

HIGH COURT OF DELHI: NEW DELHI

**+ CRL. APPEAL NO. 222/2001 &
CRL. APPEAL NO. 262/2001**

% Judgment reserved on: 11th November, 2009
Judgment delivered on: 20th November, 2009

BHAGWAN DASS @ MITTU Appellant
Through: Mr. Vineet Malhotra, Mr. K.
Singhal and Mr. Shanker
Chhabra, Advs.

Versus

STATE Respondent
Through: Mr. Lovkesh Sawhney, APP

WITH

VINOD KUMAR @ BITTU Appellant
Through: Mr. Vineet Malhotra, Mr. K.
Singhal and Mr. Shanker
Chhabra, Advs.

Versus

STATE Respondent
Through: Mr. Lovkesh Sawhney, APP

**Coram:
HON'BLE MR. JUSTICE A.K. PATHAK**

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| 1. Whether the Reporters of local papers may be allowed to see the judgment? | Not necessary |
| 2. To be referred to Reporter or not? | Not necessary |
| 3. Whether the judgment should be reported in the Digest? | Not necessary |

A.K. PATHAK, J.

1. Vide judgment dated 24th March, 2001 learned Additional Sessions Judge, Delhi, convicted appellants namely Bhagwan Dass @ Mittu and Vinod Kumar @ Bittu along with their co-accused Ghanshyam (since deceased), under Sections 366 and 376(2)(g) of the Indian Penal Code (for short hereinafter referred to as "IPC"); by an order dated 26th March 2001 appellants had been sentenced to face rigorous imprisonment for ten years and to pay fine of Rs. 5,000/- each and in default of payment of fine to further undergo rigorous imprisonment for the period of two years each for the offence under Section 376(2)(g) IPC; to further undergo rigorous imprisonment for seven years and to pay fine of Rs. 4,000/- each under Section 366 IPC and in default of payment of fine to further undergo rigorous imprisonment for a period of eighteen months each. Both the sentences were directed to run concurrently.

2. Aggrieved by their conviction and sentence, appellants have preferred the present appeals. Since both the appeals arise from the same judgment and order on sentence, they are being disposed of together.

3. Briefly stated, prosecution case is that on 20th April, 1983, the prosecutrix and her younger sister were alone in their house, as their parents had gone to their native place. At about 11:30 pm accused Vinod Kumar @ Bittu and Ghanshyam knocked the door. On prosecutrix opening the door, at the instance of accused Vinod Kumar @ Bittu, accused Ghanshyam asked her to accompany them and when she resisted, accused Ghanshaym took out a knife from the pocket of his pyjama and threatened her with dire consequences. Prosecutrix got frightened and accompanied them. Accused Ghanshyam also threatened the sister of prosecutrix that in case she raised alarm or informed about this to anyone, she would be killed. Outside the house,

accused Bhagwan Dass @ Mittu and Lal Babu (P.O.) also joined them. They took the prosecutrix to the house of accused Ghanshyam, where accused Bittu remained downstairs while the remaining accused took the prosecutrix to the second floor through the back staircase of the said house. Accused Bhagwan Dass @ Mittu gagged the mouth of prosecutrix; whereas accused Lal Babu caught hold of her hands and made her to lie on the floor. Accused Ghanshyam removed salwar and underwear of prosecutrix and at that stage accused Bhagwan Dass @ Mittu and accused Lal Babu went out. Accused Ghanshyam committed rape upon the prosecutrix. Prosecutrix gave a fist blow on the chest of accused Ghanshyam at which he gave a fist blow on the face of prosecutrix below her eye, resulting in injury to her. She also bit the accused Ghanshyam on his chest. When prosecutrix resisted, accused Ghanshyam took out a knife and pointed it towards her and when she tried to catch the

knife she sustained injuries on index finger of her right hand. On seeing blood oozing out from her finger she got dead frightened. Prosecutrix also sustained bruises on her elbows while putting up resistance. On hearing some noise coming from the *gali*, accused Ghanshyam left her and went away. Thereafter, prosecutrix wore her clothes and returned to her house after jumping the partition wall of the neighbouring house. In the morning she went to her sister's house at Jhandewalan and disclosed the incident to her. Thereafter prosecutrix along with her brother-in-law and sister went to Police Post Rajinder Nagar and made a statement before Sub Inspector Pishori Lal.

