

IN THE SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTION  
CRIMINAL APPEAL NO.387 OF 2021  
(Arising out of SLP (Cr1.) No.1422 of 2021)

LELU ALIAS LAIN KUMAR

Appellant

VERSUS

STATE OF CHHATTISGARH

Respondent

O R D E R

Leave granted.

This appeal challenges the judgment and order dated 20.02.2019 passed by the High Court of Chhatisgarh at Bilaspur in Criminal Appeal No.790 of 2002.

The appellant was convicted by the First Additional Sessions Judge, Mahasamund, Chhatisgarh, under Section 376(1) of the Indian Penal Code, 1860 and was awarded sentence of rigorous imprisonment for seven years and with fine in the sum of Rs.5000/-, in default whereof to undergo further rigorous imprisonment for a period of one year.

The appeal preferred therefrom having been dismissed by the High Court, the instant appeal has been preferred.

Mr. Talha Abdul Rahman, learned Advocate appearing as Amicus Curiae has advanced three submissions:

- a) The evidence on record shows that the age of the prosecutrix on the date of the incident was not below 16 years of age, as projected by the prosecution. In fact, a finding to that effect was rendered by the High Court in paragraph 20 of its judgment that the prosecutrix was not below 16 years of age.
- b) The medical evidence on record in the form of MLC Report Exhibit P10 as well as the testimony of PW4 Dr. Asha Mishra did not suggest any injuries on the private parts of the prosecutrix.
- c) The eye-witness account on the record through the depositions of the prosecutrix, PW1 as well as the other eye-witnesses PW2 and PW6 clearly shows that the act in question was purely consensual.

The prosecutrix, PW1, in her version had clearly stated as under:

"1. ... Laillu reached there, carried me into the "kothar" shutting my mouth and flung me there down. Laillu had raped me after laying me down on the floor. Since the accused had shut down my mouth, I could not raise any alarm. After the incident, I had become unconscious.

2. During this incident, my uncle had also reached there. This I came to learn when I had reached my home. I do not know it as to who had taken me to my home after this incident. I had regained my consciousness after when I had reached my home."

The statement of the prosecutrix was fully supported by PW6, who stated that they had found the prosecutrix in unconscious state soon after the incident was committed.

In the circumstances, there is nothing on record which can even remotely suggest that the act was consensual.

In the face of clear statements of the prosecutrix and the other witnesses on record, the Courts below were justified in convicting the appellant of the offence in question.

We, therefore, dismiss the appeal insofar as the conviction and substantive sentence are concerned. However, we modify the default sentence and reduce it from one year to three months.

Except for the modification indicated above, the appeal is dismissed.

We express our appreciation for the efforts put in by Mr. Talha Abdul Rahman, learned Advocate who appeared as Amicus Curiae in the matter.

.....J.  
[Uday Umesh Lalit]

.....J.  
[Indira Banerjee]

New Delhi;  
April 06, 2021.

ITEM NO.6

COURT NO.4  
(HEARING THROUGH VIDEO CONFERENCING)

SECTION II-C

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Petition for Special Leave to Appeal (Crl.) No.1422/2021  
(Arising out of impugned final judgment and order dated 20-02-2019  
in CRA No.790/2002 passed by the High Court Of Chhatisgarh At  
Bilaspur)

LELU ALIAS LAIN KUMAR

Petitioner(s)

VERSUS

STATE OF CHHATTISGARH

Respondent(s)

Date : 06-04-2021 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE UDAY UMESH LALIT  
HON'BLE MS. JUSTICE INDIRA BANERJEE

For Petitioner(s) Mr. Talha Abdul Rahman, AOR  
Mr. Udit A. Kokanthankar, Adv.  
Mohd. Shaz Khan, Adv.  
Mr. Harsh Kediya, Adv.

For Respondent(s) Mr. Sourav Roy, Dy. AG  
Mr. Mahesh Kumar, Adv.  
Mr. Suushant Yadav, Adv.  
Mr. Prabudh Singh, Adv.  
Mr. Siddhant Singh, Adv.  
Mr. Leela Dhar Prajapat, Adv.  
Mr. V.D. Khanna, Adv.  
Mr. VMZ Chambers, AOR

UPON hearing the counsel the Court made the following  
O R D E R

Leave granted.

The operative portion of the order reads as under:

"We, therefore, dismiss the appeal insofar as the  
conviction and substantive sentence are concerned.  
However, we modify the default sentence and reduce it from  
one year to three months.

Except for the modification indicated above, the appeal  
is dismissed."

Pending applications, if any, also stand disposed of.

(MUKESH NASA)  
COURT MASTER

(VIRENDER SINGH)  
BRANCH OFFICER

(Signed Order is placed on the File)