

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD**

**CRIMINAL APPEAL NO. 314 of 2002**

Javed @ Babloo Nasirkhan,  
Age : 29 years, Occu. Nil.,  
R/o : Behind S.T. Stand, Ward No. 6,  
Shrirampur, Tal Shrirampur,  
District Ahmednagar, at present in Jail

... APPELLANT  
(Original Accused No.2)

VERSUS

The State of Maharashtra,  
Through : P.S. Shrirampur for  
complainant Ashabai Subhash Pimpale  
R/o: Sanvatsar, Tal Kopargaon.

...RESPONDENT  
(Original Complainant)

**WITH  
CRIMINAL APPEAL NO. 263 of 2002**

Mastan Imdad Khan,  
Age : 35 years, Occupation : Labour work,  
R/o : Fakirwada, Ward No. 1, Shrimrapur,  
Tq. Shrirampur, District Ahmednagar

... APPELLANT  
(Original Accused No.1)

VERSUS

The State of Maharashtra

...RESPONDENT  
(Original Complainant)

...

Mr. S.S. Kazi, Advocate for the appellants  
Mr. P.K. Lakhotiya, APP for respondent-State

...

**CORAM : K.K. SONAWANE, J.**

**DATED : 15<sup>th</sup> NOVEMBER, 2019.**

**ORAL JUDGMENT :-**

These appeals are preferred by the appellants-accused under Section 374 of the Code of Criminal Procedure (Cr.P.C.) to agitate the validity and legality of the impugned Judgment and order of their conviction under Sections 376, 506 read with Section 34 of the Indian Penal Code (IPC) and resultant sentence imposed on them by the

learned Additional Sessions Judge, Shrirampur, District Ahmednagar in Sessions Case No. 75 of 1994 dated 13-03-2002. The appellants were sentence to suffer rigorous imprisonment for ten years and to pay a fine of Rs. 5000/- each in default to suffer further simple imprisonment for three months for the offence punishable under Section 376 read with section 34 of IPC. They are also sentenced to suffer rigorous imprisonment for six months for the offence punishable under Section 506 read with section 34 of the IPC. These sentences shall run concurrently.

2. Both these allied appeals are dealt with together for its adjudication on merit by this common Judgment as these appeals are arising from one and the same Judgment and order of conviction and resultant sentence rendered by Additional Sessions Judge in Sessions Case No. 75 of 1994.

3. The scenario of the prosecution case culled out in brief is that, the prosecutrix, a 20 years old married woman, on 24-01-1994 started proceeding to village Dighi, Taluka Shrirampur to see her brother. Her nephew Gokul Shriram Mali, 14 years old was accompanied with her for going to Dighi, Shirpur from her parents home at village Sanvatsar, Taluka Kopargaon. They both came to Kopargaon Railway Station and thereafter by Maharashtra Express Railway they arrived at Shrirampur Railway Station in the midnight at about 2.30 a.m. on 26-01-1994. It has been alleged that one old lady by name Shantabai met them at Shrirampur Railway Station. She made enquiry with the prosecutrix and her nephew Gokul about their destination. The old lady Shantabai

disclosed that Shrirampur town is the big city and it would difficult in the wee hours of night to find out the residence of her brother. The old lady Shantabai asked the prosecutrix and her nephew to stay at her house in the night. The shanty of old lady-Shantabai was located in the hutment area abutting to railway track near Railway Goods Platform. After persuasion by old lady – Shantabai, the prosecutrix and her nephew agreed to accompany with her for stay at her shanty. Accordingly, in the intervening night of 25-01-1994 and 26-01-1994, the prosecutrix and her nephew slept at the house of old lady Shantabai. They both remained in the company of Shantabai for entire day on 26-01-1994 and also halted in the night hours in her shanty. According to prosecution, in the wee hours of night i.e. 3.00 a.m. on 27-01-1994, both the appellants-accused barged into the shanty of old lady-Shantabai. They gave threats and intimidated the old lady Shantabai and nephew Gokul. Thereafter, both the appellants-accused ravished the prosecutrix forcibly. At the time of committing sexual assault on prosecutrix , the old lady left the shanty and went outside the house. Thereafter, the prosecutrix and her nephew yelled for help. Meantime, the Railway Police Personnel arrived at the spot. They made enquiry with the prosecutrix and accused. The prosecutrix divulged about the sexual assault on her by the appellants-accused. The Railway Police Personnel took the prosecutrix, her nephew and appellants -accused to Shrirampur City Police Station for further process.

