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Court : Jharkhand

Decided On : Aug-03-2017

Appellant : Arvind Kumar ? Arvind Kumar Singh

Respondent : State of Jharkhand

Advocate for Pet/Ap. : Mr. Dipankar

Judgement :

Cr. Revision No. 297 of 2005 ----- Against the judgment dated 19.01.2005 passed in Cr. Appeal No. 192 of 2004 by the learned Additional Judicial Commissioner, Fast Track Court No. VI, Ranchi affirming the judgment and order of conviction and sentence passed by the learned Judicial Magistrate, 1st Class, Ranchi in G.R. Case No. 271 of 2003. ----- Arvind Kumar @ Arvind Kumar Singh, S/o Sri Bhadra Singh, R/o Village- Chand, P.O. & P.S.- Mandar, District- Ranchi ... Petitioner Versus The State of Jharkhand ... Opposite Party ----- For the Petitioner : Mr. Dipankar, Advocate For the State : Md. Asif Khan, A.P.P. ----- Present: HON'BLE MR. JUSTICE RONGON MUKHOPADHYAY ----- By Court: Heard Mr. Dipankar, learned counsel for the petitioner and Md. Asif Khan, learned A.P.P. for the State. This application is directed against the judgment dated 19.01.2005 passed in Cr. Appeal No. 192 of 2004 by the learned Additional Judicial Commissioner, Fast Track Court No. VI, Ranchi, whereby and whereunder the judgment and order of conviction and sentence passed by the learned Judicial Magistrate, 1st Class, Ranchi in G.R. Case No. 271 of 2003, convicting the petitioner for the offences punishable u/s 354 and 341 of the Indian Penal Code

and sentencing him to undergo S.I. for 1 year and one month respectively has been affirmed. It has been submitted by the learned counsel for the petitioner that there are contradictions in the evidence of the witnesses as the version of P.W.6 who is the victim girl has not been supported by P.W.7 who is said to have accompanied the victim girl while returning from the pond. Learned counsel for the petitioner further submits that the petitioner has been implicated on account of previous enmity as one of the witness namely Shivraj Singh is the cousin brother of the informant and is the uncle of the victim girl who has been implicated in a case u/s 376 of the Indian Penal Code in which the grandfather of the petitioner had deposed in the sessions case. Learned counsel for the petitioner further submits that the evidence of the victim girl -2- P.W.6 has not been corroborated by the other witnesses with respect to the outraging of modesty as alleged against the petitioner. An alternative argument has been put forward by the learned counsel for the petitioner that if this Court is not inclined to interfere in the judgment of conviction the period of sentence be reduced substantially considering the nature of offence as also the fact that the petitioner has remained in custody for some time and the petitioner happens to be the nephew of the victim. Learned A.P.P. for the State has opposed the prayer made by the petitioner. The prosecution story in brief is that the petitioner always used to tease the daughter of the informant namely Lakhia Kumari. It is alleged that on 27.01.2003 when his daughter was returning back home along with her friend Sarita Devi after taking bath in the pond the petitioner caught hold of the hand of his daughter. It is further been alleged that the petitioner always used to tease his daughter and he wanted to outrage her modesty. On the basis of the aforesaid allegations Mandar P.S. Case No. 7 of 2003 was instituted u/s 341 and 354 of the Indian Penal Code. Charge sheet was submitted and after cognizance was taken trial proceeded. In course of trial 8 witnesses were examined on behalf of the prosecution. P.W.1 Harihar Singh has not supported the prosecution case and therefore he was declared hostile. P.W.2 Debraj Singh has stated that when Lakhia Kumari was returning after taking bath in the pond the petitioner had intercepted her and caught hold of her hand with an intention to outrage her modesty. This witness is the uncle of the victim and he has identified his signature on the fardbeyan which has been marked as Exhibit-1. P.W.3 Jatri Singh has stated that he had come to

know about the occurrence from one Balmukund Singh who has been examined as P.W.4. P.W.4 Balmukund Singh is the informant. He has stated that when his daughter was returning from the pond after having a bath she was intercepted by the petitioner who tried to outrage her modesty. This witness has proved his signature in the fardbeyan which has been marked as Exhibit-1/2. P.W.5 is Shivraj Singh who has also stated in similar terms as has been stated by P.W.4. P.W.6 Lakhia Kumari is the -3- victim girl who has stated that on 27.01.2003 while she was returning from taking bath in the pond she was molested by the petitioner. P.W.7 is Sarita Devi who is said to have accompanied P.W.6 in returning home after taking a bath. This witness had stated that the petitioner had threatened P.W.6 with dire consequence. P.W.8 Sabha Ram is the Investigating Officer of the case who had examined the witnesses u/s 161 of the Cr.P.C. and after investigation had submitted charge sheet u/s 354 and 341 of the Indian Penal Code. No defence witness has been examined. The act of the petitioner is said to have been witnessed by two witnesses namely P.W.6 and P.W.7. P.W.6 has in very explicit terms stated about the attempt made by the petitioner in trying to outrage her modesty. Although there appears to be some contradictions with respect to the statement of P.W.7 who had also accompanied P.W.6 but only on the basis of such contradictions the evidence of P.W.6 cannot be brushed aside. Most of the prosecution witnesses have supported the fact that while Lakhia Kumari was returning home after taking a bath in the pond she was accosted by the petitioner and who had tried to outrage her modesty. Although learned counsel for the petitioner has much stressed upon the inimical terms which was existing between both the sides but it is well known that enmity is a double edged sword and merely because the parties were in inimical terms on such vague statement it cannot be assumed that as a retaliation the petitioner has been falsely implicated by P.W.4. The evidence of the witnesses thus being consistent and corroborative to each other's statement has rightly been appreciated by the learned trial court before convicting the petitioner for the offence u/s 354 and 341 of the Indian Penal Code. The learned appellate court has also on going through the materials available on record dismissed the appeal preferred by the petitioner. There being no reason to conclude otherwise the judgment of conviction passed by the learned trial court and affirmed by the learned appellate court is, hereby, sustained.

However, with respect to the sentence which has been imposed upon the petitioner it appears that the petitioner is the nephew of the victim P.W.6 who is facing the rigors of the prosecution case since the year 2003. The petitioner has also -4- remained in custody for some time. On consideration of the aforesaid fact the period of sentence imposed upon the petitioner is modified to the period already undergone. This application stands dismissed with the aforesaid modification in sentence. (R. Mukhopadhyay, J.) Jharkhand High Court at Ranchi
The 3rd day of August, 2017 Alok/NAFR

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