

HIGH COURT OF MADHYA PRADESH : AT JABALPUR

Criminal Revision No. 854/2006

Manoj Jharia and another
Vs.
State of Madhya Pradesh

As Per : G.S.Solanki, J.

Shri Pradeep Sahu, Advocate for applicant No. 1.

Shri S.K.P. Verma, Advocate for applicant No. 2.

Shri Pushpraj Singh, PL for the State.

ORDER
[30.4.2013]

1. This revision petition has been preferred by the applicants under Section 397/401 of the Cr.P.C. being aggrieved by judgment dated 8.5.2006 passed by Tenth Additional District Judge, Jabalpur in Criminal Appeal No. 595/2005 affirming the conviction and sentence recorded by JMFC, Jabalpur in Criminal Case No. 261/2004 vide order dated 17.11.2005 whereby the applicants have been convicted under Section 377/34 of the IPC and sentenced to R.I. for 3 years and fine of Rs. 200/- with default stipulation.
2. The facts, in short, giving rise to this petition are that on 27.12.2001 at about 10:30 AM when complainant Lakhan Lal (PW-1) was standing at Tripuri Square, applicants came there and told him to accompany them for taking bath at Tilwaraghat, on which the complainant agreed, thereafter, all of them had gone to Tilwaraghat and took a bath returned to home. Thereafter, applicants consumed wine and undressed the complainant and committed unnatural offence with the complainant one by one. It was alleged that when one of the applicants was committing the aforesaid offence, another one had caught hold the applicant. Thereafter, the applicants threatened the complainant not to lodge the report.

3. The complainant lodged the report (P-1) on the next day i.e. on 28.12.2001. The complainant was sent for medical examination. Dr. Ashok Jain (PW-5) examined the complainant and submitted report (P-4).
4. After due investigation, the applicants were charge sheeted before JMFC, Jabalpur. Learned JMFC, Jabalpur framed the charges under Section 377 of the IPC against the applicants.
5. The applicants abjured the guilt and prayed for trial.
6. The learned JMFC, Jabalpur on appraisal of evidence on record, convicted and sentenced the applicants as mentioned hereinabove. Being aggrieved thereby the applicants preferred an appeal before Tenth Additional District Judge, Jabalpur, which was dismissed, hence this revision petition.
7. Learned counsel appearing for the applicants have submitted that the trial Court as well as the appellate Court have committed illegality in appreciating the evidence on record in its proper perspective. Except the complainant, none of the witnesses has supported the case of the prosecution. The complainant himself has not specifically stated that the applicants entered their private parts in his anus. Thus, the offence under Section 377 of the IPC is not proved against the applicants, therefore, the conviction and sentence recorded by the Courts below be set aside and applicants be acquitted.
8. Learned Panel Lawyer for the State has supported the conviction and sentence recorded by the Courts below.
9. I have peruse the judgment and order passed by the Courts below. Complainant Lakhan Lal (PW-1) categorically stated that the applicants committed unnatural offence (carnal intercourse) with him. In cross-examination, he has not deviated from the aforesaid statement. Statement of complainant has been corroborated from FIR (Ex.P-1) and report (P-4) submitted by Dr. Ashok Jain, in which swelling along with multiple abrasions have been found on the anus of the complainant. On

Proctoscopy, a contusion was found on interior wall of anal canal, which was suggestive of penetration. The statement/report of the Doctor was not challenged in the cross-examination. In these circumstances, in my opinion, the trial Court as well as the appellate Court have not committed any illegality in recording the conviction of the applicants under Section 377 of the IPC. Thus, the conviction of the applicants recorded by the Courts below under Section 377/34 of the IPC, is hereby affirmed.

10. So far as sentence of the applicants is concerned, learned counsel for the applicants have submitted that the incident had taken place 12 years before in the year 2001. Applicant No. 1 has suffered the jail sentence of more than 4 months and applicant No. 2 has suffered the jail sentence of about 29 days, the ends of justice would be met, if the applicants are sentenced for the period already undergone and fine. Counsel has placed reliance on a decision of Apex Court in **Fazal Rab Choudhary Vs. State of Bihar - AIR 1983 SC 323** to submit that Hon'ble the Apex Court has reduced the sentence of the accused person upto the period of six months.
11. Considering the overall facts and circumstances of the case, the jail sentence of 3 years awarded to the applicants appears to be severe and there is a scope of reduction of jail sentence.
12. Consequently, the revision is partly allowed. The conviction of the applicants recorded by the Courts below under Section 377/34 of the IPC, is hereby affirmed. However, the sentence of the applicants is reduced to R.I. for 6 months and fine (as imposed by trial Court). The set-off of the period already undergone be adjusted.

(G.S.Solanki)
Judge