4. On the basis of statement of prosecutrix, SI Pishori Lal (hereinafter referred to as I.O.) wrote a rukka and pursuant thereof FIR No. 101/83 was registered at Police Station Rajinder Nagar under Sections 376/506 read with 34 IPC. Prosecutrix was sent to Lok Nayak Jai Prakash Hospital

(L.N.J.P.) for medical examination where factum of rape was confirmed. Underwear and *salwar* of the prosecutrix were also taken in possession and sealed.

5. Statement of prosecutrix under Section 164 Cr.P.C. was recorded before the Metropolitan Magistrate. During the investigation, *shawl* of the prosecutrix was seized from the spot. Accused persons were arrested. Accused Ghanshaym got recovered the knife from a trunk lying in his house which was seized vide a seizure memo. Accused Ghanshyam was also got medically examined. His semen sample was taken; his underwear and *pyjama*, which he was wearing at the time of arrest, were also seized. Pyjama, underwear and semen sample of the accused along with salwar, underwear and vaginal swab of the prosecutrix were sent to Central Forensic Science Laboratory (CFSL), Delhi and its report was obtained. Statement of witnesses were recorded by the I.O.

6. After completion of investigation, charge sheet was filed in the court of learned Metropolitan Magistrate, who took cognizance of the offence and after supplying the copies of the documents to the accused persons, committed the case to the Sessions court for trial as offences under Section 366/376 IPC are exclusively triable by the Sessions Court.

7. Charges under Sections 452/366/506/376(2)(g) read with Section 34 IPC were framed against the appellants and accused Ghanshyam. Separate charge under Section 27 of the Arms Act was also framed against the accused Ghanshyam. Accused persons pleaded not guilty and claimed trial.

8. During trial, prosecution examined fifteen witnesses in all. Prosecutrix was examined as PW1. Her sister Ms. Asha Rani was examined as PW2. Brother-in-law of the prosecutrix namely Ashok Kumar was examined as PW3.

Shri Fauja Singh, father of the prosecutrix, was examined as PW6. SI Pishori Lal, who had investigated the case, was examined as PW15. Other witnesses are formal in nature either being police officials or doctors.

9. After prosecution closed evidence, statement(s) of the accused persons under Section 313 Cr.P.C. were recorded. Accused persons denied their complicity in the crime and claimed themselves to be innocent. Accused Vinod Kumar @ Bittu stated that he was innocent and had been falsely implicated. No reason was given by him as to why he was falsely implicated. No defence evidence was lead by him. Accused Bhagwan Dass @ Mittu also took similar plea, which was taken by the accused Vinod Kumar @ Bittu. He also did not lead any evidence in his defence.

10. After hearing the arguments of learned counsel for accused persons and scrutinizing the entire ocular and documentary evidence on record, learned Additional

Sessions Judge held that the testimony of prosecutrix was trustworthy and reliable, inasmuch as her testimony was supported by both the medical and scientific evidence. Learned Additional Sessions Judge concluded that the prosecution had succeeded in proving its case beyond the shadow of reasonable doubt that the accused persons had forcibly taken the prosecutrix from her house, in furtherance of their common intention, whereafter, prosecutrix was raped by accused Ghanshaym in his house with the help of other co-accused persons namely Vinod Kumar @ Bittu and Bhagwan Dass @ Mittu. Learned Additional Sessions Judge held that intention of all the accused persons, as it was borne out from the record, was to abduct the prosecutrix for the purpose of sexual assault. Consequently, appellants along with accused Ghanshyam were convicted under Section 366 as well as 376(2)(g) IPC.

11. As per learned Additional Sessions Judge, minor discrepancies, as pointed by the learned counsel in the cross examination of the prosecutrix, had no bearing on the merits of the case. Plea taken by the learned counsel for the accused that there was delay in lodging the FIR was also not acceptable as incident took place in the middle of night, inasmuch, as the prosecutrix had returned home at about 2:00 am, at which point, she was not expected to go to Police Station to lodge a complaint, more so when there was no male member available in the house. In the morning she went to her sister's house and thereafter to the Police Station and her this conduct was quite natural.

