

(2024) 05 OHC CK 0018
In the Orissa High Court
Case No : Criminal Appeal No. 295 Of 2024

Pintu Dakua

APPELLANT

Vs

State Of Odisha

RESPONDENT

Date of Decision : 01-05-2024

Acts Referred:

Code of Criminal Procedure, 1973 — Section 374(2)
Indian Penal Code, 1860 — Section 34, 294, 323, 325, 341, 354A, 354B, 379, 506
Protection of Children from Sexual Offences Act, 2012 — Section 8, 12

Citation : (2024) 05 OHC CK 0018

Hon'ble Judges : D. Dash, J

Bench : Single Bench

Advocate : Anita Sahoo, S.C. Mishra, S. N. Das

Final Decision : Partly Allowed

Judgement

D.Dash, J

1. The Appellant, by filing this Appeal, has called in question the judgment of conviction and order of sentence dated 24th February, 2024 passed by the learned Additional Sessions Judge-Cum-Special Court under POCSO Act, Nayagarh in T.R. No.74 of 2017.

By the impugned the judgment of conviction and order of sentence, the Appellant (accused) has been convicted for commission of the offence under section 323 of the Indian Penal Code, 1860 (for short, 'the IPC'). Accordingly, he has been sentenced to undergo rigorous imprisonment for four (4) months for the said offence with the benefit of the usual set-off.

2. Learned counsel for the Appellant (accused), from the very beginning, instead of questioning the finding of guilt against the accused, as has been returned by the Trial Court, confined her submission only on the question of sentence. She submitted that taking into account the age of the Appellant (accused) and the rural background from which he hails, as he is now living on doing petty business

and maintaining his family, since he has already faced the mental agony of the criminal trial for about seven years, the sentence of imprisonment, as has been awarded, stands too harsh. She, therefore, submitted that it is a fit case that at this distance of time, keeping in view all the relevant factors into account, the sentence be appropriately modified to imposition of fine as deemed just and proper.

3. Learned Additional Standing Counsel for the Respondent-State, while submitting that the offence for which the conviction has been recorded against the Appellant (accused) is punishable with imprisonment of either description extending to one year or with fine extending to Rs.1000/- or with both, contended that the sentence of imposition for a period four (4) months, as has been awarded by the Trial Court commensurate the offence committed under that circumstance.

4. Keeping in view the submissions made, I have carefully read the impugned judgment of conviction and have also extensively travelled through the depositions of the witnesses (P.Ws.1 to P.W.8).

5. The Appellant (accused) stood charged for commission of the offence under sections 294/323/325/341/354-A/354-B/379/506/34 of the I.P.C. read with sections 8 & 12 of the Protection of Children from Sexual Offences Act, 2012 (in short, 'the POCSO Act'). Upon examination of the victim (P.W.1) and her mother (P.W.2) as also other evidence, the Trial Court has found the prosecution to have failed to establish the charges for commission of the offence under sections 294/325/341/354-A/354-B/379/506/34 of the I.P.C read with sections 8 & 12 of the POCSO Act. So, for all those charges, the Appellant (accused) has been acquitted. The Appellant (accused), however, has been convicted for commission of the offence under section 323 of the IPC for having caused simple hurt to P.W.1, who had sustained two bruises on the left knee joint and right elbow joint and P.W.2, who had sustained two bruises on right forehead and central region of occipital area. As per the prosecution case, this Appellant and another, were questioning the sale of ingenuine articles on higher rates and then it is said that this Appellant (accused) dealt a thenga blow upon P.W.1 and fist blow upon P.W.2. The allegations further had been levelled against the Appellant for Commission of the offences under section 294/323/325/341/354-A/354-B/379/506/34 of the I.P.C. read with sections 8 & 12 of the POCSO Act. The Appellant (accused) has been acquitted of all the charges except section 323 of the IPC. The Appellant (accused) hails from the rural background and as it appears, has been undergoing mental agony of a criminal trial right from the year 2017 till now.

Cumulatively viewing of all these aforesaid, this Court is the view that the sentence of payment of fine of Rs.2000/- (Rupees Two Thousand) in default to undergo simple imprisonment for two month for committing the offence under section 323 at this distance of time, would serve in the interest of justice and meets its ends.

Accordingly, the Appellant's conviction for the offence under section 323 of the IPC being confirmed; he is sentenced to pay fine of Rs.2000/- (Rupees Two Thousand) in default to undergo simple imprisonment for two months. It is further directed that in the event of realization of fine, the said sum be paid to P.Ws.1 & 2 in equal proportion as compensation.

6. In the result, the Appeal is allowed in part with the modification as to the order of sentence dated 24th February, 2024 passed by the learned Additional Sessions Judge-Cum-Special Court under POCSO Act, Nayagarh in T.R. No.74 of 2017 to the extent as indicated above.

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