

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.1498 of 2017

Arising Out of PS. Case No.-91 Year-2012 Thana- KAKO District- Jehanabad

Madhir Bind @ Madhir Prasad, Son of Govind Bind, Resident of Village -
Algana, Police Station - Kako, District - Jehanabad.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Ashok Kumar Mishra, Advocate
For the Respondent/s : Smt. Abha Singh, A.P.P.

CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
ORAL JUDGMENT

Date : 16-10-2020

Appeal against judgment of conviction dated 28.03.2017 and order of sentence dated 29.03.2017 passed in Sessions Trial No. 16 of 2013/28 of 2017 arising out of Kako P.S. Case No. 91 of 2012 by Mr. Ram Vinod Singh, learned Fast Track Court No. 1, Jehanabad.

Heard Mr. Ashok Kumar Mishra, learned counsel for the appellant and Smt. Abha Devi, learned Additional Public Prosecutor.

After some argument, learned counsel for the appellant submits that as per instruction of the appellant this appeal be confined to the challenge of quantum of sentence only and the appellant does not want to press this appeal against the judgment of conviction.

Accordingly, the appeal against judgment of



conviction stands dismissed.

By the impugned judgment, the learned Trial Judge convicted the appellant for offence under Section 376 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for seven years and to pay a fine of rupees three thousand and in default of payment of fine to further undergo simple imprisonment for three months. Appellant was acquitted of the charge under Section 366(A) of the Indian Penal Code.

Learned counsel for the appellant submits that the appellant was in judicial custody as under trial prisoner from 29.08.2012 to 25.03.2013 and, thereafter, he is in custody since 28.03.2017, as such, he has already completed four years and four months of custody.

Learned counsel submits that this is the first offence of the appellant, who is only bread-earner of his family. Mitigating circumstance in favour of the appellant is that the FIR as well as evidence of the Investigating Officer would show that the victim was in talking term with the appellant on mobile call since long.

The perusal of the entire evidence of the victim would suggest that she never made any protest during her one month's stay with the appellant, rather the evidence suggests that she



was a consenting party. Since her age was assessed by the Medical Officer in between sixteen to seventeen years and she stated before the Court that she was aged about fifteen years. The conviction has been recorded.

Considering the aforesaid material, it is ordered that the sentence of imprisonment against the appellant is reduced to the period already undergone. However, appellant shall pay the fine within one month of this order, failing which step should be taken in pursuance of the trial Court judgment.

With the aforesaid modification in sentence, this appeal stands dismissed.

(Birendra Kumar, J)

Kundan/-

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