4. Pursuant to First Information Report (FIR) of prosecutrix, the Police of Shrirampur City Police Station registered the crime No. 20 of

1994 under Sections 376 and 506 read with Section 34 of the IPC and set the penal law in motion. The prosecutrix and both the appellants were sent to Government Hospital for medical check up. IO visited to the spot of incident and drawn the *panchnama*. He recorded statements of witnesses acquainted with the facts of the case. He seized the cloths of the prosecutrix and accused for the sake of investigation. The appellants-accused came to be apprehended in this case. The seized Muddemal were referred to forensic laboratory for Chemical Analysis. IO Collected relevant documents of medical certificate, CA report etc. After completion of investigation, IO preferred the charge-sheet against both the appellants vide Sessions Case No. 75 of 1994.

5. The learned Sessions Judge, after due compliance of procedural formalities, framed the charge against both the accused. They pleaded not guilty and claimed for trial. In order to prove charges against the appellants-accused, prosecution has examined in all seven witnesses in this case. The learned Sessions Judge also recorded statements of accused under Section 313 of the Cr.P.C. After hearing both sides and on appreciation of evidence adduced on record, the learned Sessions Judge, arrived at the conclusion that both the appellants-accused are guilty for the offence punishable under Sections 376 and 506 read with Section 34 of the IPC. Therefore, the learned Additional Sessions Judge proceeded to pass the impugned Judgment and order of conviction of the appellants and imposed the resultant sentence as indicated above. The impugned Judgment and order of conviction and resultant sentence of appellant-accused is the subject-matter of present appeals.

6. Mr. Kazi, learned counsel appearing for appellants-accused vehemently submits that the impugned Judgment and order of conviction and resultant sentence rendered by the Additional Sessions Judge is totally erroneous, perverse and bad-in-law. The learned trial Court did not appreciate the evidence on record in its proper perspective. The appellants-accused did not commit any kind of offence as alleged on behalf of prosecution. They are innocent of the charges pitted against them. The appellants-accused are falsely implicated in this case. According to learned counsel, there are material discrepancies in the evidence of prosecution witnesses. The attending circumstances on record categorically indicate that the occurrence of alleged incident as verbalized by the victim was improbable and unbelievable one. Mr. Kazi, learned counsel harped on the circumstances that there is difference between connotation "sexual intercourse" and "rape". The expression "rape" is defined under Section 375 of IPC. According to learned counsel, the prosecutrix was seen one of the consenting party for sexual intercourse. The learned counsel drawn the attention of this Court towards conduct and demeanour of prosecutrix, her nephew and old lady Shantabai. He submits that there was no resistance on the part of these witnesses. The evidence of PW-3 Police Personnel shows that they had seen both accused near the shanty of old lady Shantabai. There were no attempts to call Railway Police by old lady Shantabai or prosecutrix. But, the police, while on night round spotted the accused standing in front of house of Shantabai located near Railway Goods Platform. Therefore, they came near the hut of Shantabai for enquiry. According

to learned counsel Mr. Kazi, it would unjust and improper to draw adverse inference against appellants-accused on the basis of suspicious evidence of prosecution witnesses. The circumstances on record creates doubt about the veracity and trustworthiness of the allegations nurtured on behalf of prosecution. It would fallacious to appreciate that the appellants-accused are the culprit of the offence. Learned counsel for appellants in support of his submissions placed reliance on the judicial precedents in the cases viz - *Dilip and others Vs. State of M.P.* reported in *AIR 2001 SC 3049* and *Hiraman Jangu Uike Versus State of Maharashtra* reported in *Laws (Bom) 2019-7-92 (Criminal No. 331 of 2019, decided on 17<sup>th</sup> July, 2019)* and *The State of U.P. Versus Chhoteylal (AIR 2011 SC 697)*.

