

Fazal Rab Choudhary

Vs

State of Bihar

Criminal Appeal No. 479 of 1982

(D. A. Desai, A. P. Sen, Baharul Islam JJ)

13.09.1982

ORDER

1. Special leave limited to the question of sentence only.
2. Appellant is convicted for having committed an offence under Section 377, IPC, in that he committed an unnatural offence upon a young boy who had come to his house to take a syringe. The learned Magistrate convicted him for the aforementioned offence and sentenced him to suffer RI for three years. While recording the order of sentence, the learned Magistrate observed :

Although no previous conviction is proved against the accused but I think accused is entitled to get any benefit of probation in this case because offence is serious and heinous. I, therefore, sentence the accused to undergo RI for three years.

The appellant preferred an appeal which was heard by Additional Judicial Commissioner, Ranchi. The appellate court affirmed the finding of the trial court and accordingly confirmed the conviction. The learned Judge has not discussed the question of adequacy or otherwise of the sentence imposed upon the appellant. When the matter was taken to the High Court in revision at the instance of the appellant, the learned Judge of the High Court dismissed the revision in limine, observing that the case has been proved and the revision is without merits.

3. The offence is one under Section 377, IPC, which implies sexual perversity. No force appears to have been used. Neither the notions of permissive society nor the fact that in some countries homosexuality has ceased to be an offence has influenced our thinking. However in judging the depravity of the action for determining quantum of sentence, all aspects of the matter must be kept in view. We feel there is some scope for modification of sentence. Having examined all the relevant aspects bearing on the question of nature of offence and quantum of sentence, we reduce the substantive sentence to RI for six months. To the extent of this modification in the sentence, the appeal is allowed.

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