**SUPREME COURT OF INDIA**

Deo Narain Mandal

Vs.

State of Uttar Pradesh

Crl.A.No.937 of 2004

(N. Santosh Hegde and S. B. Sinha JJ.)

25.08.2004

**JUDGMENT**

**Santosh Hegde, J.**

1. Heard learned counsel for the parties.

2. Leave granted.

3. The appellant and one Kamlesh were found guilty of an offence punishable under Section 365/511 read with Section 149 IPC for which learned 6th Additional Sessions Judge, Lucknow awarded two years rigorous imprisonment to the said accused.

4. They were also awarded a further sentence of three months rigorous imprisonment for an offence punishable under Section 147 IPC. He directed both the sentences to run concurrently.

5. Being aggrieved by the said judgment and conviction, the appellant preferred an appeal before the High Court of Judicature at Allahabad, Lucknow Bench. The High Court by the impugned order noted that the case of the appellant herein was not pressed on merits and only a plea to reduce the sentence was advanced before it, hence while confirming the conviction awarded by the Trial Court by generally observing, that considering all facts and circumstances of the case as well as age, character and other antecedents of the appellant held that the ends of justice would meet if sentence awarded to the appellant is modified and reduced to the period already undergone. It, however, imposed a fine of Rs. 4, 000/- for an offence punishable under Section 365/ 511 read with Section 149 and for offence under Section 147 the sentence of imprisonment was reduced to the period already undergone and fine of Rs. 1, 000/- was awarded.

6. Not being satisfied with the said reduced conviction, appellant has preferred this appeal. When this appeal came for preliminary hearing. This Court on 8th of August, 2003, while issuing notice on the S.L.P. also issued notice to the appellant why the sentence awarded by

the High Court should not be enhanced . Since the High Court has recorded that the appellant has not pressed his appeal on merits in the ordinary course we would have accepted that statement recorded by the High Court and would have dismissed the appeal without going into the question on merit, however, since there is a notice in enhancement of the sentence by this Court, it is but proper in law that we should hear the appellant on merits of the case also. Shri K.B. Sinha, learned senior counsel appearing for the appellant contended that at the relevant point of time there was ongoing love affair between the appellant and Kamla (PW-1) the girl who was attempted to be kidnapped. He also pointed out that the maternal uncle of the appellant had a fight with the appellant it is because of this background a false complaint was lodged against the appellant and others. The trial court did not properly appreciate the evidence in this background, hence, the conviction recorded by the courts below cannot be sustained.

7. We have perused the evidence adduced by the prosecution in this case and we notice that though it is true that there was a love affair between Kamla and the appellant, on the date of incident the appellant alongwith 5 other persons did come in tempo and tried to kidnap Kamla at about 10 P.M. and it is because of the intervention of the mother and maternal uncle of the victim alongwith the neighbors, the appellant and another accused by name Kamlesh were apprehended and were produced before the police promptly.

8. The fact that said Kamla had a affair with the appellant would not, in any manner, give any right to the appellant to forcibly take her away from her lawful guardianship. In this background the Trial Court correctly came to the conclusion that the appellant was guilty of the offences for which he is convicted and the said conviction, in our opinion, deserves to be sustained.

9. This brings us to the next question in regard to the reduction of sentence made by the High Court. In criminal cases awarding of sentence is not a mere formality. Where the statute has given the court a choice of sentence with maximum and minimum limit presented then an element of discretion is vested with the court.

10. This discretion can not be exercised arbitrarily or whimsically. It will have to be exercised taking into consideration the gravity of offence, the manner in which it is committed, the age, the sex of the accused, in other words the sentence to be awarded will have to be considered in the background of the fact of each case and the court while doing so should bear in mind the principle of proportionality. The sentence awarded should be neither excessively harsh nor ridiculously low.