7. Learned APP raised the objection to the contentions propounded on behalf of appellants-accused and contended that the entire facts and circumstances of the case were strictly scrutinized and appreciated by the leaned trial Court. The conclusion drawn by the learned trial Judge for the guilt of appellants-accused appears just, proper and reasonable one. There are no illegality or error committed by the learned trial Court. According to learned prosecutor, the interference in the findings of conviction expressed by the learned trial Court at the behest of appellants-accused is totally unwarranted and unjustifiable one. He supported the findings of guilt of the appellants-accused expressed by learned trial Court in these appeals.

8. Having given anxious consideration to the arguments advanced on behalf of both sides as well as the oral and circumstantial evidence

adduced on record, I find it difficult to persuade myself to subscribe the findings of conviction of the appellant expressed by learned trial Court. In contrast, the circumstances on record reveals that the prosecution failed to prove the significant ingredients of Section 375 of IPC pertains to consent of prosecutrix in this case.

9. The evidence of prosecution witnesses categorically establish that the prosecutrix, a 20 years old married woman, accompanied with nephew Gokul, 14 years old, came to Shrirampur Railway Station in the wee hours of the night on 26-01-1994 for going to Dighi village to see her brother. It has also brought on record that the prosecutrix met with the old lady – Shantabai and after her persuasion, both prosecutrix and her nephew went to the house-cum-shanty of Shantabai and slept in the night of 26-01-1994. According to prosecution, both prosecutrix and her nephew remained in the company of old lady Shantabai at her house for entire day of 26-01-1994 and also halted there in the intervening night of 26-01-1994 and 27-01-1994. Thereafter, it has been alleged that in the wee hours of night at about 3.00 a.m. on 27-01-1994, both the appellants-accused barged into the house / shanty of Shantabai and committed sexual assault on prosecutrix. It has also brought on record that both the appellants-accused were picked-up by Railway Police Personnel, when they were seen standing in front of house of Shantabai. The prosecutrix, her nephew Gokul, old lady Shantabai and both the appellants-accused, all were taken to the Police Station by PW-3 Mr. Anthony, Railway Police Personnel for further enquiry. Thereafter, prosecutrix lodged the FIR (Exhibit-26). These factual aspects

manifestly point out the presence of both the appellants-accused, prosecutrix, her nephew Gokul and old lady Shantabai, on the spot of alleged incident at the relevant time.

10. Prosecution examined PW-7 Dr. Sampat Kedare. He has clinically examined the prosecutrix and both the accused as per requisition form Shrirampur City Police Station (Exhibit-53). He examined the prosecutrix on the very same day of incident i.e. 27-01-1994 vide MLC No.91 at about 5.00 p.m. He observed tenderness at the private part of the prosecutrix. The hymen found lax in condition with tears at lower and dorsal aspect of both labia, with red colour discharge. He issued medical certificate (Exhibit-54) of the prosecutrix on record. The prosecutrix was 20 years old married woman at the time of alleged incident. There were no signs of violence on her persons. The laxity and slackness condition of hymen indicate that she was habituated to sexual intercourse. It is evident from the medical experts opinion PW-7 Dr. Sampat Kedare that the prosecutrix was subjected to sexual intercourse, prior to 12 to 18 hours of her medical examination.

11. Now turning to actual episode of sexual assault as alleged by the prosecution, I find the conduct and demeanour of prosecutrix and her nephew PW-2 Gokul, somewhat, suspicious and dubious one. The prime witness i.e. old lady – Shantabai, owner of shanty did not come forward to depose in favour of prosecution. As referred above, the prosecutrix and her nephew arrived at the Railway Station of Shrirampur in the midnight of 26-01-1994 from Kopargaon. The PW-1

prosecutrix deposed that one old lady met them at the Shrirampur Railway Station. She came to know her name as Shantabai later on. Thereafter, the old lady Shantabai convinced her not to go to Dighi in the night hours to see her brother, and asked the prosecutrix and her nephew to accompany with her for stay in the night at her house located in the hutment area nearer to the Railway Goods Platform. Thereafter, the prosecutrix and her nephew slept in the house of Shantabai in the night of 26-01-1994. Moreover, the prosecutrix and her nephew, both, remained in the hut of Shantabai for entire day of 26-01-1994 and also halted there in the intervening night of 26-01-1994 and 27-01-1994.

