

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 906 of 2011

- Teejram, Son of Bhim Surawanshi, aged 20 years, R/o. Sukali Police Station Janjgir, District Janjgir-Champa (CG)

---- Appellant

Versus

- State Of Chhattisgarh Through: P.S. Janjgir, Distt.-Janjgir-Champa, C.G.

---- Respondent

And

CRA No. 57 Of 2012

- Beniram, S/o. Heera Lal Suryavanshi, aged about 31 years, R/o. Pacheda, Police Station Janjgir District Janjgir Champa (CG)

---- Appellant

Vs

- State Of Chhattisgarh, through Police Station Janjgir, District Janjgir-Champa (CG)

---- Respondent

And

CRA No. 987 Of 2011

- Umendram S/o Jaduram Suryavanshi R/o Pendri PS Janjgir Distt. Janjgir Champa (CG)

---- Appellant

Vs

- State Of Chhattisgarh, through Police Station Janjgir, District Janjgir-Champa (CG)

---- Respondent

And

CRA No. 72 Of 2012

- Rishi Singh S/o Dilharan Singh, R/o Sukli, P.S. - Janjgir, Distt. - Janjgir-Champa (C.G.)

---- Appellant

Vs

- State Of Chhattisgarh, , through PS Janjgir, District Janjgir Champa (CG)

---- Respondent

And

CRA No. 162 Of 2012

- Dharampal S/o Neelkanth Suryavanshi , R/o Kasaundi P.S.
Janjgir , Distt.. Janjgir Champa

---- Appellant

Vs

- State Of Chhattisgarh, through Police Station Janjgir, District
Janjgir-Champa (CG)

---- Respondent

And

CRA No. 947 Of 2011

- Brijesh Singh, S/o. Shri Dogan Singh, aged about 24 years, R/o/
Village Sukli, Police Station Janjgir District Janjgir Champa (CG)

---- Appellant

Vs

- State Of Chhattisgarh, Through Station House Officer, Police
Station Janjgir, Distt. Janjgir-Champa (CG)

---- Respondent

And

CRA No. 967 Of 2011

- Santosh Singh, S/o. Shri Manharan Singh Chandel, aged about
39 years, R/o. Village Sukli, Police Station Janjgir, District
Janjgir-Champa (CG)

---- Appellant

Vs

- State Of Chhattisgarh, Through Station House Officer, Police
Station Janjgir District Janjgir Champa (CG)

---- Respondent

Shri RK Jain, counsel for appellants in Cr.A. 906/11, 987/11, 72/12,
162/12, 947/11 and 967/11.

Shri Vimlesh Bajpai, counsel for appellant in CrA No.57/12.
Smt. Shobha Kashyap, Dy. GA for the State.

Hon'ble Shri Justice Chandra Bhushan Bajpai

Judgment

01/10/2015

By this common judgment, Criminal Appeals 906/11, 57/12,
987/11, 72/12, 162/12, 947/11 and 967/11 are being disposed of as
they arise out of the same judgment.

2. Challenge in these appeals is to the judgment of conviction and order of sentence dated 08.11.2011 passed by Sessions Judge, Janjgir Champa in Session trial No.84/10 whereby and whereunder the trial Judge after holding the appellants guilty for being a members of unlawful assembly and as members of the unlawful assembly in furtherance of the common object causing simple hurt to prosecutrix (PW-6), name not mentioned, and also for causing simple injury to Pradeep (PW-7) and also committing gang rape in furtherance of their common object convicted the appellants for the offence under Sections 147/149, 323/149, 323/149 and 376(2)(g)/149 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for six months, six months, six month and ten years respectively and to pay fine of Rs.5000/-, in default of payment of fine, to further undergo RI for three months under Section 376(2)(g)/149 of the IPC with a direction to run the sentences concurrently. They were also given the benefit of set off as appellants Brajesh Singh, Rishi Singh, Beniram, Umedram, Dharampal and Teejram are in custody since 29.3.2010 and appellant Santos Singh is in custody since 15.5.2010.

3. Conviction is impugned on the ground that without there being an iota of evidence, the trial Court has convicted and sentenced the appellants as aforementioned, thereby committed illegality.

4. As per the case of the prosecution, on 28.3.2010, prosecutrix (PW-6) along with one Pradeep Rathore (PW-7) was sitting near mango tree, the appellants reached there, they beaten up Pradeep Rathore (PW-7) and asked him to go away from the spot. Thereafter all the seven appellants committed rape with the prosecutrix against her will and consent. After the incident, when the villagers reached to the

spot, all the appellants ran away, thereafter at about 11 p.m., prosecutrix lodged First Information Report in Police Station Janjgir. The Police registered Crime under 170/10 against the appellants. After obtaining consent from the prosecutrix, she was examined by the doctor. The doctor noticed many abrasion and injuries. Executive Magistrate conducted test identification parade wherein the prosecutrix identified the appellants. At the instant of the appellants, property has been seized. FSL has confirmed the presence of human spermatozoa in the slide of the vaginal swab of the prosecutrix and also blood in the clothes of the prosecutrix was affirmed.

5. Statement of the witnesses were recorded under Section 161 of the Code of Criminal Procedure, 1973 (for short 'the Code'). After completion of investigation, charge sheet was filed before the Judicial Magistrate First Class, Janjgir, who in turn committed the case to the Court of Sessions. The learned Sessions Court framed the charges against all the appellants. The appellants denied the charges and prayed for trial.

