

Court No. - 89

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Case :- CRIMINAL REVISION No. - 355 of 2022

Revisionist :- Billu @ Anandi And Another

Opposite Party :- State of U.P. and Another

Counsel for Revisionist :- Mohammad Khalid, Pawan Kumar Yadav

Counsel for Opposite Party :- G.A.

Hon'ble Anil Kumar Ojha, J.

Heard learned counsel for the revisionists, learned A.G.A. for the State by means of Video Conferencing and perused the record.

Challenge in this Revision is the judgement and order dated 3.11.2021 passed by Additional Sessions Judge (Rape Cases & POCSO Act) Sambhal at Chandausi in Appeal No. 20 of 2020 under Section 101 of Juvenile Justice (Care and Protection of Children) Act wrongly filed under Section 374 (2) Cr.P.C. (Billu @ Anandi and Another Vs. State of U.P. and Another) whereby learned Appellate Court dismissed the appeal on the ground of not pressed by counsel for appellants and affirmed the conviction order dated 21.12.2020 passed by Juvenile Justice Board, District Sambhal in Case Crime No. 536 of 2005 under Sections 376, 506 I.P.C., P.S. Rajpura, District Sambhal convicting and sentencing the appellants under Section 376 I.P.C. for a period of three years each and under Section 506 I.P.C. convicted the appellants for two years each. Further directed that both the sentences shall run concurrently.

Learned counsel for the Revisionists raised only one point that order dated 3.11.2021 is illegal as the appeal has been dismissed on the ground of not pressed by the counsel for the Revisionists.

I agree with the aforesaid contention of learned counsel for the Revisionists.

Relevant portion of the order dated 3.11.2021 is quoted below:-

आदेश

"यह क्रिमिनल अपील प्रार्थी/अपीलार्थीगण आनन्दी उर्फ बिल्लू व शीशपाल की ओर से धारा-373, 504 भा०द०सं० थाना रजपुरा जिला सम्भल के सम्बन्ध में प्रस्तुत की गयी है, जो माननीय सत्र न्यायाधीश महोदय के यहाँ से अन्तरित होकर प्राप्त हुई है।

प्रार्थी/अपीलार्थीगण के विद्वान अधिवक्ता द्वारा अपील पर बल न देने का पृष्ठांकन किया गया है। अतः क्रिमिनल बल न देने के कारण निरस्त होने योग्य है। अतः प्रार्थी/अपीलार्थीगण की अपील बल न देने के कारण निरस्त की जाती है। पत्रावली नियमानुसार दाखिल दफ्तर हो।

दिनांक: 03.11.2021"

In **State of Haryana v. Janak Singh, (2013) 9 SCC 431**, Hon'ble Apex Court has held that where Criminal Appeal preferred by the convict of offence under

Section 376 I.P.C. was not pressed by the counsel for the appellant as regards the judgement of conviction and had pressed only on the point of sentence and the appellate court/High Court then reduced the sentence already undergone by the convict in jail. It has been further held by the Hon'ble Supreme Court that even when the appeal was not pressed on merits and only pressed only on the point of sentence, appellate court has to see under Section 376 I.P.C. whether the conviction was proper.

For the ready reference, relevant part of the afore-cited judgement of the Apex Court is quoted below:

"12. We notice that before the High Court the learned counsel for the respondents did not challenge the conviction. At the same time, he stated that the circumstances of the case and medical evidence indicated that this could be a case where the prosecutrix had gone with respondent Joginder Singh of her own will. Therefore, it is not clear whether the respondents had really instructed their counsel not to press the appeal on merits or whether the counsel on his own thought that getting the respondents released on sentence already undergone by them was an easy way out and, therefore, he preferred that option. We feel that the appeals were heard in a slipshod manner. It was open for the respondents to press the appeals on merits and pray for acquittal. Had the case been argued on merits, the High Court could have acquitted the respondents if it felt that the prosecution had not proved its case beyond reasonable doubt. Assuming the respondents did not press the appeals, the High Court had to still consider whether the concession made by the counsel was proper because it is the duty of the court to see whether conviction is legal. But, once the respondents stated that they did not want to press the appeals and the High Court was convinced that conviction must follow, then, ordinarily it could not have reduced the sentence to the sentence already undergone by the respondents which is below the minimum prescribed by law. The High Court could have done so only if it felt that there were extenuating circumstances by giving reasons therefor. While reducing the sentence, the High Court has merely stated that it was "just and expedient" to do so. These are not the reasons contemplated by the proviso to Section 376(1) IPC. Reasons must contain extenuating circumstances which prompted the High Court to reduce the sentence below the prescribed minimum. Sentence bargaining is impermissible in a serious offence like rape. Besides, at the cost of repetition, it must be stated that such a course would be against the mandate of Section 376(1) IPC.

13. In view of the above discussion, we hold that the impugned judgment [Janak Singh v. State of Haryana, Criminal Appeal No. 648-SB of 2000, decided on 2-8-2010 (P&H)] is legally unsustainable and is liable to be set aside and the matter deserves to be remanded to the High Court for fresh disposal of the appeals filed by the respondents."

Recently in ***Criminal Appeal No. 1385-1386 of 2021, Gurjant Singh Vs. The State of Punjab***, Hon'ble Apex Court has again reiterated the aforesaid principle.

Accordingly it is held that Criminal Appeal cannot be dismissed on the ground of not pressed.

In view of the above law of ***Hon'ble Apex Court in State of Haryana v. Janak Singh (Supra)***, order passed by Additional Sessions Judge (Rape Cases & POCSO Act) Sambhal at Chandausi dated 03.11.2021 dismissing the appeal on the ground of not pressed by the learned counsel for the appellants deserves to be set-aside and Revision deserves to be allowed.

Accordingly, Revision is allowed. Impugned order dated 03.11.2021 passed by

Additional Sessions Judge (Rape Cases & POCSO Act) Sambhal at Chandausi is set-aside.

Matter is remitted to Additional Sessions Judge (Rape Cases & POCSO Act) Sambhal at Chandausi to dispose of the matter in accordance with provisions of law after providing adequate opportunity of hearing to the parties.

It is also directed that Additional Sessions Judge (Rape Cases & POCSO Act) Sambhal at Chandausi shall dispose of the appeal within a period of three months from the date of receipt of certified copy of this order as revisionist is already in jail and matter relates to Section 376 I.P.C.

Order Date :- 4.2.2022

A. Mandhani