12. The minute scrutiny of all these circumstances reveals that the theory propounded on behalf of prosecutrix as mentioned above appears incredulous, doubtful and does not inspire confidence. The conduct and demeanour of the prosecutrix at this stage found in negation with the normal human behaviour. It is to be seen that the prosecutrix left the house of parents in the dusk for going to village Dighi, Shrirampur in search of her brother. She was not aware about the address or exact location of her brother in Dighi area, Shrirampur. She ventured to come to Shrirampur in the wee hours of night of 26-01-1994 without any specific knowledge of location of her brother. Moreover, the prosecutrix met with old lady Shantabai at the Shrirampur Railway Station. They were not acquainted with each other prior to their meeting at Railway Station in the night of 26-01-1994. The old lady was totally unknown and not familiar to prosecutrix. Despite the same, the prosecutrix and her nephew prepared

themselves to go to the house of unknown lady Shantabai in the night hours. They slept in the hut of Shantabai during the night hours. It is also surprising to appreciate that in the morning hours of 27-01-1994, the prosecutrix and her nephew did not attempt to proceed to village Dighi, Shrirampur, in search of brother of prosecutrix but they remained with the unknown lady Shantabai in her hut for entire day and also slept there in the night of alleged incident. It remains a conundrum that instead of going to take search of brother to see him in Dighi area at the earliest, for what reason, the prosecutrix and her nephew remained with unfamiliar old lady Shantabai for entire day as well as intervening night of 26-01-1994 and 27-01-1994 till occurrence of the alleged incident. This anomalous behaviour of the prosecutrix created doubt about her credibility in this case.

13. In regard to main allegation of sexual assault i.e. rape on the prosecutrix by the appellants-accused, she deposed before the learned trial Court that :-

*" ..... On that day I took halt in the hut of Shantabai. At about 3.00 a.m. two boys came in the hut. Those two boys started threatening us. Shantabai afraid and went out of the hut. Those two boys confined my nephew Gokul. One boy came to me, he threatened me. He started removing my saree. Those boys dragged me on the ground. One boy removed my saree and other boy committed rape on me. One boy was pressing my breasts. One boy after committing rape on me, went aside. The another boy committed sexual intercourse with me. At about 3.00 to 3.30 the Police attached to Shrirampur Railway Station came in the hut of Shantabai. That Police person heard my shout. Thereafter, the Police person brought me, those two boys and my nephew at Railway Station Shrirampur. Police made inquiry with me and recorded my statement. Police made a enquiry with*

*those two boys. One boy told his name as Mastan and another told his name as Babloo. From Shrirampur Railway Station, we were taken to Shrirampur City Police Station. Those two boys are present in the Court. The witness gave glance to both the accused and pointed that these boys are the same. Police recorded my complaint and thereafter I was sent to medical examination in hospital. The complaint now read over to me is the same, the contents written therein are same. It bears my thumb impression. It is at Exhibit-26. I was clinically examined in the hospital..... "*

14. The PW-2 Gokul nephew of prosecutrix was the eye witness of the incident. He was 14 years old having age of understanding at the time of alleged incident. He has testified that-

*" ..... At about 3.00 a.m. Babloo and Mastan came in the hut. They threatened Shantabai and drove her out of the house. They threatened me. One accused No. 2 caught hold me. The accused Mastan committed rape on Ashabai. Thereafter, accused No. 1 Mastan caught hold me and accused No. 2 committed rape on Ashabai. Two Police persons of Railway Police came in the hut. Both Police took me, Ashabai, and both the accused to Railway Police Station Shrirampur. We narrated the incident to the Police. In the morning they reached us in the city Police Station Shrirampur. Ashabai lodged complaint with the Police Station. Police recorded my statement....."*

