

HIGH COURT OF MADHYA PRADESH ; JABALPUR**Cr.R.No. 1387/2011****Balram****Vs.****State of M.P.**

For the Applicant : Shri M.K.Tripathi, Advocate.
For the Respondent : Shri Alok Tapikar, Panel Lawyer

Heard on the question of admission.

State counsel has taken notice of this admission, hence no further notice is required.

The applicant's counsel submits that the record of the courts below have already been received, hence instead to hear the arguments on IA No.15626/11, this revision be heard finally.

Learned Panel Lawyer, did not have any objection in such hearing. Pursuant to it, by dismissing the aforesaid application for suspension of the jail sentence, with the consent of the parties, this revision is heard finally. Order dictated in open court.

ORDER**(29.08.2011)**

This revision is directed by the applicant/accused, being aggrieved by the order dated 4.8.2011 passed by the IIIrd Addl.Sessions Judge, East Nimad, Khandwa in Cr.A.No.92/10 whereby dismissing his appeal and affirming the judgment dated 19.4.2010 passed by the JMFC Harsood in criminal Case No.730/2007 convicting and sentencing the applicant for the offence under section 354 of the IPC with a direction to undergo for RI six months with fine of Rs.300/-, in default of payment of fine further RI 15 days, he has been send to jail for facing the jail sentence.

2. The facts giving rise to this revision in short are that on 15.12.07, the prosecutrix Sudha Pandey (PW 1), aged 18 years, accompanied with her father Suresh Prasad (PW 2), came to the market of village Ashapur. After

marketing, when they reached to the bus stand, they saw that the bus had already gone. At the same time, the applicant was going to village Fafri on his motor-cycle then in faith that he will drop the prosecutrix at her residence, her father send her with the applicant. On the way, in the forest, applicant stationed the motor-cycle. On asking the reason of it by the prosecutrix, he said that he is going to get easy and immediately thereafter, with bad intention, he caught-hold the hand of the prosecutrix. The prosecutrix tried to rescue herself. She was also subjected to threat of her life on telling such incident to anyone. Thereafter the prosecutrix came to her home walking and narrated the incident to her parents. Accordingly, by taking advantage of the situation, the applicant had tried to outrage the modesty of the prosecutrix and committed such offence. On lodging the report with the police Khalwa, the applicant was arrested. After holding the investigation, the applicant was charge-sheeted for the offence of section 354 and 506 of the IPC. On framing the charges for the aforesaid offence, he abjured the same, on which the trial was held. On appreciation of the evidence, the applicant was held guilty for the offence under section 354 of the IPC and sentenced with the punishment as stated above, while he was acquitted from the charge of section 506-B IPC. On filing the appeal, the same was dismissed, on which, the applicant has come forward to this court with this revision.

3. Shri M.K.Tripathi, learned counsel of the applicant without assailing the findings of the impugned judgment of both the courts holding conviction against the appellant under section 354 of the IPC, made his limited submissions firstly for extending the benefit of Probation of Offenders Act on the background that he being first offender did not have any criminal history and secondly and in alternate, prayed that in case the aforesaid benefit is not extended to him then considering the circumstance that the applicant has already suffered the mental agony of the present case for more than 3 ½ years and also suffered the jail sentence since the date of impugned judgment of the appellate court i.e 4.8.2011 till today, his jail sentence be

reduced upto the period for which he has undergone till today by enhancing the amount of fine under the discretion of the court and prayed to allow this revision accordingly.

4. On the other hand, with the assistance of the case diary and other papers, Shri Alok Tapikar, learned Panel Lawyer by justifying the impugned judgment of conviction and sentence said that there is no scope in the matter either for acquittal or for extending the benefit of Probation of the Offenders Act because the applicant has not only committed the alleged offence but he has also broken the trust and faith of the father of the prosecutrix. He also argued that looking to the nature of the offence and the manner in which it was committed the applicant has been punished with adequate punishment and it does not require any reduction at this stage and prayed for dismissal of this revision.

5. Having heard the parties, after perusing the record, I have not found any perversity or infirmity in the judgment of both the courts below in appreciation of the evidence holding guilty to the applicant for the alleged offence. So, there is no scope in the matter for extending the acquittal to the applicant. Although the case has not been argued on this question by the applicant but before proceeding further, in order to do justice between the parties, I have examined the matter with the aforesaid angle also.

6. Coming to consider the first submission of the applicant's counsel for extending the benefit of Probation of the Offenders Act, in the available factual matrix of the matter in which the applicant by breaking the trust and faith placed on him by the father of the prosecutrix, has committed the alleged offence. In such a situation, inspite of the fact that he is the first offender and did not have any criminal antecedent, I do not find it fit to extend the benefit of such provision to the applicant, hence such prayer is hereby rejected.

7. So far the other submission for reducing the jail sentence of the applicant is concerned, I have found some substance in it because the applicant is facing the mental agony of this case since the date of the

incident and also appeared on various dates before the trial court as well as the appellate court and also facing the jail sentence, since the date of impugned judgment of the appellate court. Thus considering all these circumstances, I deem fit to reduce his jail sentence imposed by the subordinate court under section 354 IPC for RI 6 months to the period of 3 months RI by enhancing the amount of fine from 300/- to Rs.1000/-.

8. Therefore, by affirming the conviction of the appellant under section 354 of the IPC, this revision is allowed in part and the jail sentence awarded for six months is reduced for three months RI by enhancing the amount of fine from Rs.300/- to Rs.1000/- as stated above. Failing in depositing the enhanced fine amount, the applicant has to suffer further one month SI. Till this extent, the impugned judgment is hereby modified while the other findings of the same are hereby affirmed.

9. The revision is allowed in part as indicated above.

(U.C.Maheshwari)
Judge

MKL