12. I have perused the testimony of prosecutrix PW1 and find the same to be trustworthy and reliable. Her testimony had remained unshattered in her cross examination on material points. Her version is also corroborated from the medical evidence as injury/bruises were found on her face and elbows. Semen found on her underwear was of the

same group which was found on the underwear of the accused Ghanshyam i.e. 'A' group. However, I am of the view that so far as accused Vinod @ Bittu is concerned, he is entitled to benefit of doubt as far as offence under Section 376 is concerned, as prosecutrix had given different versions at different stages of investigation and the trial, as regards his presence at the time of rape. In the FIR she had stated that accused Bittu remained downstairs while the other accused took her to second floor; in her statement under Section 164 Cr.P.C. she stated that Bittu was asked to go to back by the accused Ghanshyam while they were on their way to the house of Ghanshyam; but in her deposition in the court, she stated that accused Bittu also went upstairs.

13. So far as kidnapping is concerned, from the testimony of PW1 it is clear that accused Bittu, accused Mittu along with their co accused Ghanshyam and Lal Babu had kidnapped the prosecutrix knowingly well that prosecutrix may likely to be forced or seduced to illicit intercourse. So far as accused Mittu is concerned, he had even played overt acts while accused Ghanshyam forcibly raped the prosecutrix.

14. Prosecutrix PW1 has categorically deposed that on 20th April, 1983, she along with her younger sister was alone in the house when at about 11:30 pm someone had knocked the door, on inquiring as to who was at the door, accused Bittu responded by saying that he had some work with her. After prosecutrix opened the door Ghanshyam and Vinod Kumar @ Bittu were found standing there; appellant Ghanshyam asked her to accompany them and when she showed reluctance he took out a knife from his pyjama and threatened that if she did not accompany them he would kill her and her sister. She as well as her sister got scared and started weeping. Accused Ghanshyam kept the knife at her back and ordered her to move. He also threatened her sister to stop weeping, otherwise, she would be done to death. At some distance she saw accused Lal Babu and Mittu and they also joined them. Accused Lal Babu (P.O.) and Mittu started walking ahead of her; while accused Ghanshyam and accused Bittu were following her, with the knife at her back. The accused took her to the second floor of the house of accused Ghanshyam from the back stair case of the said house. Lal Babu muffled her face with his hands while

accused Mittu caught hold of her legs. Thereafter accused Ghanshyam forcibly opened her salwar and underwear. After her clothes were removed other accused persons went out and accused Ghanshyam put his hand on her mouth. Prosecutrix gave a blow on the chest of accused Ghanshyam at which he gave a blow on her left cheek. Accused Ghanshyam pulled out a knife and when she tried to catch the knife she received injuries on index finger of her right hand. Then accused Ghanshyam committed rape upon her. She raised alarm. Someone shouted from the downstairs, at which accused Ghanshyam got up and went out. She also put her underwear and salwar and came back to her house. Since it was night time and she as well as her sister were terrified, they remained in the house. In the morning prosecutrix went to her sister's house and narrated the incident to her sister and thereafter she along with her sister Smt. Raj Rani and her sister's husband Mr. Ashok Kumar went to Police Post. Her this statement has remained unshattered in her cross examination on material points. No material discrepancy could be pointed out in her statement by the learned counsel for the accused, with regard to her

version about her kidnapping by the accused persons and her being raped by accused Ghanshyam with the help of co-accused Mittu.

15. Her testimony with regard to her kidnapping from her house by the accused Bittu, Mittu and co-accused Ghanshyam had been consistent throughout. Her version that accused Bittu and Ghanshyam had come to her house at about 11:30 PM, and knocked the door; after she opened the door, accused Bittu and Ghanshyam took her with them at the point of knife, with the help of accused Mittu and Lal Babu, has remained unshattered. From her statement it is clear that accused Bittu, Mittu along with accused Ghanshyam and accused Lal Babu (P.O.) took the prosecutrix from her house to the house of accused Ghanshyam at the point of a knife. It is apparent from her testimony that all the accused surrounded her while taking her from her house to the house of accused Ghanshyam. It is also apparent from her cross examination that accused persons took her from her house, up to the house of accused Ghanshyam, from the back gali and not from the main road. From the conduct of accused persons it is clear that they were sharing

common intention of kidnapping the prosecutrix. She was taken away from her house to the house of accused Ghanshyam, in odd hours of night i.e. at about 11:30 pm, through the back gali at the point of knife. This conduct of theirs is sufficient enough to impute knowledge on their part that the prosecutrix was likely to be forced to sexual intercourse; Even more so, when prosecutrix was in fact subsequently raped by the accused Ghanshyam at the second floor of his house with the active help of accused Mittu. Accordingly, I am of the view that learned Additional Sessions Judge has rightly convicted both the appellants persons for the offence under Sections 363/34 of Indian Penal Code.

