

**State Vs. Narayan Bisoi**

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**Court :** Orissa

**Decided On :** Apr-24-1974

**Reported in :** 40(1974)CLT711; 1975CriLJ1399

**Judge :** R.N. Misra, J.

**Appellant :** State

**Respondent :** Narayan Bisoi

**Judgement :**

ORDER

**R.N. Misra, J.**

1. The learned Additional Sessions Judge, Sundargarh has made this reference under Section 438, Cr, P. C. for quashing the decision of a Magistrate First Class, Rourkela in a G. R. Case.

2. The prosecution alleged that P.W. 2 Sabitri and her husband Arun (P.W. 4) were sleeping in a room which had no door leaves in their house at(sic) Gopabandhupalli nearabout Rourkela in the district of Sundargarh in the night of 15/18-9-72. At about midnight the accused entered into the room, caught hold of P.W. 2's right hand and dragged her making certain sexual overtures. She resented it, raised hulla and gave one or two slaps to the accused. P.W. 4 got up from sleep, caught hold of the accused, tied him with a rope with the help of others

and lodged first information report.

The accused was sent up for trial under Sections 451 and 354, I.P.C. At the trial both the husband and the wife as also two other local witnesses being P.Ws. 1 and 3 were examined to support the prosecution case. The learned Magistrate accepted the case of trespass, but was of the view that the prosecution had failed to establish the offences punishable under Sections 451 and 354, I.P.C. Convicting the accused under Section 448, I.P.C. he sentenced him to pay a fine of Rs. 100 or in default suffer S. I. for seven days.

3. The accused filed Criminal Appeal No. 176 of 1973 before the learned Additional Sessions Judge. Instead of disposing of the appeal one way or the other the learned Additional Sessions Judge has come to the conclusion that the accused was liable for conviction under Section 451, I.P.C. and deserved the sentence of substantive imprisonment. He stated his conclusions thus.-

Thus there is no doubt that the appellant is guilty under Section 451, I.P.C. But this appellate Court has no power of enhancing the sentence. The accused-appellant was convicted under Section 448, I.P.C. and was sentenced to pay a fine of Rs. 100 (one hundred). The sentence of imprisonment under Section 451, I.P.C. is mandatory. As I hold him guilty under Section 451, I.P.C. I must award him ' imprisonment which would amount to the enhancement of fine awarded by the learned lower court. Therefore I feel expedient to make a reference under Section 438, Cr. P. C. to the Hon'ble High Court for awarding suitable sentence for the offence under Section 451, I.P.C. and also for setting aside the acquittal under Section 354, I.P.C. by exercising its revisional jurisdiction, as the view taken by the learned lower court has got a far-reaching effect on the public and society in maintenance of law and order, and lest the people will be prone to commit the offence of outraging the modesty of any woman with supposed questionable character.

4. On a perusal of the record I find justification for the indignation of the learned Additional Sessions Judge. Indignation, however genuine and warranted, cannot overcome the statutory bars provided under Section 439, Cr. P. C. Sub-section (4) of Section 439, Cr. P. C. provides.

Nothing in this section applies to an entry made under Section 273, or shall be deemed to authorise a High Court to convert a finding of acquittal into one of conviction.

The accused was charged for the offences under Sections 451 and 354, I.P.C. The learned Magistrate has acquitted him of the charge under Section 354, I.P.C. and also passed an order of acquittal in respect of the charge under Section 451, I.P.C. and convicted the accused Under Section 448 I.P.C. on the principle that where the charge was for a higher offence conviction could be on the smaller charge. The learned Additional Sessions Judge, as a court of appeal, had also no jurisdiction to convict the accused under Section 451, I.P.C. He should have been aware of the bar provided under the Code and should not have recommended to this Court to convict the accused under Section 354, I.P.C. and enhance the sentence by inflicting a term of imprisonment under Section 451, I.P.C. An appeal lay to this Court against the judgment of acquittal and no appeal has in fact been filed on behalf of the State.

5. On examination of the record of the case and upon hearing the learned Additional. Government Advocate for the State and Mr. Ranjit Mohant for the accused opposite party, I am, however, satisfied that this case warrants a higher sentence. The learned Magistrate has not only been guilty of erroneously acquitting the accused of the charge under Section 354, I.P.C. as also the one under Section 451, I.P.C., but also in imposing a very inadequate sentence so far as conviction under Section 448, I.P.C. is concerned. The Code permitted imposition of a substantive imprisonment for one year. Where on the facts established by the prosecution which the learned Magistrate had accepted, there was no justification for him to impose a small fine of Rs. 100. Discretion has been vested in courts under the Code to impose suitable and adequate sentence within the limits set by law. Where the facts warranted a deterrent sentence to be given, judicial discretion must be applied and such sentence as would be appropriate should be awarded. I was feeling inclined to impose a term of imprisonment. But Mr. Ranjit Mohanty rightly brings to my notice that there has already been a lapse of some time and now to enhance the sentence to one of imprisonment may bring about hardship to the accused. I would accordingly enhance the fine of Rs. 100 to

Rs. 300. If the fine be not paid, the accused opposite party shall suffer R.I. for one month in lieu thereof. If the fine be realised a sum of Rs. 150 shall be paid to P.W. 2 by way of compensation. The reference is accordingly disposed of.

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