durg (Chhattisgarh)

---- Appellants**Versus**

State of Chhattisgarh through the District Magistrate, Durg (Chhattisgarh)

---- Respondent

For Appellant	:	Ms. Usha Chandrakar, Advocate
For State	:	Mr. D.K.Tiwari, Dy. Govt. Advocate

Hon'ble Shri Sharad Kumar Gupta, J.**C.A.V. JUDGMENT**

1. Challenge in this appeal is levied to the judgment of conviction and order of sentence dated 19/07/2002 passed by the 4th Additional Sessions Judge, Durg (CG) in S.T. No. 242/2000 whereby and whereunder, he has convicted and sentenced each appellant as under :-

Conviction u/S.	Sentence RI.	Fine	In default of payment of fine
342 Indian Penal Code (in short 'IPC')	3 months	—	--
324 IPC	2½ years	Rs. 500/-	6 months RI

2. In brief the prosecution story is that appellant No.1 Tilakchand Bhimte is father in law of the prosecutrix. Appellant No.2 Panchkula is her mother in law. Coaccused Devendra Bhimte @

Uvendra is her husband. On 13/02/2000 at about 3 pm at Indira Nagar, Supela Bhilai appellants and coaccused Devendra @ Uvendra wrongfully confined prosecutrix, appellants caused injury on her body by sharp object, coaccused Devendra @ Uvendra caused simple injury on her body, appellant No.2 Panchkula abetted appellant No.1 Tilakchand Bhimte to commit rape with prosecutrix, appellant No. 1 Tilakchand Bhimte committed rape with her.

3. After conclusion of the trial, Trial Court acquitted coaccused Devendra @ Uvendra from the offences punishable under Section 342, 323 IPC. Trial Court also acquitted appellant No.1 Tilakchand Bhimte from the offence punishable under Section 376 IPC. Trial Court also acquitted appellant No.2 Panchkula from the charge punishable under Section 114 read with 376 IPC, however trial Court convicted and sentenced the appellants as aforesaid.
4. Counsel for the appellant at the outset urged that she is not challenging the conviction of the appellants rather she is challenging only the aforesaid period of sentence of RI for 2 ½ years for the offence punishable u/s 324 IPC. She further submitted that appellant No. 1 Tilakchand Bhimte already undergone 4 months 28 days and appellant No. 2 Panchkula already undergone 3 months 7 days, thus the period of RI 2½ years to each appellant may be reduced to the period already undergone.
5. Counsel for the State argued that aforesaid RI is just and proper and does not call for any interference by this Court.

6. At the time of the incident no minimum imprisonment was provided for the offence punishable u/s 324 IPC. The appellant No. 1 Tilakchand Bhimte remained in jail for 4 months 28 days and appellant No. 2 Panchkula remained in jail for 3 months 7 days. Each appellant has already undergone the jail sentence awarded by the trial Court for the offence punishable under Section 342 IPC. About 19 years have passed after the incident. At the time of incident, appellant No.1 Tilakchand Bhimte was 58 years old, now he is aged about 77 years and appellant No.2 Panchkula was 50 years old, now she is aged about 69 years. Now, they are in main stream of society. Sending them to jail would disturb their life. Hence, no useful purpose would be served if they are sent to jail after 19 years of the incident. Looking to these circumstances and observations 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 for 2 ½ years is reduced to the period already undergone by each appellant and fine is suitably enhanced.
7. Consequently, the appeal is partly allowed. The sentence awarded to each appellant for the offence punishable u/s 324 IPC, RI for 2 ½ years is reduced to the period already undergone by them and fine of Rs. 500/- of each appellant is enhanced to Rs. 25,000/- (Rs. Twenty Five only), in default of payment of fine each appellant to further undergo RI for 6 months. The fine amount if already deposited be adjusted in fine sentence imposed by this order. Out of the fine amount, total Rs. 50,000/- if deposited, Rs. 40,000/- (Rs. Forty Thousand only) be given to the

prosecutrix as compensation after the expiration of prescribed period of further legal remedy available to the parties.

8. The appellants are granted two months' time from the date of this judgment for depositing the fine amounts.
9. The appellants are reported to be on bail. Their bail and bond stands cancelled subject to the provision of Section 437-A of the Cr.P.C.

Sd/-

(Sharad Kumar Gupta)
Judge

kishore