°)ITEM NO.103 COURT NO.6 SECTION II

SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS

CRIMINAL APPEAL NO. 626 OF 2001

BHANWAR LAL Appellant (s)

VERSUS

STATE OF RAJASTHAN Respondent(s)

(With office report)

Date: 12/09/2007 This Appeal was called on for hearing today.

CORAM :
HON'BLE MR. JUSTICE S.B. SINHA
HON'BLE MR. JUSTICE H.S. BEDI

For Appellant(s) Mr. K.B. Sinha, Sr.Adv.
Mrs. Kawaljit Kocher,Adv.
Ms. Kusum Chaudhary,Adv.

For Respondent(s) Mr. Naveen Kumar Singh,Adv.
Mr. Aruneshwar Gupta,Adv.
Mr. Shashwat Gupta,Adv.
for Mr. Ashok K. Mahajan,Adv.

UPON hearing counsel the Court made the following
ORDER

Heard the learned counsel for the parties.
The Judgment of the High Court is modified and the appeal is allowed to the extent mentioned in the signed order.

(A.S. BISHT) (PUSHAP LATA BHARDWAJ)
COURT MASTER COURT MASTER
[Signed order is placed on the file]

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 626 OF 2001

BHANWAR LAL ... APPELLANT(S)
:VERSUS:
STATE OF RAJASTHAN ... RESPONDENT(S)

ORDER

Heard the learned counsel for the parties.

The Appellant was convicted for commission of offence under Section 376 of the IPC. He was acquitted by the learned Trial Judge by a judgment dated 5.1.1984 passed in Sessions Case No.128/1982. The High Court, however, reversed the said judgment of conviction and sentence finding him guilty for commission of offence under Section 376 of the IPC and sentenced him to undergo rigorous imprisonment for a period of 10 years from the date he is lodged in prison again.

Mr. K.B. Sinha, learned senior counsel appearing on behalf of the appellant confined his submissions only to the quantum of sentence. Learned counsel would contend that keeping in view the fact that the occurrence had taken place as far back as in 1982 and the prosecutrix has settled in her life, a lenient view of the matter may be taken. Learned counsel would contend that for the aforementioned purpose,

the fact that the appellant was acquitted by the learned Trial Court should also be relevant factor.

Learned counsel appearing on behalf of the State on the other hand would submit that the sentence imposed on the appellant by the High Court should be upheld keeping in view the fact that the prosecutrix at the relevant time was only 7 years old.

The power in regard to quantum of sentence is although discretionary but it is well settled that the same can neither be based on he whims nor on caprice. The conduct of the accused and the facts and circumstances obtaining in each case would be relevant for the purpose of imposition of adequate sentence.

There cannot, however, be any doubt whatsoever that the period which has elapsed since the date of occurrence and the factor that the appellant was found innocent by the Trial Court, would be relevant factors.

The occurrence took place on 3.9.1982. Indisputably the prosecutrix at that time was a 7 years old girl. The First Information Report was lodged on 5.9.1982. On medical

examination conducted on the prosecutrix it was found that she had been subjected to forceful sexual intercourse. The testimony of the prosecutrix was believed by the High Court. Her evidence was some sort of descriptive in nature.

The Parliament amended Section 376 of the IPC by Act 43 of 1983. In terms of clause (f) of sub-section (2) of Section 376, a minimum sentence of 10 years was prescribed. However, the Parliamentary amendment is not relevant in this case as the offence took place much prior thereto. We, therefore, keeping in view the aforementioned facts and circumstances of this case, are of the opinion that imposition of 7 years' rigorous imprisonment would meet the ends of justice. The judgment of the High Court is modified and the appeal is allowed to the aforementioned extent.

The appellant has been enlarged on bail by order dated 8.5.2001 passed by this Court. He shall be taken back into custody forthwith to serve the remaining period of sentence.

.....J
(S.B. SINHA)

.....J
(H.S. BEDI)

NEW DELHI,
SEPTEMBER 12, 2007.