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Vikram Singh and anr Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Jul-29-2011

Judge : Narendra Kumar Jain, J.

Acts : Indian Penal Code (IPC) - Sections 376 (2) (g), 363, 366, 120B; Code Of Criminal Procedure (CRPC) - Section 313; Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 - Section 3(2)(v),

Appeal No. : S.B.CRIMINAL APPEAL No.1127 of 2005; S.B.CRIMINAL APPEAL No.1174 of 2005

Appellant : Vikram Singh and anr

Respondent : State of Rajasthan

Advocate for Def. : Mr.J.R. Bijarnia, Adv

Advocate for Pet/Ap. : Mr.Neeraj Sharma; Mr.Anil Jain; Mrs.Naina Saraf, Advs

Judgement :

1. The matter has come up for orders on fifth application for suspension of sentence on behalf of appellant Mayank Chobisa @ Pintu, but during the course of arguments, learned counsel for appellant did not press the application and submitted that she is not challenging the order of conviction of appellant passed by trial court in view of overwhelming prosecution evidence including statement of prosecutrix in the case and her only prayer is to reduce the sentence of

imprisonment of appellant awarded by the trial court under Section 376 (2) (g) IPC from ten years rigorous imprisonment, to a reasonable period, which this Court thinks fit and proper, as appellant has already undergone five years, ten months and twenty five days imprisonment, till now. Similarly, learned counsel for appellant Vikram Singh (criminal appeal No.1127/05) also submitted that he is also not challenging the order of conviction of appellant in view of statement of prosecutrix and his prayer is also to reduce the sentence of imprisonment of appellant passed by trial court under Section 376 (2)(g) IPC from ten years rigorous imprisonment to five years, eleven months and twenty nine days already undergone by him till now or to a reasonable period, which this Court thinks fit and proper.

2. Learned public prosecutor did not oppose the prayer of appellants for hearing of the appeals and he submitted that the sentence of imprisonments can be reduced for the reasons to be recorded.

3. At the request of learned counsel for the parties, the arguments were heard and appeals are being disposed off finally. Both the appeals are directed against common order of trial court and arise out of same incident and FIR, therefore, they are being disposed off by this common order.

4. Appellants Mayank Chobisa @ Pintu and Vikram Singh, both have preferred these appeals challenging their order of conviction and sentence passed by Special Judge, SC/ST Cases, Jaipur in Sessions Case No.27/05 vide judgment and order dated 23rd November, 2005, whereby they have been convicted and sentenced as under :-

Under Section

Sentence

363 IPC

To undergo 3 years' rigorous imprisonment and a fine of Rs. 2,000/-, in default of payment of fine to further undergo one months' additional simple imprisonment.

366 IPC

To undergo 5 years' rigorous imprisonment and a fine of Rs. 3,000/-, in default of payment of fine to further undergo three months' additional simple imprisonment.

376 (2) (g) read with Section 120-B IPC

To undergo 10 years' rigorous imprisonment and a fine of Rs. 5,000/-, in default of payment of fine to further undergo six months' additional simple imprisonment.

5. Briefly stated the facts of the case are that PW.3 Nenu Ram lodged a written report (Ex.P.3) at Police Station Vidhan Sabha, Jaipur, wherein it was alleged that his daughter Suman aged about 15 years had gone to Rajvansh Public School on 6th September, 2004 along with his brother's daughter Monu. Monu came at 6.15 p.m. and told him that his tenant Vikram Singh and his friend Mayank Sharma, both have abducted Suman. On the basis of above written report, FIR No.203/2004 (Ex.P.4) was registered under Sections 363 & 366 IPC. During investigation, Suman was recovered on 17th October, 2004. Thereafter, she was medically examined. Accused persons were also arrested. After completion of investigation, police filed a charge sheet against two accused appellants and one co-accused Dalson Denial @ Rinku. A charge sheet against one co-accused Vipin Koted @ Nikki was also filed showing him absconding.

6. Learned trial court framed charges against accused appellants Mayank Chobisa @ Pintu and Vikram Singh under Sections 363, 366, 120B, 376 (2)(g) IPC and under Section 3(2)(v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 and against co-accused Dalson Denial @ Rinku under Sections 363, 366 IPC and under Sections 3(2)(v) of the SC/ST Act. Accused persons denied the charges and claimed trial. Prosecution in support of its case examined PW.1 to PW.17 and also produced documentary evidence Ex.P1 to P31. Thereafter, statements of the accused persons were recorded under Section 313 Cr PC. No oral evidence was led in defence, but Exhibits D1 to D7 were produced in defence.

