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Dablu Sharma and Ors. Vs. State of Jharkhand and Anr.

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Court : Jharkhand

Decided On : Jul-10-2017

Appellant : Dablu Sharma and Ors.

Respondent : State of Jharkhand and Anr.

Advocate for Pet/Ap. : Mr. Prabir Chatterjee

Judgement :

Criminal Revision No. 384 of 2002 with Criminal Revision No. 416 of 2002 Against the judgment dated 22.06.2002 passed by the learned 12th Additional Sessions Judge, Dhanbad in Cr. Appeal No. 114 of 2000 --- 1.Dablu Sharma 2.Chhotu Sharma 3.Chandra Sekhar Sharma all sons of Shri Srilal Sharma 4.Ajit Sharma son of Mahabir Mishtri all residents of village Pachmahali, PS Chirkunda, District Dhanbad Petitioners (in Cr. Revision No. 384/2002) Bablu Sharma son of Shri Srilal Sharma, resident of village Pachmahali, PS Chirkunda, District Dhanbad ... ... Petitioner (in Cr. Revision No. 416/2002) Versus 1.The State of Jharkhand 2.Smt. Bhanu Devi W/o Sri Baja Mallick resident of Village Pachmahali, PS Chirkunda, District Dhanbad Opposite Parties (in both the cases) --- For the Petitioners : Mr. Prabir Chatterjee, Advocate For the Opposite Party No. 1 : Md. Asif Khan, A.P.P. --- Present: HON'BLE MR. JUSTICE RONGON MUKHOPADHYAY --- C. A. V. ON - 10.04.2017 PRONOUNCED ON - 10.07.2017 Heard Mr. Prabir Chatterjee, learned counsel for the petitioners and Md. Asif Khan, learned A.P.P. for the State.

2. These revision applications are directed against the judgement dated 22.06.2002 passed by the learned 12th Additional Sessions Judge, Dhanbad in Cr. Appeal No. 114 of 2000 whereby and whereunder the judgment and order of conviction passed by the learned Judicial Magistrate 1st class, Dhanbad dated 08.08.2000 in C. P. Case No. 753 of 1996 by which the petitioners in Cr. Revision No. 384 of 2002 were convicted for the offences under Sections 323/452 of the I.P.C. and petitioner in Cr. Revision 416 of 2002 was convicted under Sections 354/452 of I.P.C. and were sentenced to undergo R.I. -2- for various terms was modified as conviction was made under Section 448 of I.P.C. instead of 452 of I.P.C. has been affirmed.

3. The prosecution story in brief is that on 23.10.1996 when the informant had gone to fetch water from the tube well along with his youngest daughter, petitioner Bablu Sharma had entered into her house where her elder daughter Lakhi Kumari was alone and tried to outrage her modesty. It is also alleged that Bablu Sharma started pulling her dress at which she raised an alarm and the complainant and her youngest daughter reached the place of occurrence on hearing the cry of alarm. On the basis of the aforesaid allegation, Complaint Case No. 753 of 1996 was instituted in which after conducting an inquiry under Section 202 of Cr.P.C., cognizance was taken under Section 323/354/452 of I.P.C. After charge was framed and the prosecution having been able to prove its case beyond all reasonable doubt, the petitioner was convicted for the offences punishable under Sections 452, 323 and 354 of I.P.C. by the learned Judicial Magistrate 1st class, Dhanbad on 08.08.2000 and sentenced to imprisonment for various terms. The petitioner preferred an appeal being Criminal Appeal No. 114 of 2000 in which the conviction of Bablu Sharma was sustained under Section 354 of I.P.C., although all the accused persons including Bablu Sharma were convicted further for the offence under Section 448 of I.P.C. and a fine of Rs. 500/- was imposed upon the accused persons. So far as Bablu Sharma is concerned, he was sentenced to undergo 6 months S.I. for the offence under Section 354 of I.P.C.

