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C.R.A.(SB) 163 of 2022

Usub Ali
Versus
The State of West Bengal

Mr. Swapan Kumar Mallick,
Mr. Kazi M. Rahman,
Ms. Sudeshna Das.
...for the appellant.

Mr. Rudradipta Nandy,
Ms. Sonali Das.
...for the State.

Report submitted by the Inspector-in-Charge, Hemtabad Police Station, Raiganj Police District be kept with the record.

The report contains the statements of the witnesses along with the statement recorded before the learned Magistrate of the victim. The statement of the victim reflects that the victim has returned to her matrimonial home and is leading her family life and, as such, she do not intend to proceed with the case and she has nothing to say against her father-in-law.

The present appeal was preferred against the judgment and order of conviction and sentence dated 29.10.2022 and 31.10.2022 passed by the learned Sessions Judge, Uttar Dinajpur in Sessions Trial No.05 of 2018 arising out of Sessions Case No.131 of 2017 wherein the present appellant, namely, Usub Ali was convicted under Section 376 of the Indian Penal Code and sentenced to suffer simple imprisonment for four years and pay fine of Rs.2,000/- i.d. to suffer S.I. for two months.

I have considered the evidence of the witnesses including

that of the victim and I find that in this case peculiar charge was framed under Sections 498A/34 of the Indian Penal Code, Section 494 of the Indian Penal Code and Section 376 of the Indian Penal Code against the father-in-law.

The present appellant is the father-in-law of the victim. The main grievance of the victim happens to be against her husband who has marrying second time, after going away and not returning from Delhi.

Having considered the evidence in the present case particularly the deposition of the victim and her initial statement under Section 164 of the Code of Criminal Procedure, I am of the opinion that because of change of circumstances, it would not be possible to grant an order of acquittal in favour of the appellant from the charges levelled against him. However, it appears that pursuant to the report filed by the Inspector-in-Charge, Hemtabad Police Station, Raiganj, the statement of the neighbours as well as the statement recorded by the learned Magistrate that the lady presently is residing with the same family which includes the accused person and his son or the husband of the lady/victim/de facto complainant.

The records of the learned Magistrate court and the trial court reflect that in course of investigation the appellant was in custody from 31.08.2016 to 15.02.2017. After the order of conviction was passed by the learned trial court, it has been submitted that the appellant was in custody from 29.08.2022 till 14th December, 2022.

Having considered the changed circumstances and the fact that in such case the appellant has already suffered behind the bars, I am of the opinion that it would not be fit and proper in view of the existing state of circumstances to send the appellant to jail.

Accordingly, the sentence so imposed by the learned Sessions Judge, Uttar Dinajpur, Raiganj in Sessions Trial No.05 of 2018 arising out of Sessions Case No.131 of 2017 is reduced to the sentence already undergone or served by the present appellant.

Accordingly, CRA (SB) 163 of 2022 is partly allowed.

Pending application, if any, is consequently disposed of.

The Inspector-in-Charge of Hemtabad Police Station is present in Court. His further appearance before this Court is dispensed with.

Department is directed to send back the lower court records and communicate this order to the learned trial court for further necessary action if called for.

All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of all requisite formalities.

(Tirthankar Ghosh, J.)