

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 502 of 2008**

Rafique @ Rinku Musalman, S/o Late Sheikh Mahboob Musalman, aged about 25 years, R/o Nwab Mohala, Alal Chowk, Kawardha, Police Station Kawardha, District Kabirdham (C.G.).

---- Appellant**Versus**

State of Chhattisgarh, through District Magistrate, Kabirdham, District (C.G.).

---- Respondent

For Appellant	:	Ms. Indira Tripathi, Advocate
For Respondent	:	Mr. Sameer Sharma, PL

Hon'ble Shri Justice Arvind Singh Chandel

Order on Board**10/07/2020**

1. The matter is heard through video conferencing.
2. This appeal has been preferred against the judgment dated 30/04/2008 passed in Sessions Trial No. 56/2007 by the Sessions Judge, Kabirdham (C.G.), whereby the Appellant has been convicted under Sections 354 and 457 of the IPC and sentenced to undergo RI for 1 year and RI for 1 ½ years, respectively.
3. Facts of the case are that in the intervening night of 27-28/04/2007, Complainant Ram Singh was sleeping in his courtyard outside of his house. At that time, the appellant entered into his house and committed forcible sexual intercourse with the wife of the Complainant. The matter was reported by the Complainant vide Ex.P-7. Statement of Complainant and other witnesses were recorded under Section 161

of the Cr.P.C. After completion of investigation, a charge-sheet has been filed. Trial Court framed the charges. As many as 13 prosecution witnesses have 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.

4. After trial, the trial Court has convicted and sentenced the appellant as mentioned in the second paragraph of this judgment. Hence, this appeal.
5. Learned Counsel appearing for the Appellant submits that she does not want to press this appeal on merits and confines her argument to the sentence part only. She further submits that out of total jail sentence of 1 ½ years, the Appellant has undergone about 282 days during trial and after judgment of trial Court, he has undergone about 22 days, and presently he is in jail since 05/03/2020, he is facing the *lis* since 2007 and he is having no criminal antecedent, therefore, she prays that the jail sentence awarded to the Appellant may be reduced to the period already undergone by him.
6. 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.
7. I have heard learned Counsel appearing on behalf of the parties and perused the record minutely.
8. Considering the above facts and circumstances of the case, particularly considering that out of total jail sentence of 1 ½ years, the Appellant has undergone about 14 months, he is facing the *lis* since

2007 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.

9. Consequently, the appeal is partly allowed. The conviction of the Appellant under the aforementioned sections is affirmed and he is sentenced to the period already undergone by him.
10. It is reported that the Appellant/accused is in jail. He be released forthwith, if not required in any other case.
11. 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