6. In order to prove the guilt of the appellants, the prosecution has examined as many as 14 witnesses. Statement of the accused appellants were recorded under Section 313 of the Code, wherein they denied the circumstances framed against them, pleaded innocence and false implication in crime in question.

7. After affording opportunity of hearing to the parties, the learned trial Court convicted and sentenced the appellants as aforementioned.

8. I have heard learned counsel for the parties, perused the judgment impugned and record of the trial Court.

9. Learned counsel for appellants Teejram, Umedram, Rishi Singh, Dharampal, Brajesh Singh and Santosh Singh and learned counsel for appellant Beniram commonly submit that as directed, they are not assailing the judgment of conviction against the appellants and are confining their argument only on the point of quantum of sentence awarded by the trial Court for the offence under Section 376 (2)(g)/149 whereby the appellants were sentenced for RI for ten years. Learned counsel for the appellants submit that looking to the age of the appellants and also considering that they are first offenders, not having any criminal history of like wise offence or any other offence and also they are on jail since 15.5.10 except appellant Santosh Singh who is in jail since 23.3.2010, they may be given opportunity to live in the society as law abiding citizens and they will not commit any other offence in future. Learned counsel for the appellants further submit that act of the appellants as per the date of incident i.e. 28.3.2010 squarely falls before the Criminal appeal Amendment Act, 2008 with effect from 03.2.2014. Earlier as per the provisions, the Court may for adequate and special reasons to be mentioned in the judgment impose sentence of imprisonment either description of less than ten years. Learned counsel for the appellants submit that in view of the above facts they be given opportunity and they be sentenced for less than the minimum sentence under the provisions of Section 376(2)(g)/149 prior to the amendment.

10. Per contra, learned counsel for the State/respondent opposed the arguments advanced on behalf of the appellants and submitted that looking to the collective act and entire evidence as the prosecutrix was aged about 20 years at the time of the incident and other medical

evidence as stated by Dr.Mamta Singh Jagat (PW-3), the trial Court rightly sentenced the minimum to all the appellants. Looking to the facts there is no any scope for interference in the sentence, hence, criminal appeals filed by the appellants may be dismissed on both the count.

11. For the purpose of appreciation of the arguments, I have perused the evidence adduced by the prosecution before the trial Court.

12. The appellants are not contesting their appeal regarding their order of conviction also regarding the judgment of sentence for all other offence except under Section 376(2)(g)/149 of IPC. Even after perusal of the entire evidence, I do not see any illegality or impropriety in the judgment of conviction passed by the trial regarding all the appellants and the judgment of sentence passed against all the appellants for the offence except under Section 376(2)(g)/149 of the IPC and also looking to the fine sentence awarded for Rs.5,000/- each to the appellants it cannot be held as excessive. Consequently, fine sentence awarded by the trial Court is also need no interference. Hence, the judgment of conviction and order of sentence for all other offence except under Section 376(2)(g)/149 of the IPC are hereby affirmed. Sentence of fine passed for all the appellants does not require any interference, hence, fine sentence is also affirmed.

13. So far as the substantive jail sentence under Section 376(2)(g)/149 of the IPC are concerned, the trial Court awarded RI for ten years to each appellants. In the present case no any previous criminal history was shown in the charge sheet, Looking to the facts that the appellants are the first offenders without any criminal past and also looking to their age, and they are in jail as aforementioned and further

they have pleaded that they will not commit any offence in future, they will be given opportunity to live in the society without involving in any other crime and also the facts that prior to the Criminal Law Amendment Act, 2013 (as the present incident is before the amendment) legislature provide that for the adequate and special reasons mentioned in the judgment the court may impose the sentence of imprisonment of either description for a term of less than ten years, their case may be considered. Upon considering the arguments advanced on behalf of the appellants and also in the shadow of facts whereby the prosecutrix and Pradeep (PW-7) went for a drive towards village Pendri at about 7.30 pm and both were sitting in a lonely place though such presence itself does not indicate regarding any other activity but as per other facts regarding lodging of the report by the prosecutrix after the incident against Pradeep (PW-7) regarding rape/intercourse by Pradeep in the pretext of promise of marriage with her for last six months. Though the above facts are not in any way relevant with the present appellants, but as in the presence of shadow of such facts, this Court is of the considered view that looking to the entire facts and circumstances, the appellants be sentenced less than the minimum sentence as provided. In the considered view of this Court, RI for seven years to each appellants for the offence under Section 376(2)(g)/149 of the IPC would meet the ends of justice.

14. All the seven appeals filed on behalf of the appellants are allowed in part. Judgment of conviction passed by the trial Court and the order of sentence passed by the trial Court except order of sentence under Section 376(2)(g)/149 of the IPC and also fine sentence awarded by the trial Court for the principal offence are hereby

affirmed. For the substantive jail sentence under Section 376(2)(g)/149 of the IPC for RI for 10 years is hereby reduced for RI for seven years to each appellants. They have been granted benefit of set off as per para 98 of the judgment of the trial Court regarding their period on entire detention as part of the sentence. If any remission under the law is available, the same may be granted to them if permissible. The authorities are directed to serve the sentence to the appellants as per the order of this Court. If the fine sentence is not deposited, the authorities are directed to serve the default part of the sentence as per para 96 of the judgment of the trial Court.

Sd/-
(Chandra Bhushan Bajpai)
JUDGE