15. The evidence of Railway Police Personnel PW-3 Anthony Armugam is also found significant for consideration in this case. He stated that on 27-01-1994 at the relevant time he accompanied with his fellow Police Personnel Shri Jadhav, at about 2.00 a.m, had gone to Railway yard for taking round. While returning from the yard, they saw two persons near the hut of Shantabai. In the cross-examination PW-3 Police Personnel Mr. Anthony explained that when they were going towards "B" cabin area for round that time they saw two persons proceeding towards hut of Shantabai, but while returning these persons

were seen standing in front of her hut. According to PW-3 Mr. Anthony, he made enquiry with these two persons. They disclosed their names as Mastan and Babloo, and pretended themselves to be the guests of Shantabai. The PW3- Mr. Anthony asked the Shantabai to open the door of hut. Accordingly, Shantabai opened the door. The Police Personnel saw one woman and boy in the hut and on enquiry the old lady Shantabai disclosed that the woman was her grand daughter and boy was the son of grand-daughter. Moreover, Shantabai further divulge that these two persons i.e. present appellants were her guests. The Police Personnel suspected about foul play and therefore they took all of them to Railway Police Station and thereafter to the Shrirampur city Police Station for further enquiry. It is to be noted that PW3 Mr. Anthony in cross-examination made it clear that there were no complaint from anybody else to him about the sexual assault on the prosecutrix. But, as the appellants-accused and prosecutrix as well as Shantabai attempted to give evasive answers to his query, he took all of them to Police Station for further enquiry.

16. As referred above, the evidence of medical experts PW8-Dr. Kedare reflects that the prosecutrix was subjected to sexual intercourse prior to 12 to 18 hours of her medical examination. The appellants-accused were caught red handed while standing in front of hut Shantabai. The PW-4 Anthony recovered the prosecutrix and her nephew from the hut of Shantabai. The prosecutrix blamed the appellants-accused for sexual assault with her. In such backdrop, the reasonable inference can be drawn that the appellant-accused are only the persons who committed sexual intercourse with the prosecutrix.

17. At this juncture, I find force in the arguments of consent theory advanced on behalf of appellant-accused in this case. There would not be any dispute that expression "sexual intercourse" and "Rape" both have different import and implication. The Section 375 of the IPC elucidated the offence of rape (prior to 2013 amendment in IPC) as below:-

*"375. Rape- A man is said to commit "rape" who, except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the six following descriptions:*

*First – Against her will.*

*Secondly- Without her consent.*

*Thirdly- With her consent, when her consent has been obtained by putting her or any person in whom she is interested in fear of death or of hurt.*

*Explanation 1- For the purposes of this section "vagina" shall also include labia majora*

*Explanation 2- Consent means an unequivocal voluntary agreement when the woman by words, gestures or any form of verbal or non-verbal communications, communicates willingness to participate in the specific sexual act:*

*Provided that a woman who does not physically resist to the act of penetration shall not by the reason only of that fact, be regarded as consenting to the sexual activity.*

*Exception 1.- A medical procedure or intervention shall not constitute rape.*

*Exception 2.- Sexual intercourse or sexual acts by a man with his own wife, the wife not being under fifteen years of age, is not rape."*

18. It is essential to be borne in mind that the onus to prove each and every ingredients of the offence affirmatively is on the prosecution and such burden never shifts. It was, therefore, incumbent on the part

of prosecution to make out that all the ingredients of Section 375 of IPC attributed to appellants-accused. The above referred Section 375 of IPC itself states in clause secondly that if sexual intercourse is committed without consent of prosecutrix, it is an offence of rape. The clauses Thirdly and Fourthly denote as to when a consent would not be a consent within the meaning of clause secondly.

19. In the instant matter, the prosecution relied upon the clause Thirdly to show that the prosecutrix had been put in fear of death or of hurt and that was the reason for her passive submission before the appellants-accused. But, the circumstances available on record are not sufficient to make out a case of fear on the part of prosecutrix. It is imperative to appreciate that spot of incident i.e. hut of Shantabai consists only one and single room as described by the prosecutrix in her cross-examination. According to prosecution, when both the accused barged into the hut of Shantabai, they started giving threats to prosecutrix and her nephew Gokul. It is to be noted that the prosecution witnesses did not state that the accused were armed with weapon. They simply gave threats and one of the accused caught hold the nephew Gokul. The accused allowed the old lady Shantabai to go out of the hut at the relevant time. It is also essential for consideration that the spot of incident was located nearer to goods platform of Shrirampur Railway Station and Police Personnel were deployed to keep watch in the area. The manner in which the appellants-accused ravished the prosecutrix as narrated by her in the evidence, if considered minutely it reveals that there was ample opportunity for the prosecutrix to escape from clutches of the appellants-accused. The

