

Ram Prasad Vs. the State of Rajasthan

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Court : Rajasthan

Decided On : Jul-19-2011

Judge : Narendra Kumar Jain, J.

Acts : Code of Criminal Procedure (CrPC) - Section 374, 313; Indian Penal Code (IPC) - Sections 456, 323, 366, 376, 457, 323

Appeal No. : Case No. CRLA 195 of 2006

Appellant : Ram Prasad

Respondent : The State of Rajasthan

Advocate for Def. : Ms. Rekha Madnani, Adv

Advocate for Pet/Ap. : Mr. A.K. Gupta, Adv

Judgement :

1. Heard learned counsel for the parties.
2. Although matter is listed for orders on second application for suspension of sentence of the appellant, but during the course of arguments, learned counsel for both the parties prayed that final arguments may be heard and appeal itself be disposed off.
3. At the request of parties, arguments were heard and appeal is being disposed off finally.

4. Appellant Ram Prasad S/o. Moolya @ Mool Chand has preferred this criminal appeal under Section 374 of the Code of Criminal Procedure against impugned judgment and order dated 25.01.2006 passed by the Sessions Judge, Sawai Madhopur in Sessions Case No. 42/05, whereby the appellant has been convicted and sentenced as under:-

Accused- appellant

Under Section

Sentence

Ram Prasad

376 IPC

To undergo 10 years' rigorous imprisonment and a fine of Rs. 2,500/-, in default of payment of fine to further undergo 3 months' additional simple imprisonment.

457 IPC

To undergo 5 years' rigorous imprisonment and a fine of Rs. 1,000/-, in default of payment of fine to further undergo 1 month's additional simple imprisonment.

323 IPC

To undergo 1 year's simple imprisonment.

All the sentences were ordered to run concurrently.

5. Brief facts of the case are that in respect of an occurrence dated 13.03.2005, a written report, Exhibit P-6 was lodged by complainant Om Prakash at Police Station Behrawda Kalan about commitment of rape with his wife Smt. Barfa by accused-appellant and on the basis of this report, FIR No. 13/2005 was registered under Sections 456, 323 and 376 IPC. After completion of investigation, a charge-sheet was filed. Learned trial Court framed charges against the appellant for the offences under Sections 457, 323 and 376 IPC. Accused denied the charges and claimed trial. The prosecution, in support of its case, examined P.W. 1 to P.W. 16

and produced documentary evidence Exhibit P1 to Exhibit P12. Thereafter, statements of accused was recorded under Section 313 Cr.P.C. In defence, statements of D.W. 1 and D.W. 2 were recorded and documentary evidence, Exhibit D1 to Exhibit D3 were produced. Learned trial Court, after considering submissions of learned counsel for the parties and examining the record of the case, convicted and sentenced the accused-appellant as mentioned above.

6. Being aggrieved with the order of conviction and sentence of imprisonment, the appellant has preferred this appeal.

7. Learned counsel for appellant, initially, argued the case at length and pointed out number of contradictions in the prosecution evidence, particularly by highlighting the statement of P.W. 1, Murari Lal. He also submitted that age of prosecutrix was 26 years and she was mother of four children at the time of so-called commission of offence and accused-appellant was falsely implicated in the case. However, in view of statement of Prosecutrix, P.W. 14, Smt. Barfa, he did not press the appeal on merits and prayed that looking to the facts and circumstances of the case and for the reasons mentioned above, sentence of imprisonment of 10 years awarded to the accused-appellant by the trial court may be reduced to a period of imprisonment of 5 years, 9 months and 24 days, already undergone by him.

8. Learned Public Prosecutor submitted that this is a case wherein there is strong evidence of prosecutrix, P.W. 14, Smt. Barfa against the appellant, therefore, there is no illegality in the order of conviction of the appellant passed by the trial court. So far as sentence of imprisonment of the appellant is concerned, it was argued that it is within the discretion of the Court and sentence of imprisonment of the appellant can be reduced for the reasons to be recorded in the case.

9. I have considered submissions of the learned counsel for the parties and minutely scanned the impugned judgment as well as record of the trial Court.

10. I examined the statements of prosecution witnesses, particularly statement of P.W. 1, Murari Lal; P.W. 12 Dr. Hemlata, P.W. 14 Smt. Barfa, prosecutrix and Investigating Officer and after considering their statements as a whole, I am

satisfied that learned counsel for the appellant has rightly not pressed the appeal on merits. Since the order of conviction has not been challenged, therefore, it is not necessary to refer and discuss the facts and evidence of the case in detail. In my view, the finding of the learned trial Court about conviction of the appellant for the above offences, is based on proper appreciation of evidence and the same does not call for any interference by this Court.

