

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO(s). 113 OF 2012

HIRA LAL KALUNDIA ... APPELLANT(S)

VERSUS

STATE OF JHARKHAND ...RESPONDENT(S)

O R D E R

This appeal is against the concurrent finding of fact on the charge of offence punishable under Section 376 of the Indian Penal Code ("IPC" for short) recorded by the High Court of Jharkhand in Criminal Appeal No. 268 of 2001 dated 16.01.2009 wherein it has affirmed the judgment of conviction and sentence in Sessions Trial Case No. 219 of 1998 in Manjhari P.S. Case No. 2 of 1998 whereby the appellant has been sentenced to undergo rigorous imprisonment for a period of seven years urging certain legal contentions.

The first ground of attack on the concurrent finding recorded in the impugned judgment is that, the prosecutrix-P.W.1 herself admitted in her examination-in-chief that her age is 20 years, therefore, the conclusion arrived at by both the courts below that she is aged about 14-15 years, when

the offence is committed by the appellant, the offence falls under Section 376 of the IPC, therefore, the findings and reasons recorded are contrary to the material evidence placed on record, therefore, the same is liable to be set aside. The second ground urged is that P.W. 2-Siwani Kalundia (Aunt of the prosecutrix) is an eyewitness, who has been examined in the case. The presence of P.W. 2 at the time of committing the offence by the appellant is not spoken to by P.W.1. P.W. 2 has deposed that there is a love affair between the P.W. 1 (victim) and the appellant herein. The same has not been considered by the courts below while affirming the conviction and sentence imposed on him, is also a ground urged for interference with the impugned judgment and order.

Mr. Dinesh Kumar Tiwary, learned counsel appearing on behalf of the appellant, further submitted that the medical report given by P.W. 3-Dr. Neeru Jha, who has stated that there is no scratch mark on the private part of the prosecutrix and, therefore, the alleged offence is not proved against the appellant.

Per contra, Mr. Tapeshe Kumar Singh, learned counsel appearing on behalf of the State of Jharkhand, sought to justify the concurrent finding of fact recorded on

the charges levelled against the appellant inter alia contending that the same is based on re-appreciation of legal evidence on record, the same need not be interfered with by this Court in exercise of its jurisdiction as no case is made out by the appellant herein.

After hearing learned counsel for the parties, we have carefully examined the findings and reasons recorded in the impugned judgment by the High Court. The fact finding court on due appreciation of the evidence on record, has recorded the finding of fact after accepting the evidence of P.W. 1 and P.W. 2 and held that the charges levelled against the appellant are proved and, accordingly, convicted and sentenced him for seven years rigorous imprisonment for the offence under Section 376, the same cannot be interfered with by this Court on the contentions urged on behalf of the appellant herein, particularly having regard to the fact that the appellant had already undergone imprisonment of six years and two months. The imprisonment imposed by the trial court, which is affirmed by the High Court for the offence under Section 376 is for a period of seven years. In this view of the matter, it would be suffice for this Court

to treat the period of imprisonment already undergone by the appellant herein for the charges proved against him.

We order accordingly.

In the result, the appeal is disposed of with the above said modification to the impugned judgment.

The appellant is on bail. He shall be discharged of his bail bonds.

.....J.
(V. GOPALA GOWDA)

.....J.
(ADARSH KUMAR GOEL)

NEW DELHI,
SEPTEMBER 4, 2014

ITEM NO.108

COURT NO.13

SECTION IIA

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Criminal Appeal No(s). 113/2012

HIRA LAL KALUNDIA

Appellant(s)

VERSUS

STATE OF JHARKHAND

Respondent(s)

(With appln. (s) for bail and office report)

Date : 04/09/2014 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE V. GOPALA GOWDA
HON'BLE MR. JUSTICE ADARSH KUMAR GOELFor Appellant(s) Mr. Dinesh Kumar Tiwary, Adv.
Mr. Amit Srivastava, Adv.
Mr. Santosh Kumar Tripathi, Adv.For Respondent(s) Mr. Tapeshe Kumar Singh, Adv.
Mr. Mohd. Waquas, Adv.UPON hearing the counsel the Court made the following
O R D E RIn terms of the signed order, the appeal is
disposed of.The appellant is on bail. He shall be discharged of
his bail bonds.(S.K. RAKHEJA)
COURT MASTER(MALA KUMARI SHARMA)
COURT MASTER

(Signed order is placed on the file)