

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLA No.1010 of 2022

Chandrakanta Mohapatra Appellant

Mr. A.R. Panda, Advocate.

-versus-

State of Odisha Respondent

*Mr. P.B. Tripathy,
Addl. Standing Counsel*

**CORAM:
JUSTICE S.K. SAHOO**

**ORDER
11.07.2023**

Order No.

2.

This matter is taken up through Hybrid arrangement (video conferencing/physical mode).

Heard learned counsel for the appellant and learned counsel for the respondent.

When the matter is placed, learned counsel for the appellant pointed out from the impugned judgment dated 30.05.2022 passed by the learned Additional Sessions Judge-cum-Special Judge, Jajpur Road in C.T. (Special) Case No.15 of 2020 that the appellant has been sentenced to undergo R.I. for seven years and to pay a fine of Rs.10,000/- (Rupee ten thousand), in default, to undergo further R.I. for six months for the offence under section 376(1) of the I.P.C., to undergo R.I. for three years and to pay a fine of Rs.5,000/- (rupees five thousand), in default, to undergo further R.I. for three months for the offence under section 450 of the I.P.C. and the substantive sentences were directed to run concurrently.

The incident in question stated to have taken place

in the intervening night between 15.03.2020 and 16.03.2020.

Section 376(1) of the I.P.C. read as follows:

“(1) Whoever, except in the cases provided for in sub-section (2), commits rape, shall be punished with rigorous imprisonment of either description for a term **which shall not be less than ten years**, but which may extend to imprisonment for life, and shall also be liable to fine.”

It appears that earlier the punishment prescribed for the offence under section 376(1) of the I.P.C. was “shall not be less than seven years but which may extend to imprisonment for life, and shall also be liable to fine”. However, the said provision was substituted by the Criminal Law (Amendment) Act, 2018 (Act 22 of 2018) with effect from 21.04.2018, which provided that the punishment “shall not be less than ten years, but which may extend to imprisonment for life and shall also be liable to fine”. There is nothing in the section which gives discretion to the Court to reduce the punishment than minimum sentence prescribed.

The Hon’ble Supreme Court has time and again held that Courts cannot impose lesser than the minimum sentence prescribed under a statute, especially when the said provision does not provide any discretion to the Court to hand down a lesser term of imprisonment having regard for some peculiar circumstances of the case at hand. Recently, in the case of **State of U.P. –Vrs- Sonu Kushwaha reported in (2023) SCC OnLine S.C. 774** while reiterating the above position of law, the Apex Court held as follows:

“15.....When a penal provision uses the phraseology “shall not be less than....”, the

Courts cannot impose a lesser sentence. The Courts are powerless to do that unless there is a specific statutory provision enabling the Court to impose a lesser sentence.”

Let an explanation be called for from the concerned Presiding Officer as to how he sentenced the appellant to rigorous imprisonment for seven years when the minimum sentence prescribed for the offence is ten years.

Let a copy of this order be communicated by the Registrar (Judicial) through e-mail to the concerned Presiding Officer wherever he is posted and the explanation be furnished in the sealed cover on or before 19th July 2023.

List this matter in the week commencing 24th July 2023.

**(S.K. Sahoo)
Judge**



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