

(2023) 10 CHH CK 0037
In the Chhattisgarh High Court
Case No : Criminal Appeal No. 482 Of 2016

Nanhi @ Bhuneshwar Raut @ Bhuneshwar	APPELLANT
Vs	
State of Chhattisgarh	RESPONDENT

Date of Decision : 31-10-2023

Acts Referred:

Indian Penal Code, 1860 — Section 363, 376, 376(2)(i), 450
Code Of Criminal Procedure, 1973 — Section 313, 374(2)
Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 — Section 3(1)(12)
Protection of Children from Sexual Offences Act, 2012 — Section 4, 6, 42

Citation : (2023) 10 CHH CK 0037

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

Bench : Division Bench

Advocate : Sumit Shrivastava, Afroz Khan

Final Decision : Allowed

Judgement

Sanjay K. Agrawal, J.

1. This criminal appeal under Section 374(2) of CrPC has been preferred by the appellant herein against the impugned judgment dated 19/03/2014 passed by learned Special Judge (SC/ST Act), Raigarh in Special Sessions Trial No. 53/2013 whereby he has been convicted and sentenced as under with a direction to run all the sentences concurrently :-

Conviction

Sentence

U/s 450 of IPC

R.I. for 5 years with fine of Rs. 1000/- and in default of payment of fine, additional R.I. for 1 year.

U/s 363 of IPC

R.I. for 2 years with fine of Rs. 1000/- and in default of payment of fine, additional R.I. for 6 months.

U/s 376(2)(i) of IPC r/w Section 6 of Protection of Children from Sexual Offences Act, 2012

Imprisonment for life with fine of Rs. 5000/- and in default of payment of fine, additional R.I. for 1 year.

2. Case of the prosecution, in brief, is that on 23/07/2013 at about 9 PM at village Jatra within the ambit of Police Station Lailunga, the appellant herein abducted minor victim, aged about 9 years, from her house while she was sleeping and thereafter, committed sexual intercourse with her knowing full well that she was a member of Scheduled Caste/Scheduled Tribe and thereby, committed the aforesaid offence.

3. Further case of the prosecution is that on 24/07/2013 at about 09:15 PM, victim's mother (PW-2) lodged a report against the appellant vide Ex. P/3 that on 23/07/2013, at about 9 PM, everyone in her house had gone to sleep after taking their meals and victim was sleeping with her grandmother. At about 10-11 PM, her daughter came to her and started crying and informed her that appellant had abducted her while she was sleeping and after taking her to a field, he laid her down under a mango tree and assaulted her and committed sexual intercourse with her. Pursuant to the first information report (Ex. P/3), wheels of investigation started running and after taking consent from the parents of the victim vide Ex. P/4 and P/5, she was subjected to medical examination which was conducted by Dr. Usha Armo (PW-7) and her MLC report (Ex. P/13) was found positive. After due investigation, the appellant was charge-sheeted for offence punishable under Sections 450, 363, 376 (p) of IPC, in alternative, Section 3(1)(12) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter, the Act of 1989) and Section 4 and 6 of Protection of Children from Sexual Offences Act, 2012 (hereinafter, the Act of 2012) which was committed to the Court of Special Judge 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 13 witnesses and brought on record 24 documents. Statement of the appellant was taken 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, though acquitted the appellant for offence punishable under Section 3(1)(12) of the Act of 1989 but proceeded to convict him for offence punishable under Sections 450, 363 and 376(2)(i) of IPC r/w Section 6 of the Act of 2012 and sentenced him as aforesaid.

6. Mr. Sumit Shrivastava, learned counsel for the appellant, would submit that the trial Court is absolutely unjustified in convicting the appellant for the

aforesaid offence as prosecution has not been able to prove the offence beyond reasonable doubt. In alternative, he would submit that the minimum sentence as stood on the date of offence is 10 years, therefore, this appeal be allowed and the appellant be sentenced to the period already undergone as he is in jail from 26/07/2013.

7. Per contra, Mr. Afroz Khan, learned State counsel, would submit that prosecution has been able to prove the offence beyond reasonable doubt, as such, the trial Court has rightly convicted the appellant for the offence in question, therefore, it be maintained by dismissing the instant appeal.

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 is whether the trial Court is justified in convicting the appellant for the offence in question ?

10. Victim (PW-1), aged about 9 years, has been examined before the Court and she has supported the case of the prosecution and her statement has also been corroborated by her mother (PW-2). Moreover, victim has also been subjected to medical examination and her MLC report (Ex. P/14) has been found positive and it has duly been proved by Dr. Usha Armo (PW-7). As such, considering the entire evidence available on record particularly the statements of victim (PW-1) and her mother (PW-2) as well as the MLC report (Ex. P/14) which has been proved by the statement of Dr. Usha Armo (PW-7), we are of the considered opinion that the trial Court has rightly held the appellant to be the author of crime in question and convicted him for offence punishable under Sections 450, 363 and 376(2)(i) of IPC r\w Section 6 of Protection of Children from Sexual Offences Act, 2012.

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 of life imprisonment as awarded by the trial Court for offence punishable under Section 376(2)(i) of IPC r\w Section 6 of Protection of Children from Sexual Offences Act, 2012 ?

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 the injured; 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 22 years on the date of the offence and further considering that minimum sentence for offence punishable under Section 6 of the Act of 2012 (prior to the amendment w.e.f. 16/08/2019) was 10 years as well as the minimum sentence for offence punishable under Section 376 of IPC is also ten years, we hereby award the sentence of 15 years to the appellant for offence punishable under Section 376(2)(i) of IPC r/w Section 6 of the Act of 2012, in place of the sentence of life imprisonment as awarded by the trial Court, by virtue of Section 42 of the Act of 2012. However, the sentence awarded by the trial Court for offence punishable under Sections 450 of IPC and Section 363 of IPC shall remain intact.

15. Accordingly, this criminal appeal is allowed to the extend indicated herein-above.

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 authorities for information and compliance.