16. I do not find any force in the arguments of learned counsel that the accused Bittu was not sharing common intention vis a vis main accused Ghanshyam. It was contended by learned counsel that accused Bittu was not aware that accused Ghanshaym was having a knife and that he would threaten the prosecutrix; That accused Bittu had not played any overt act while accused Ghanshyam took the prosecutrix with him to his house. Initially in the statement

made under Section 161 Cr.P.C. prosecutrix stated that accused Bittu had remained outside the house; whereas while making a statement before the Magistrate under Section 164 Cr.P.C. she stated that accused Bittu was sent back by the accused Ghanshyam from midway. While deposing in the court prosecutrix stated that accused Bittu had come up to the second floor and caught hold of her hands. According to the learned counsel this is a material discrepancy with regard to the previous statement of the prosecutrix. He has further contended that in her statement under Section 164Cr.P.C. as well as in her deposition in the court, prosecutrix had stated that someone shouted from downstairs as to who was raising alarm upstairs, at which accused Ghanshyam got up and went away and she also put on her underwear and salwar and jumped over the roof of the adjoining house and from there she returned to her house. This, according to the learned counsel, clearly showed that she was a consenting party. She had accompanied accused Ghanshyam to his house and when one of the neighbours noticed this, she ran away from there after jumping the partition wall. I do not find any force in

this contention of learned counsel for the accused Bittu. As far as role of accused Bittu with regard to kidnapping of prosecutrix is concerned, the same has been clearly specified by the prosecutrix and is consistent in all her statements i.e. statement under Section 154 Cr.P.C., statement under Section 164 Cr.P.C. as well as her statement made on oath in the court, during the trial. She has consistently stated that someone had knocked the door and when she enquired as to who was at the door, accused Bittu spelled out his name and told that he had some work with her. After prosecutrix opened the door, accused Ghanshyam asked her to accompany them at point of knife. He also threatened to kill her and her sister. Thereafter, accused persons took her to the house of accused Ghanshyam. It is apparent from the testimony of prosecutrix that all the accused were together while they took the prosecutrix from her house to the house of accused Ghanshyam. So far as incident of kidnapping is concerned, her testimony is consistent against all the accused persons including accused Bittu.

17. However, in my view, accused Bittu is entitled to benefit of doubt as far as his participation in the offence of rape is concerned. In FIR prosecutrix stated that accused Bittu had accompanied other accused persons up to the house of Ghanshyam but remained downstairs. In her statement under Section 164 Cr.P.C. she deposed that accused Bittu was asked by the co-accused Ghanshaym to go back, while they were on their way from her house to the house of accused Ghanshyam. In her statement in the court, prosecutrix deposed that accused Bittu had played an overt act while she was being raped by accused Ghanshyam. According to her, accused Bittu caught hold of her hands before she was pinned down on the floor. Three different versions were given by her as to the role of accused Bittu with regard to the offence of rape committed by accused Ghanshyam. So far as offence under Section 376 IPC is concerned, it can be said that accused Bittu did not play any overt act. It cannot be said that accused Bittu was sharing common intention with accused Ghanshyam while he actually committed rape upon the prosecutrix. For the sake of arguments even if it is presumed that he was sharing

common intention with accused Ghanshyam with regard to rape of the prosecutrix initially but he had withdrawn from the actual act midway. For this reason accused Bittu is entitled to benefit of doubt with regard to his complicity in the said offence of rape.

18. Learned counsel for accused Mittu has argued that the offence was committed on 20th April, 1983. Section 376(2)(g) was substituted by way of Criminal Law (Amendment) Act 43 of 1983 on 25th December, 1983. Under the unamended Act, there was no provision of “gang rape”. Accordingly, accused Mittu could not have been convicted and sentenced by the learned Additional Sessions Judge under Section 376 (2)(g) of the Indian Penal Code. He has further contended that in view of the Article 20(1) of the Constitution, accused, Mittu could not have been convicted under Section 376(2)(g) of the Indian Penal Code, as the said provision was not in existence in the statute book as on the date of commission of offence, which took place on 20th April, 1983. Minimum punishment as prescribed under Section 376(2)(g) could not have been awarded to the accused as the same was not prescribed under the