11. In the instance case, it is seen the appellant alongwith co- accused were found guilty of offence punishable under Section 365/ 511 read with Section 149 IPC as also under Section 147 IPC. Section 365 provides for a sentence which may extend to two years while Section 511 provides for a sentence which may extend to half of the imprisonment i.e. awardable for the principal offence, attempt of which is committed by the accused. Section 147 provides for a sentence which may extend to two years. It is in the background of this statutory provision the Trial Court after hearing the accused on the question of sentence came to the

conclusion that ends of justice would be met by awarding two years rigorous imprisonment to the accused under Section 365/511 read with Section 149 IPC and has sentenced the appellant to three months rigorous imprisonment under Section 147 with a direction that the sentence should run concurrently.

12. The High Court in this case without even noticing the fact what is the actual sentence undergone by the appellant pursuant to his conviction awarded by the Trial Court proceeded to reduce the same to the period already undergone with an added sentences of fine as stated above. Of course, the High Court by the impugned order recorded that the facts and circumstances of the case as well as age, character and other antecedents of the appellant which made the court feel that the ends of justice would be met if the sentence is reduced and modified. This conclusion of the High Court for reducing the sentence in our considered view is wholly disproportionate to the offence of which the appellant is found guilty.

13. To find out whether the period already undergone by the appellant would be sufficient for reducing the sentence we had called upon the learned counsel appearing for the State to give us the necessary information and from the list of dates provided by the State, we notice that the appellant was arrested on 12th of January, 1983 and was granted bail on 14th of January, 1983 by the Trial Court which shows he was in custody for two days that too as an under trial prisoner. Trial Court sentenced the appellant on 31st of May, 1988 and the High Court released the appellant on the 8th of July, 1988. It is not clear from the list of date when exactly the appellant surrendered to his bail after the judgment of the Trial Court. Presuming the fact in favour of the appellant that he was taken into custody on the date of the judgment i.e. 31st of May, 1988 itself. Since he was released on bail by the High Court of 8th of July, 1988, he would have been custody as a convict for 38 days which together with the two days spent as an under trial, would take the period of custody to 40 days. On facts and circumstances of this case, we must hold that sentence of 40 days for an offence punishable under Section 365/511 read with Section 149 is wholly inadequate and disproportionate.

14. For the reasons stated above, we are of the opinion that the judgment of the High Court, so far as it pertains to the reduction of sentence awarded by the Trial Court will have to be set aside.

15. The next question would be : what would be an appropriate sentence on the facts of this case. Shri K.B. Sinha, learned senior counsel appearing for the appellant submitted that apart from the fact that the incident in question has taken place nearly twenty years ago ( which itself is not ground for reduction of sentence), victim as well as the appellant are now married and settled in life.

16. A prolonged sentence in such situation might have a deleterious effect on the family of the appellant. He also has pointed out that since the date of the incident in question, there has been no allegation against the appellant of any criminal conduct. Hence, he pleaded having noticed all the facts including the factum of the love affair between the appellant and the victim a reduced sentence may kindly be considered. Having taken into consideration the said plea advanced on behalf of the appellant while dismissing the appeal of the appellant

and affirming the conviction recorded by the two courts below, we substitute the sentence awarded by the Trial Court and the High Court and direct the appellant to undergo rigorous imprisonment for a period of six months for offence punishable under Section 365/511 read with Section 149 IPC. The sentence of three months awarded for offence punishable under Section 147 IPC by the Trial Court is maintained. We also maintain the fine awarded by the High Court of Rs. 4, 000/- for offence under Section 365/511 read with Section 149 and fine of Rs. 1, 000/- for offence under Section 147 IPC, we further direct that if the fine amount is recovered, a sum of Rs. 3, 000/- out of the same shall be paid to PW-1 Kamla Devi who was the victim of act of the appellant, if the appellant defaults in the payment of above said fine, he shall undergo a further period of two months rigorous imprisonment for the default of the fine awarded for offence punishable under Section 365/511 read with Section 149 and a further period of 1 month RI if the fine imposed by the High Court under Section 147 is not paid.

17. With the above modification this appeal is dismissed.