

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 737 of 2019**

Raju Gond @ Mahtab Khan, aged about 24 years S/o Gaffar Khan R/o Sanjay Nagar Lakholi, Ward No. 32, Thana Kotwali, Distt. Rajnandgaon (C.G.).

---- Appellant**Versus**

State of Chhattigarh through Police Station Kotwali, Distt. Rajandgaon (C.G.).

---- Respondent

For Appellant	:	Mr. Parag Kotecha, Advocate
For Respondent	:	Mr. Anand Verma, Dy. Govt. Adv.

Hon'ble Shri Justice Arvind Singh Chandel

Order on Board**21/08/2019**

1. This appeal has been preferred against the judgment dated 12/04/2019 passed in Special Case (Atrocities) No. 22/2017 by the Additional Sessions Judge (FTC), Rajnandgaon/Special Judge additional charge of (SC & ST Act), Rajandgaon (C.G.), whereby the Appellant has been convicted under Section 363 of the IPC and sentenced to undergo RI for 5 years and to pay fine of Rs. 15,000/- with default stipulation.
2. Facts of the case are that the age of the Prosecutrix (PW9) was about 17 years at the relevant time. On 26/04/2017, mother of the Prosecutrix namely Shalu Sarvare (PW8) lodged a FIR vide Ex.P.-19 alleging therein that since April 2016 to October 2016, the Appellant continuously committed sexual intercourse with her daughter due to

that the Prosecutrix became pregnant. Thereafter, on 19/04/2017, the Appellant, on the pretext of marriage, had taken the Prosecutrix to village Gathua and resided there together. There also, the Appellant committed sexual intercourse with her and due to that on 21/04/2017 the Prosecutrix gave birth to premature baby girl who died on 25/04/2017. Thereafter, the Appellant fled away by leaving the Prosecutrix. On the basis of said report, offence has been registered. After completion of investigation, a charge-sheet has been filed against the Appellant. Trial Court framed the charges under Section 363, 366, 376 (2) (a) & 506-B of the IPC, Section 3(2) (5) of the SC/ST (Prevention of Atrocities) Act and Section 6 of the POCSO Act. As many as 28 witnesses have been examined. No defence witness has been examined. Statement of the Appellant under Section 313 of the Cr.P.C has been recorded, wherein he has pleaded his innocence and false implication in the matter.

3. After completion of the trial, the trial Court acquitted the Appellant from the charges framed under Sections 366, 376 (2) (a) & 506-B of the IPC, Section 3(2) (5) of the SC/ST (Prevention of Atrocities) Act and Section 6 of the POCSO Act, however, the Appellant has been convicted under Section 363 of the IPC and sentenced as mentioned in paragraph one of this judgment. Hence, this appeal.
4. 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 out of total jail sentence of 5 years, the Appellant is in jail since 28/04/2017, thus, he has

undergone about 2 ½ years. He has no criminal antecedent and he is facing the *lis* since 2017, therefore, he prays that the jail sentence awarded to the Appellant may be reduced to the period already undergone by him.

5. 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.
6. I have heard learned Counsel appearing on behalf of the parties and perused the record minutely.
7. Considering the above facts and circumstances of the case, particularly considering that out of total jail sentence of 5 years, the Appellant has undergone about 2 ½ years, he is facing the *lis* since 2017 and there is no criminal antecedent against him, I am of the view that the ends of justice would be met if, while upholding the conviction imposed upon the Appellant, the jail sentenced awarded to him is reduced to the period already undergone by him and the fine sentence imposed under Section 363 of the IPC is enhanced to Rs. 50,000/-. Ordered accordingly. The enhanced amount of fine shall be payable within 2 months from the date of receipt of a copy of this order. In default of payment, the Appellant shall be liable to undergo SI for 1 year. If any amount has already been deposited towards fine, the same shall be adjusted in the amount of fine imposed/enhanced today.
8. Consequently, the appeal is partly allowed to the extent indicated above.

9. It is reported that the Appellant/accused is jail since 28/04/2017. He be released, forthwith, if not required in any other case.
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

Rahul