

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 712 of 2018

- Applicant

- Rupendra Kumar Sahu S/o Shri Ram Kumar Sahu Aged About 22 Years R/o Village Dattod, Thana Jaijaipur, District Janjgir Champa Chhattisgarh, Present Address Jangalside Bankimongra, Thana Bankimongra, District Korba Chhattisgarh.

---- Respondent

For Applicant-State :- Shri S.K. Mishra, PL

Hon'ble Shri Prashant Kumar Mishra

Hon'ble Shri Gautam Chourdiya, JJ.

Order on Board

By

Prashant Kumar Mishra, J

23/07/2019

1. Learned counsel for the applicant is permitted to correct the prayer clause No.1 in the memo of petition.
2. On due consideration, application is allowed and delay of 127 days in filing the application, seeking leave to appeal, is

condoned. Accordingly, I.A. No.1 is allowed.

3. This application seeking leave to appeal has been preferred against the order passed by the trial Court imposing punishment of Rigorous Imprisonment (R.I.) for 12 years and fine of Rs.5,000/-, in default of payment of fine, additional R.I. for 2 years upon the respondent's conviction under Section 6 of Protection of Children from Sexual Offences (POCSO) Act, 2012 (in short 'the Act, 2012').
4. It is argued that considering the entire fact situation of case the trial Court should have awarded life imprisonment to the respondent for the reason that the prosecutrix was less than 12 years of age and the accused has committed 'Aggravated Penetrative Sexual Assault' within the meaning of the said offence as provided under Section 5(m) of the Act, 2012.
5. Admittedly the prosecutrix was less than 12 years of age on the date of incident, therefore, the accused has been convicted for committing offence under Section 5(m) punishable under Section 6 of the Act, 2012. The said section provides that whoever, commits aggravated penetrative sexual assault, shall be punished for rigorous imprisonment for a term shall not be less than 10 years but which may extend to imprisonment for life and shall also be

liable to fine. Section 6 of the Act, 2012, by itself does not provide for any guidelines as to the extent of punishment, which may be imposed on commission of one or other kind of aggravated penetrative sexual assault as mentioned in Section 5(a) to Section 5(m).

6. The prosecution case is that the accused inserted his penis into the mouth of the prosecutrix. He has not committed rape as such. What would be the adequate sentence in a given case depends on facts and circumstances of each case.
7. The principle of sentencing i.e. to say appropriate punishment in a given case depending upon the facts and circumstances has been dealt with by the Supreme Court time and again.
8. In **Karamjit Singh v State (Delhi Admn.)**¹ the Supreme Court has observed thus at paras 7 & 8 :

7.....Punishment in criminal cases is both punitive and reformatory. The purpose is that the person found guilty of committing the offence is made to realise his fault and is deterred from repeating such acts in future. The reformatory aspect is meant to enable the person concerned to relent and repent for his action and make himself acceptable to the society as a useful social being. In determining the question of proper punishment in a criminal case, the Court has to weigh the degree of culpability of the accused, its

¹ (2001) 9 SCC 161

effect on others and the desirability of showing any leniency in the matter of punishment in the case. An act of balancing is, what is needed in such a case; a balance between the interest of the individual and the concern of the society; weighing the one against the other. Imposing a hard punishment on the accused serves a limited purpose but at the same time, it is to be kept in mind that relevance of deterrent punishment in matters of serious crimes affecting society should not be undermined. Within the parameters of the law an attempt has to be made to afford an opportunity to the individual to reform himself and lead the life of a normal, useful member of society and make his contribution in that regard. Denying such opportunity to a person who has been found to have committed offence in the facts and circumstances placed on record would only have a hardening attitude towards his fellow beings and towards society at large. Such a situation, has to be avoided, again within the permissible limits of law.

8. After giving our anxious consideration to the question of reduction of sentence as urged on behalf of the appellant and objected to on behalf of the respondent, we have come to the conclusion that some consideration should be shown to the appellant in the matter. In coming to this conclusion we have taken into account the facts that he has spent a long period, more than thirteen years, in jail; that he was a young man of 21 years when he committed the act giving rise to the case; that the situation then prevailing in the State of Punjab was surcharged with acts of terrorism and several misguided young men were

drawn into the movement; that in the meantime the movement has subsided and it could be reasonably taken that the State is free from the menace of terrorism. In taking the decision to show some consideration to the appellant in the matter of punishment we have reposed confidence in goodness of human character which is a part of the personality of every human being.....

9. The Supreme Court in **Union of India v Kuldeep Singh**²

observed thus in para 12 :

12. After giving due consideration to the facts and circumstances of each case, for deciding a just and appropriate sentence to be awarded for an offence, the aggravating and mitigating factors and circumstances in which a crime has been committed are to be delicately balanced on the basis of really relevant circumstances in a dispassionate manner by the Court. Such act of balancing is indeed a difficult task. It has been very aptly indicated in *Dennis Councle McGautha v. State of California* : 402 US 183: 28 L Ed 2d 711 (1971) that no formula of a foolproof nature is possible that would provide a reasonable criterion in determining a just and appropriate punishment in the infinite variety of circumstances that may affect the gravity of the crime. In the absence of any foolproof formula which may provide any basis for reasonable criteria to correctly assess various circumstances germane to the consideration of gravity of crime, the discretionary judgment in the facts of each case, is the only way in

² (2004) 2 SCC 590

which such judgment may be equitably distinguished.

10. In **Ahsan v State of Uttar Pradesh**³ the Supreme Court held thus in para 24 :

24. In our opinion, while sentencing the accused, the Court is required to take into account several factors arising in the case, such as the nature of offence committed, the manner in which it was committed, its gravity, the motive behind the commission of the offence, nature of injuries sustained by the victim, whether the injuries sustained were simple or grievous in nature, weapons used for commission of offence and any other extenuating circumstances, if any. Once these factors are considered while imposing the sentence, there remains little scope to interfere in quantum of punishment. Such is the case here.

11. In the case at hand the minimum sentence provided for offence under Section 6 of the Act, 2012, is 10 years. The trial Court has imposed more than minimum sentence on the accused, who himself is aged about 22 years. Thus, the accused is a young offender and has not committed rape as such, therefore, he needs an opportunity to reform himself at the end of period of conviction. The accused is not a habitual offender as there is no material produced by the prosecution before the trial Court in this regard.

12. Considering the facts and circumstances of the case, we

3 (2018) 13 SCC 420

are of the considered view that the trial Court has awarded adequate punishment to the accused, accordingly, the Cr.M.P. deserves to be and is hereby dismissed.

Sd/-
(Prashant Kumar Mishra)
Judge

Sd/-
(Gautam Chourdiya)
Judge

Ankit