unamended provision of Section 376 IPC. He has further contended that at the most accused Mittu could not have been convicted under Section 376 IPC by taking aid of Section 34 of IPC. According to him, in the facts of this case, Section 34 of IPC was not attracted since no evidence had come on record to show that the accused Mittu was sharing common intention with accused Ghanshyam, Bittu and Lal Babu (P.O.) either in the forceful kidnapping of prosecutrix or in the rape committed by accused Ghanshyam. He has contended that the liability of one person for an offence committed by another in the course of crime committed by several persons arises under Section 34 IPC only if this is done by them in furtherance of their common intention to commit such a crime. Prosecution has to show that all the accused were acting in furtherance of their common intention. Prior meeting of mind between the accused persons to commit a particular crime has to be shown by the prosecution by leading cogent evidence before Section 34 of IPC is employed in a given case. He has placed reliance on ***Daya Shanker vs. State of M.P.*** reported in **2009(1)**

Scale 665 and **Sripathi & Ors. vs. State of Karnataka** reported in **2009(5) Scale 5**.

19. Learned counsel has contended that from the statement of prosecutrix it is clear that accused Mittu had not accompanied accused Ghanshyam and accused Bittu while they knocked the door of the house of prosecutrix. Accused Mittu had not uttered a word while prosecutrix was taken from her house to the house of accused Ghanshyam. Merely because accused Mittu was going in the *gali* ahead of the prosecutrix by itself would not be sufficient to show that accused Mittu was sharing the common intention with other accused persons to kidnap her. He has further contended that prosecutrix has given different statement with regard to the role of accused Mittu at different stages of investigation and trial. Initially, she stated that accused Mittu was with other accused persons when prosecutrix was taken to the second floor and he had also gagged her mouth. Subsequently, she stated that accused Mittu caught hold of her hands. Lastly, while deposing in the court, she stated that accused Mittu remained at the ground floor while she was taken to second floor by other three accused persons.

Later, accused Mittu came at the second floor and caught hold of her legs. According to the learned counsel, these are material discrepancies in her statements, with regard to the role played by accused Mittu.

20. I do not find any force in the contention of learned counsel for the accused Mittu, that version of the prosecutrix cannot be relied regarding the role played by the accused Mittu. Prosecutrix has categorically stated that accused Mittu was outside her house; Accused Ghanshyam put a knife on her back; accused Mittu and Lal Babu started moving ahead her while Bittu and Ghanshyam were behind her. It is also evident from the testimony that the accused Mittu had accompanied the other person not only up to the house of accused Ghanshyam but had also gone upstairs and played active role while accused Ghanshyam raped the prosecutrix. Merely because at some stage she had deposed that accused Mittu caught hold of her mouth and subsequently, she deposed that accused Mittu caught hold her hands and thereafter, that accused Mittu caught hold of her legs, would not make much difference, keeping in view her traumatic mental stage when rape was being committed

upon her. One thing is clear from the statement of prosecutrix that accused Mittu had not only participated in the act of kidnapping but also played overt act while accused Ghanshyam committed rape. The common intention on the part of accused Mittu in kidnapping and also in rape can safely be inferred from the manner in which the crime was committed. The fact that accused Mittu remained present with other accused persons since the beginning, itself shows that he was sharing common intention with the main accused Ghanshyam. The judgments relied upon on this point, are in different facts and are of no help to the appellant. But in the said cases, no overt act was played by the accused. The accused in the said cases was mere spectator. In this case, accused Mittu had played active role in the offence of kidnapping as also in the rape.

21. However, I find force in the contention of the learned counsel that accused Mittu could not have been convicted under Section 376(2)(g) of the Indian Penal Code. Sub Section 2 of Section 376 was substituted by way of amendment Act 43 of 1983 with effect from 25th December,

1983; whereas offence was committed in the month of April, 1983.

22. Sub Section 2 of Section 376 IPC reads as under:-

“Whoever, - (g) commits gang rape shall be punished with rigorous imprisonment for a term which shall not be less than ten years but which may be for life and shall also be liable to fine:

Provided that the Court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment of either description for a term of less than ten years.

Explanation 1. – Where a woman is raped by one or more in a group of persons acting in furtherance of their common intention, each of the persons shall be deemed to have committed gang rape within the meaning of this subsection.

Explanation 2.– “Women’s or children’s institution” means an institution, whether called an orphanage or a home for neglected woman or children or a widows’ home or by any other name, which is established and maintained for the reception and care of woman or children.”

Explanation 3 – “Hospital” means the precincts of the hospital and includes the precincts of any institution for the reception and treatment of persons during convalescence or of persons requiring medical attention or rehabilitation.

