

(2023) 11 CHH CK 0049
In the Chhattisgarh High Court
Case No : Criminal Appeal No. 1018 Of 2016

Mahendra Munda @ Chokoi

APPELLANT

Vs

State Of Chhattisgarh

RESPONDENT

Date of Decision : 20-11-2023

Acts Referred:

Indian Penal Code, 1860 — Section 376, 376(2), 376(2)(i)
Code Of Criminal Procedure, 1973 — Section 313, 374(2), 433A

Citation : (2023) 11 CHH CK 0049

Hon'ble Judges : Sanjay K. Agrawal, J; Sanjay S. Agrawal, J

Bench : Division Bench

Advocate : Ranjana Jaiswal, Sudeep Verma

Final Decision : Allowed

Judgement

Sanjay K. Agrawal, J

1. This criminal appeal under Section 374(2) of CrPC has been preferred by the appellant against impugned judgment dated 31/03/2014 passed by learned Upper Sessions Judge FTC, Korba in Sessions Trial No. 42/2013 whereby he has been convicted for offence punishable under Section 376(2)(i) of IPC (omitted w.e.f. 21/04/2018) and has been sentenced to undergo R.I. for 15 years with fine of Rs. 3000/- and in default of payment of fine, additional R.I. for 1 year.

2. Case of the prosecution, in a nutshell, is that on 15/04/2013 at about 08:30 PM at Lalghat, Balconagar, the appellant herein committed sexual intercourse with the victim, aged about 6 years and thereby, committed the aforesaid offence.

3. Further case of the prosecution is that on 16/04/2013, Smt. Sumarin (PW-3) reported the matter at Police Station Balconagar Korba that on 15/04/2013 at about 08:30 PM, while she was going to the house of Beer Singh, she saw that appellant's wife Neelima was standing outside her house and was peeking inside and she asked to look at the act being done by the appellant. When she peeked

inside, she saw that appellant was committing sexual intercourse with the minor victim, aged about 6 years and she was crying. She went inside his house along with Geeta Bai (PW-1) and took the victim to her house since victim's mother had already died and her father was in jail. On the said report, first information report (Ex. P/5) was lodged against the appellant and the matter was taken into investigation. Victim was subjected to medical examination which was conducted by Dr. Smt. K.B. Sonkar (PW-2) and her MLC report (Ex. P/3) was found positive. She was also subjected to Radiologist's examination for age determination and as per the report (Ex. P/11), her age was determined to be less than 8 years. After due investigation, the appellant was charge-sheeted for offence punishable under Section 376 of IPC which was committed to the Court of Sessions for trial in accordance with law. The appellant abjured his guilt and entered into defence.

4. In order to bring home the offence, prosecution examined as many as 14 witnesses and brought on record 23 documents. Statement of the appellant was recorded under Section 313 of CrPC wherein he denied guilt, however, he examined none in his defence and only brought 1 document on record.

5. Learned trial Court, after appreciation of oral and documentary evidence on record, proceeded to convict the appellant for offence punishable under Section 376(2)(i) of IPC and sentenced him as aforesaid.

6. Ms. Ranjana Jaiswal, learned counsel for the appellant, would submit that prosecution has not been able to bring home the offence beyond reasonable doubt and as such, the trial Court has erred in convicting the appellant for the aforesaid offence. In alternative, she would submit that even if the date when the offence in question is said to have been committed is considered, the unamended provision of Section 376(2)(i) of IPC will come into play, wherein the minimum punishment for offence punishable under Section 376(2)(i) of IPC was 10 years' RI and the same was omitted w.e.f. 21/04/2018. Therefore, the present appellant be sentenced for a period of 10 years' RI by reducing it from imprisonment for 15 years, as awarded by the learned trial Court.

7. Per contra, Mr. Sudeep Verma, learned State counsel, would submit that prosecution has been able to bring home the offence beyond reasonable doubt and since the victim was aged only about 6 years, therefore, the trial Court has rightly convicted the appellant for the aforesaid offence and sentenced him to R.I. for 15 years and therefore, the instant appeal is liable to be dismissed.

8. We have heard learned counsel for the parties, considered their rival submissions made herein-above and went through the records with utmost circumspection.

9. The first question for consideration would be, whether the trial Court is justified in convicting the appellant for the offence in question ?

10. Victim (PW-11) has been examined before the Court but since she is minor aged only about 6 years, she has not given any statement against the appellant,

however, Geeta Bai (PW-1) who took the victim from appellant's house and took her to her house has clearly deposed against the appellant and despite being subjected to cross-examination, she has remained consistent. Moreover, victim was subjected to medical examination which was conducted by Dr. Smt. K.B. Sonkar (PW-2) and her MLC report (Ex. P/3) has been found positive. She has also been subjected to Radiologist's examination in which her age has been determined to be less than 8 years vide Ex. P/11. As such, considering the entire evidence available on record, we are of the considered opinion that the trial Court has rightly convicted the appellant for offence punishable under Section 376(2)(i) of IPC. We hereby affirm the conviction recorded by the trial Court.

