

(2024) 07 OHC CK 0006
In the Orissa High Court
Case No : Criminal Appeal No. 565 Of 2024

Bharat Nial

APPELLANT

Vs

State Of Odisha

RESPONDENT

Date of Decision : 03-07-2024

Acts Referred:

Code of Criminal Procedure, 1973 — Section 374
Indian Penal Code, 1860 — Section 294, 323, 355, 376(2)(i), 506, 511
Protection of Children from Sexual Offences Act, 2012 — Section 18

Citation : (2024) 07 OHC CK 0006

Hon'ble Judges : D.Dash, J

Bench : Single Bench

Advocate : Umakanta Barik, G. N. Rout

Final Decision : Partly Allowed

Judgement

D.Dash, J

1. The Appellant, by filing this Appeal, has assailed the judgment of conviction and order of sentence dated 22nd May, 2024, passed by the learned Additional Sessions Judge-cum-Special Court under POCSO Act, Bhawanipatna, Kalahandi in C.T Case No.243/88 of 2016 (POCSO) (T.R No.85 of 2020), arising out of Koksara P.S. Case No.134 of 2016.

The Appellant (accused) thereunder has been convicted for commission of offence under section 506/323/355 of the Indian Penal Code, 1860 (for short, 'the IPC'). Accordingly, he has been sentenced to undergo simple imprisonment for one (01) year and pay fine of Rs.5000/- in default to undergo simple imprisonment for one (01) month for the offence under section 506 of the IPC; simple imprisonment for one (01) year and pay fine of Rs.2000/-in default to undergo simple imprisonment for 15 (fifteen) days for the offence under section 355 of the IPC and to undergo simple imprisonment for 6 (six) months and pay fine of Rs.5000/-in default to undergo simple imprisonment for 7 (seven) days for the offence under section 323 of the IPC with the stipulation that the

substantive sentences shall run concurrently.

The Appellant (accused) stood charged for commission of offence under section 376(2)(i)/511/294/506/323/355 of the IPC read with section 18 of the Protection of Children from Sexual Offences Act (for short, 'POCSO Act'). The Trial Court upon examination of the evidence of the prosecution witnesses has acquitted the Appellant of the charges under section 376(2)(i)/511 of the IPC. He has also been acquitted of the charge under section 294 of the IPC.

2. Learned counsel for the Appellant (accused) from the beginning instead of questioning the finding of guilt of the accused as has been returned by the Trial Court, holding him guilty for commission of offence under section 506/323/355 of the IPC, confined his submission on the question of sentence. He submitted that the prosecution evidence as to the allegation of attempt to commit rape having not been established as per the finding of the Trial Court, it becomes clear that for some other reason may be for previous quarrel, there has been exaggeration to that extent. He, however, submitted that the incident dates back to 18.06.2016 and in the meantime, there has been lapse of about eight (8) years when the Appellant is 35+. He submitted that the family members of the Appellant are wholly depending on his income. He, therefore, submitted that at this distance of time when there remains no such report as regards any adverse conduct of the Petitioner especially as to his involvement in criminal activity, sentence of imprisonment would stand too harsh. He, therefore, urged for appropriate modification of the sentence.

3. Learned Counsel for the Respondent-State submitted that the sentences as has been imposed by the Trial Court commensurate the offence.

4. Keeping in view the submissions made, I have carefully read the judgment of conviction and have travelled through the deposition of all the witnesses P.W. 1 to P.W.12. I have also perused the documents admitted in evidence.

5. The accused is now aged about 35 years and there has been lapse of about 8 years since the incident. It is stated that all the family members of the accused are depending upon his income. The accused too has undergone the mental agony of criminal trial for all these period.

6. Cumulatively taking all these factors into account at this distance of time, when no report as to any adverse conduct of the accused is forthcoming, while confirming the finding of the Trial Court as to the commission of offence under section 506/323/355 of the IPC, this Court feels inclined to modify the sentence as under in paying:-

a. fine of Rs.10,000/- (Rupees Ten Thousand) in default to undergo simple imprisonment for two (02) months for the offence under section 506 of the IPC;

b. fine of Rs.10,000/- (Rupees Ten Thousand) in default to undergo simple imprisonment for two (02) months for the offence under section 355 of the IPC; and

c. fine of Rs.1000/- (Rupees One Thousand) in default to undergo simple imprisonment for 15 (fifteen) days for the offence under section 323 of the IPC.

7. In the result, the Appeal is allowed in part with the modification of the sentence to the extent as indicated above.

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