7. Learned trial court, after considering the submissions of parties and examining the record of the case, acquitted the co-accused Dalson Denial @ Rinku of the charges framed against him. Learned trial court also acquitted both the accused appellants of the charges under Section 3(2)(v) of the SC/ST Act, but convicted and sentenced them as mentioned above.

8. I have considered the submissions of learned counsel for the parties and examined the impugned judgment and record of the trial court.

9. Learned counsel for both appellants did not challenge the order of conviction of the appellants passed by trial court, therefore, it is not necessary to refer and discuss the facts and evidence of the case in detail.

10. I examined the entire evidence available on record particularly the statements of PW.1 Kumari Monu, PW.2 Smt.Prem, PW.3 Nenu Ram (father of prosecutrix), PW.9 Tej Pal Singh ASI Police Station Jyoti nagar, Jaipur, PW.11 kumari Suman (Prosecutrix), PW.13 Samarveer Yadav SHO Police Station Jyoti Nagar, Jaipur. PW.17 Karan Sharma Investigating Officer / Circle Officer and after considering the same, I am of the view that impugned judgment passed by trial court is legal, justified and based on proper appreciation of evidence and the same does not call for any interference by this Court. In my view, learned counsel for both appellants were right in not challenging the order of conviction of appellants.

11. So far as reduction of sentence of appellants under Section 376(2)(g) IPC is concerned, it is relevant to mention that PW.8 Dr.Rajesh Kumar, who examined the prosecutrix, stated that as per X-Ray Report Ex.14, he opined that on the date of examination of prosecutrix Suman, she was above 17 years and below 19 years of age, there are number of contradictions in the statement of PW.11 Kumari Suman. The accused Vikram Singh and prosecutrix were known to each other and they had love and affairs relation with each other, they lived together for more than and half month, PW.1 Kumari Monu, who was accompanied with Suman PW.11 on the date of incident, was also declared hostile and did not support the prosecution story. PW.2 Smt.Prem (Aunt of prosecutrix) was also declared hostile by prosecution. Therefore, looking to all the facts and circumstances of the case and for the reasons mentioned above I am of the view that this is a fit case of

reduction of minimum sentence of imprisonment of appellants.

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 highside. 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. Hon'ble Apex Court in Ravinder v. State of M.P., (2006) 9 SCC 590, reduced the minimum statutory sentence of 7 years rigorous imprisonment to a period of 4 years imprisonment, already undergone by accused, in the facts and circumstances of that case. Para 4 of the judgment in reproduced as under:-

“4. Learned counsel for the appellant next submitted that the appellant has remained in custody for a period of more than four years, as such the sentence of imprisonment awarded against him should be reduced to the period already undergone. In the facts and circumstances of the case, we are of the view that it is a fit case where sentence of imprisonment awarded against the appellant should be reduced to the period already undergone.”

16. Hon'ble Apex Court in Raj Kumar Alias Raju Yadav Alias Raj Kumar Yadav v. State of Bihar, (2006) 9 SCC 589, reduced the sentence of 7 years' imprisonment under Section 376 IPC to a period of imprisonment already undergone by accused.

17. Hon'ble Apex Court in the above referred cased, in the facts and circumstances of that particular case, reduced the minimum sentence of imprisonment under Section 376 IPC to a period of 5 years, 3 years, 1-½ years, in one case 4 years, already undergone by accused and in last case to a period of imprisonment already undergone.

18. After considering all the facts and circumstances of the case and the above referred judgments of the Hon’ble Apex Court and for the reasons mentioned above, I am of the view that ends of justice will meet in case the sentence of imprisonment of both appellants awarded by trial court under Section 376(2)(g) IPC is reduced from ten years rigorous imprisonment to seven years rigorous imprisonment.

19. Consequently, appeals of both the appellants Mayank Chobisa @ Pintu and Vikram Singh are partly allowed. Their order of conviction and sentence under Sections 363 and 366 IPC passed by trial court is maintained. Their conviction under Section 376 (2) (g) read with Section 120B IPC is also maintained, but their sentence of imprisonment under this section is reduced from ten years rigorous imprisonment to seven years rigorous imprisonment and a fine of Rs.5,000/-, in default, to further undergo one month’s simple imprisonment. All the sentences will run concurrently as ordered by trial court.

20. Since appeal has been disposed off, therefore, application for suspension of sentence NO.674/2011 filed by appellant Mayank Chobisa is also dismissed as not pressed.

21. A copy of this judgment be placed on record in connected file.

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