11. So far as reduction of sentence of imprisonment of the appellant under Section 376 I.P.C. from 10 years' rigorous imprisonment to a period of imprisonment already undergone by him is concerned, I am not inclined to accept the prayer of learned counsel for the appellant, but in the facts and circumstances of the present case, particularly the number of contradictions in the statement of the prosecutrix, statement of P.W. 1 and medical evidence. I am of the view that this is a fit case wherein sentence of imprisonment can be reduced.

12. In Prem Chand v. State of Haryana, AIR 1989 SC 937, in the peculiar facts and circumstances of that case, the Hon'ble Supreme Court reduced the sentence of imprisonment of ten years awarded under Section 376 (2) IPC, to a period of sentence of imprisonment of five years. The State of Haryana filed review petition before Hon'ble the Supreme Court in the above case and the same was dismissed. The decision of the Hon'ble Supreme Court in that review petition is reported in (1990) 1 SCC 249 (State of Haryana v. Prem Chand & Others).

13. In Ram Kumar v. State of Haryana (2006) 4 SCC 347, their Lordships of the Hon'ble Apex Court reduced the sentence of seven years under Section 376, IPC, to a period of three years imprisonment. Para No.3 of the judgment reads as under:-

“3. The appellant, aggrieved by the order passed by the High Court has filed the above appeal by way of appeal. We have been taken through the statement and evidence recorded by the Court. Our attention was also drawn to the judgment passed by both the Sessions Court as well as the judgment passed by the High Court. The learned counsel for the appellant drew our attention to the

statement of the girl Bimla (PW-5) and also drew our attention to the evidence of the doctor. We have carefully analysed the evidence tendered by the prosecution. In our opinion, sufficient evidence was tendered by the prosecution to prove the guilt of the accused. However, at the time of hearing it is brought to our notice that the girl has now got married and living with her husband. The said statement is also ratified by the evidence of the father of the girl. Having regard to the peculiar facts and circumstances of the case, we are of the view that the sentence imposed by the Sessions Court and as affirmed by the High Court under Sections 366 and 376 of the Penal Code is on the high side. In our opinion, ends of justice would be amply met if we reduce the sentence to three years. We do so accordingly.”

14. In the case of State of Chhattisgarh v. Lekhram, (2006) 5 SCC 736, the Hon'ble Apex Court reduced the minimum sentence under Section 376, IPC, of seven years to a sentence of one-and-half-year imprisonment, already undergone by accused therein. Para 16 of the judgment reads as under:-

“16. The prosecutrix was a mature girl. She was married. She spent a few months in her in-laws' place. The respondent was working in her house. They, thus, knew each other for a long time. The prosecution evidently could not prove its case that she was enticed away from the custody of her guardian by the respondent on a false plea that he would marry her. She denied the said suggestion as presumably she was aware that she being married, the question of her marrying the respondent again may not arise. She lived for some time with the respondent in a rented house. Both the courts proceeded on the basis that she was a consenting party. The occurrence took place in the year 1986. The respondent preferred an appeal before the High Court in the year 1987. The same remained pending for about 10 years. The special leave petition was filed by the State 230 days after the prescribed period of limitation

for preferring such appeal. The delay in filing the special leave petition, however, was condoned. He is said to have remained in custody for about one-and-a-half years. In the peculiar facts and circumstances of this case and having regard to the facts that both the courts have arrived at the conclusion that she was a consenting party, in our opinion, it may not be proper to send the appellant back to prison.”

15. In the above referred cases, the Hon'ble Apex Court has reduced the minimum sentence of imprisonment under Section 376 IPC to a period of 5 years, 3 years and in one case 1-½ years imprisonment respectively.

16. There is no dispute between the parties that the appellant remained in jail for about 3 months and 28 days during trial and 5 years, 5 months and 27 days after his conviction by the trial court vide impugned judgment dated 25.01.2006, therefore, the appellant has remained in custody for about 5 years, 9 months and 24 days.

17. After considering all the facts and circumstances of the case and for the reasons mentioned above, I am of the view that ends of justice will meet, in case the sentence of imprisonment of ten years, awarded by the trial court to the accused-appellant under Section 376 I.P.C. is reduced to a period of seven years' rigorous imprisonment with fine, as imposed by the trial Court.

18. Consequently, appeal of appellant is partly allowed. Order of conviction and sentence of the appellant Ram Prasad under Section 457 and 323 IPC is maintained. The order of conviction of appellant under Section 376 I.P.C. is also maintained, but sentence of imprisonment of the appellant Ram Prasad under Section 376 IPC, awarded by the trial court, is modified and reduced to a period of seven years' rigorous imprisonment with fine of Rs. 2,500/-, in default of payment of fine to further undergo three months' simple imprisonment. All the sentences, in all the offences, shall run concurrently.

19. Since appeal has been disposed off finally, therefore, second application for suspension of sentence stands disposed off.

