

HIGH COURT OF MADHYA PRADESH JABALPUR

Criminal Appeal No.1956/2000

Prakash Kuchbandiya and another

Vs.

State of Madhya Pradesh

Present : Hon'ble Shri Justice N.K. Gupta.

Name of counsel for the parties:

Shri Raman Patel, Advocate for the appellants.

*Shri Prabhat Singh, Panel Lawyer for the
respondent/State.*

J U D G M E N T

(Delivered on the 15th day of December, 2010)

The appellants have preferred this appeal against the judgment dated 19.7.2000 passed by the Additional Sessions Judge, Jabalpur in S.T. No.379/98 by which they were convicted for the offence punishable under Sections 354 and 323 of IPC and sentenced to R.I. for nine months with fine of Rs.500/- and R.I. for one month with fine of Rs.250/-. Sentences were to run concurrently. In default of payment of fine Rs.500/- and Rs.250/- further R.I. for two months and one month respectively.

2. The prosecution case in short is that on 22.4.1998 at about 8-9 p.m., the prosecutrix went to shop in the locality of Ghamapur, Jabalpur to purchase the *Bidi*. The vender gave her Rs.60/- back to return that amount to her brother

thereafter she left for her house. In a street, the appellants held the prosecutrix and removed her clothes, but since she became unconscious, the appellants ran away. When the prosecutrix was not found in the locality, her father lodged an FIR and intimated to the police about her missing, then she was recovered and a crime was registered. The prosecutrix was sent to the hospital for her medical examination. Some injuries were found on her person. After due investigation, the Police Ghamapur had submitted a challan before the committal Court for the offence punishable under Sections 363, 366 and 376 of IPC.

3. The appellants abjured their guilt. They did not take any specific defence and, therefore, no defence evidence was adduced.

4. The Additional Sessions Judge, Jabalpur after considering the evidence adduced by the parties acquitted the appellants for the offence punishable under Sections 363, 366 and 376 of IPC, but convicted them for the offence punishable under Sections 354 and 323 of IPC and inflicted the aforesaid sentence.

5. I have heard the learned counsel for both the parties.

6. Learned counsel for the appellants has submitted that only one month R.I. is awarded by the trial Court for the offence punishable under Section 323 of IPC, whereas the

appellants remained in the custody for more than four months. The appellants were young youth of 20 and 25 years of age respectively at the time of incident. They are facing trial of the present case since April 1998, therefore, their jail sentence awarded for the offence punishable under Section 354 of IPC may be reduced.

7. Looking to the act done by the appellants, their age at the time of incident, punishment for the offence under Section 323 of IPC, the period of trial and appeal with the fact that the appellants have already undergone the period of 128 days in custody, the contention of learned counsel for the appellant seems to be acceptable and, therefore, their sentence can be reduced.

8. On the basis of aforesaid discussion, the appeal of the appellants is partly allowed. Their conviction for the offence punishable under Sections 354 and 323 of IPC is hereby maintained, but the sentence for the offence punishable under Section 354 of IPC is hereby reduced to the period, which they have already undergone in the custody. There is no change in imposition of fine amount.

9. At present, the appellants are on bail, therefore, it is directed that their bail bonds shall stand discharged.

(N.K. GUPTA)
JUDGE
.12.2010

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