23. “Gang rape” was defined as well as minimum sentence of ten years was prescribed by way of insertion of sub-

Section 2 in the Section 376 of the Indian Penal Code, by way of amendment. This provision came into force with effect from 25th December, 1983. Occurrence in this case took place on 20th April, 1983.

24. Article 20 of the Constitution reads as under :-

“(1) No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence.

(2) No person shall be prosecuted and punished for the same offence more than once.

(3) No person accused of any offence shall be compelled to be a witness against himself.”

25. Article 20 (1) of the Constitution makes it clear that a person can only be convicted for offence which was in force at the time of commission of such offence. Offence of gang rape was not available under Section 376 of IPC at the time when offence of rape was committed in this case.

Accordingly, accused Mittu could not have been convicted under Section 376 (2)(g) of the Indian Penal Code.

26. In somewhat similar circumstances the Supreme Court in ***Naresh Kumar vs. State of Maharashtra*** reported in ***AIR 1980 SC 1168*** upheld the conviction of the accused under Section 376/34 IPC.

27. In the light of above discussions, order of conviction dated 24th March, 2001 is modified. Accused Vinod Kumar @ Bittu and Bhagwan Dass @ Mittu are convicted under Section 366/34 IPC. So far accused Mittu is concerned, he is also convicted under Section 376/34 IPC. Appellant Bittu is acquitted for the offence under Section 376 IPC.

28. Learned counsel for Bittu has contended that the accused Bittu was arrested on 27th April, 1983. After one and half month he was granted bail. On 24th March, accused Bittu was again sent to jail and thereafter he was released on bail on 11th February. Thus he remained in jail

for about two years. Accused Bittu was young in age at the time of commission of offence. After accused was released on bail He got married and is now having three children aged from seven years to sixteen years. All the children are school going. Widowed mother of accused Bittu is also dependent upon him. Accused has already faced agony of trial for about twenty five years. Accordingly, lenient view be taken and he be awarded sentence equivalent to the period which he had already remained in jail. Similar arguments have been advanced by the learned counsel for accused Mittu. According to him, accused also has a family which is dependent upon him. Reliance has been placed on the following judgments:-

- i) **Krishan Pal vs. State** reported in **2003 (69) DRJ 276**
- ii) **Mohd. Ali vs. State** reported in **2001 (60) DRJ 351**
- iii) **Munna Lal vs. State** reported in **87 (2000) DLT 764**
- iv) **Mahabir Prasad vs. State** reported in **76 (1998) DLT 324**

- v) ***Faizy vs. State*** reported in **2000 (56) DRJ (Suppl) 487** and
- vi) ***Ram Kumar vs. State of Haryana*** reported in **2006(4) SCC 347**

29. As against this learned counsel for the State has contended that appellants are guilty of committing heinous crime of kidnapping and rape. Accused person are not entitled to any leniency.

30. I have considered the rival contentions of both the parties on this point and I do not find any force in the contentions of the learned counsel for the appellants that the appellants be awarded sentence equivalent to the period they have already remained in jail. Judgments relied upon are in different facts and are not applicable to the present case. Facts narrated above clearly show that the appellants had indulged in, heinous offences. In the middle of night they took the prosecutrix from her house to the house of Ghanshyam, forcibly and at the point of knife, and

thereafter, prosecutrix was raped by the accused Ghanshyam. Sentence has to be corresponding to the gravity of offence. Victim of rape not only suffers physically but the scars of rape remain imprinted in her mind for long. Victim of rape also suffers unexplainable mental trauma. Accordingly, I am of the view that two years sentence would be on the lesser side. However, keeping in mind the contentions of the appellants' counsel, I modify the sentence of appellants for the offence under Section 366/34 IPC from seven years R.I. to four years R.I. No modification, however, is made with regard to sentence of fine awarded by the learned Additional Sessions Judge.

31. I further sentence accused Mittu to face RI for a period of five years for the offence under Section 376/34 IPC and to pay a fine of Rs. 5,000/- and in default of payment of fine to further undergo RI for four months. Both the sentences shall

run concurrently. Benefit of section 428 Cr.P.C. shall also be available to the appellants.

32. Bail bonds and surety bonds of the appellants are cancelled. Learned trial court shall take both the appellants in custody and send them to jail to undergo the remaining period of sentence as awarded by this order.

33. Both the appeals are disposed of in the above terms.

A.K. PATHAK, J.

November, 20 2009
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