4. In course of trial, 5 witnesses were examined on behalf of the prosecution. P.W. 1 - Ashok Mallick is the son of the complainant who had stated that he had seen Bablu Sharma entering inside the house and tearing the dress of his sister namely,

Lakhi Kumari. It has also been disclosed that he was assaulted and the blouse of his mother was torn. P.W. 2 - Bajo Mallick is the husband of the complainant who had heard about the incident. P.W. 3 - Manika Mallick has stated that she had seen the accused persons coming out from the house of the complainant and later on she could come to know about the occurrence. P.W. 4 - is the victim girl Lakhi Kumari who has stated that on 23.10.1996 her mother and sister had gone to fetch water while her brother had gone out to market and her father was on duty. It has -3- been stated that at that time, the accused Bablu Sharma had tried to outrage her modesty and on an alarm being raised by her, her mother and sister had come and had seen the incident. It has also been stated that the other accused persons had come and assaulted her mother and sister and also torn the blouse and saree of her mother. P.W. 5 - Bhanu Devi is the complainant who had stated that when she returned from the place where she had gone to fetch water, she had seen the accused Bablu Sharma trying to outrage the modesty of her daughter Lakhi Kumari. It has also been disclosed that the other accused persons had assaulted her and her son with lathi and her blouse was also torn by the accused persons.

5. It has been stated by the learned counsel for the petitioners that the petitioners have been implicated on account of previous enmity. He further submits that Complaint Case No. 767 of 1996 was instituted against the complainant and others and the present case is counter blast to the said case. It has further been stated that all the witnesses are related to each other and are interested witnesses and therefore, their evidence cannot be relied upon. Further submission has been advanced that the evidence of the witnesses does not inspire confidence and therefore, the petitioners deserve acquittal for the offences under Section 354 and 448 of I.P.C.

6. Learned A.P.P. for the State has opposed the prayer.

7. So far as the contention of the learned counsel for the petitioner that the present case is the counter blast to the earlier case lodged against the complainant and others, it appears that the present case being C. P. Case No. 753 of 1996 was instituted much prior to the case instituted by the accused being C. P. Case No. 767 of 1996. The evidence of the victim girl (P.W.

4) categorically states the role of the accused Bablu Sharma in trying to outrage her modesty as well as role of other accused persons in assaulting her mother and brother when they had reached the place of occurrence on hearing the cry of alarm. This fact has been corroborated by the statement of P.W. 5 who has stated on similar terms as what has been stated by the victim. P.W. 1 is the son of the complainant who is also an eye-witness to the effect that he had seen the petitioner - Bablu Sharma entering into the house and trying to pull her towards the ground. These 3 witnesses although are related to each other, but their testimony cannot be disbelieved -4- simply because they are related to each other. The evidence of P.W. 1, 4 & 5 are categorical and corroborates each other's testimonies and the defence has failed to demolish the case of the complainant. The learned courts below had rightly convicted the petitioners though, the conviction was modified by the learned appellate court which is perfectly justifiable. Such circumstances, therefore, does not entitle the petitioner to cause interference by this court in the judgment and order of conviction which was also affirmed in appeal.

8. However, with respect to the sentence imposed upon the petitioners, it appears that the petitioner - Bablu Sharma (in Cr. Revision No. 416 of 2002) has been convicted and sentenced under Section 354 of I.P.C. for 6 months R.I. and he has also remained for some time in custody. The same petitioner is facing the rigors of prosecution since 1996. In such circumstances therefore, the sentence imposed upon the petitioner - Bablu Sharma (in Cr. Revision No. 416 of 2002) is hereby modified to the period already undergone.

9. So far as the petitioners in Cr. Revision No. 384 of 2002 are concerned, they have been fined an amount of Rs. 500 for the offence under Sections 323 & 448 of I.P.C. The role of these petitioners have not been defined as specific allegation has been levelled against the Bablu Sharma. In such circumstances, therefore, by invoking the provisions of Probation of Offenders Act, these petitioners are released after due admonition. So far as the petitioner - Bablu Sharma (in Cr. Revision No. 416 of 2002) is concerned, the fine which has been imposed upon him for the offence under Section 448 of I.P.C., the same does not require any interference.

10. These applications therefore stand dismissed with the modification in sentence as aforesaid. (Rongon Mukhopadhyay, J) Jharkhand High Court at Ranchi The ..... day of July, 2017 R.Shekhar/NAFR/Cp.3

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