11. Now the next question for consideration is whether, as claimed by learned counsel for the appellant, the appellant is entitled for reduction in the sentence as awarded by the trial Court for offence punishable under Section 376(2) of IPC ?

12. In this regard, learned counsel for the appellant would submit that in light of the decision rendered by the Supreme Court in the matter of Vipul Rasikbhai Koli Jankher v. State of Gujarat 2022 LiveLaw (SC) 288, the sentence awarded to the appellant by the trial Court is liable to be reduced.

13. The Supreme Court, in the matter of Vipul Rasikbhai (supra), has relied upon its earlier decisions rendered in the matters of Dharambir v. State of Uttar Pradesh (1979) 3 SCC 645 and Maru Ram v. Union of India (1981) 1 SCC 107 and held in paragraphs 7 and 8 as under :-

"7. In determining the quantum of sentence, the Court must bear in mind the circumstances pertaining to the offence and all other relevant circumstances including the age of the offender. The appellant has undergone actual imprisonment for a period of 11 years as on date. In Dharambir v. State of Uttar Pradesh (supra) a two-Judge Bench of this Court specifically noted the impact of longer prison sentences on convicts who are young. Justice V R Krishna Iyer, speaking on behalf of the Court had noted the impact of prolonged incarceration:

"2. We, however, notice that the petitioners in this case are in their early twenties. We must naturally give thought to the impact on these two young lives of a life sentence which means languishing in prison for years and years. Such induration of the soul induced by indefinite incarceration hardens the inmates, not softens their responses. Things as they are, long prison terms do not humanise or rehabilitate but debase and promote recidivism. A host of other vices, which are unmentionable in a judgment, haunt the long careers of incarceration, especially when young persons are forced into cells in the company of callous convicts who live in sex-starved circumstances. Therefore, the conscience of the court constrains it to issue appropriate directions which are policy-oriented, as part of the sentencing process, designed to make the purpose of punitive deprivation of liberty, constitutionally sanctioned, is decriminalisation of the criminal and restoration of his dignity, self-esteem and good citizenship, so that

when the man emerges from the forbidding gates he becomes a socially useful individual. From this angle our prisons have to travel long distances to meet the ends of social justice.”

8. In our view, the ends of justice would be met by directing that instead and in place of the sentence of life imprisonment which has been imposed for the conviction under Section 376, the appellant shall stand sentenced to a term of 15 years' imprisonment. We are not inclined to uphold the argument of the respondent-state that only the sentence of life imprisonment would meet the ends of justice. The principles of restorative justice finds place within the Indian Constitution and severity of sentence is not the only determinant for doing justice to the victims. In *Maru Ram v. Union of India* (supra), Justice V R Krishna Iyer had poignantly highlighted the linkages between victimology and restorative justice :

“74. Some argument was made that a minimum sentence of 14 years' imprisonment was merited because the victim of the murder must be remembered and all soft justice scuttled to such heinous offenders. We are afraid there is a confusion about fundamentals in mixing up victimology with penology to warrant retributive severity by the back -door. If crime claims a victim criminology must include victimology as a major component of its concerns. Indeed, when a murder or other grievous offence is committed the dependants of other aggrieved persons must restore the loss of heal the injury is part of the punitive exercise. But the length of the prison term is no reparation to the crippled or bereaved and is futility compounded with cruelty. “Can storied urn or animated bust call to its mansion the fleeting breath ?” Equally emphatically, given perspicacity and freedom from sadism, can flogging the killer or burning his limbs or torturing his psychic being bring balm to the soul of the dead by any process of thanatology or make good the terrible loss caused by the homicide ? Victimology, a burgeoning branch of humane criminal justice, must find fulfillment, not through barbarity but by compulsory recoupment by the wrongdoer of the damage inflicted, not by giving more pain to the offender but by lessening the loss of the forlorn. The State itself may have its strategy of alleviating hardships of victims as part of Article 41. So we do not think that the mandatory minimum in Section 433-A can be linked up with the distress of the dependents.

14. Following the decision of the Supreme Court in *Vipul Rasikbhai* (supra) and considering the fact that the age of the appellant was 27 years on the date of the offence and it is not the case of the prosecution that it is likely that the appellant would convert himself into a hardened criminal further considering that minimum sentence for offence punishable under Section 376(2)(i) of IPC at the time of commission of offence was 10 years, we hereby award the sentence of 10 years to the appellant for offence punishable under Section 376(2)(i) of IPC, in place of the sentence of R.I. for 15 years as awarded by the trial Court, as he is in jail from 17/04/2013. However, the fine sentence and default sentence as awarded

by the trial Court shall remain maintained. Since the appellant has already completed ten years' R.I., he be released forthwith, if his detention is not required in any other case.

15. This criminal appeal is allowed to the extent indicated hereinabove.

16. Let a certified copy of this judgment be sent to the concerned trial Court along with the original records as well as to the jail for information and compliance.