PW- 2 Gokul nephew of prosecutrix did not oppose the accused, but he portrayed himself as mere spectator. The old lady Shantabai was allowed to go out of hut. But, she did not make any endeavour to help the prosecutrix. The Police Personnel deployed at Railway Station were also not requisitioned to extricate the prosecutrix from appellants - accused. The PW-3 Police Officer Mr. Anthony and his associate did not state about any shouts of prosecutrix or her nephew at the time of alleged incident. The Police arrived at the spot after seeing the accused standing in suspicious condition near the hut of Shantabai. When PW-3 Mr. Anthony reached at the spot near the appellants-accused that time the door of the hut was found closed. The PW-3 Mr. Anthony made the Shantabai to open the door of hut. These circumstances indicate that after sexual intercourse the appellants-accused came out of the hut, and thereafter, police picked up them.

20. It is to be noted that when the Police Personnel PW-3 Mr. Anthony and his associate visited to the spot of occurrence the prosecutrix or Shantabai as well as nephew Gokul no one else ventilated grievances to the Police against the accused. In contrast, they attempt to give evasive answers to the query put by police personnel. The old lady Shantabai disclosed the appellant-accused were her guests. These all circumstances demonstrate that the prosecutrix was one of the consenting party to the act of sexual intercourse by the accused with her, otherwise, she would have lodged grievances against accused at that time only. It was the best opportunity to the prosecutrix for redressal. But, she did not open the mouth and avail the opportunity to disclose such incident. In contrast,

she attempted to avoid Police Personnel. Therefore, it would difficult to accept the theory that the prosecutrix was subjected to or was under fear of death or hurt or was under compulsion to justify for inference of any "passive submission" on her part. But, the conduct and demeanour of prosecutrix at the relevant time itself indicate her voluntary participation in the act of sexual intercourse by the accused. Had there been any resistance or demur on the part of prosecutrix for such act, she would have yelled for help. She would have resist the accused. There were no weapons with the accused and she would have tried to escape from the clutches of the accused. She did not make any endeavour even to draw attention of police for help. There were no marks of violence on the person of prosecutrix or the appellants-accused. According to prosecutrix, both the accused committed sexual intercourse one after another with her. The circumstances prevailing over on the spot adumbrates that, the absence of marks of injuries on the person of prosecutrix or accused goes to indicate that the alleged act of intercourse was a peaceful affair. The behaviour of the prosecutrix in meekly allowing the accused to have their way with her to slack sexual urges in full, makes it clear that she was one of the consenting party for the alleged act of sexual intercourse. The story of threats and fear, etc. propounded on behalf of prosecutrix appears false and frivolous one. The averment of prosecutrix that she had raised shouts and on hearing of her shouts the Police arrived at the spot also found a tissue of lies. The PW-3 Mr. Anthony, police personnel did not state about clamoring on the part of prosecution witnesses or Shantabai at the relevant time. He did not overheard the shouts of

prosecution witnesses. But, police visited to the hut of Shantabai only after seeing the accused standing in front of hut of Shantabai in suspicious condition. The door of the hut was found closed from inside and the Police Personnel made Shantabai to open the door. No one else lodged the grievance to Police Personnel PW-3 Mr. Anthony against accused at the initial stage. But, after taking all of them to the Police Station, the prosecutrix might have invented the story about sexual assault by the accused after putting her under fear. This feeble attempt on the part of prosecutrix may be with intention to show her virtuousness to police and others.

21. Be that as it may, the overall circumstances available on record in this case constrained the judicious consciousness to conclude that the sexual intercourse in question is not proved to amount to 'rape' as envisaged under Section 375 of IPC. The prosecution failed to prove the ingredients of Section 375 of IPC as provided under clause secondly. The prosecutrix herself found one of the consenting party for such act of sexual intercourse. The circumstances indicate that the prosecutrix had herself voluntary taken participation in such activities. Therefore, the appellants-accused cannot be held guilty for committing an offence of rape as contemplated under Section 375 of IPC. The learned trial Court did not appreciate the circumstances on record in its proper perspective and committed error for adverse inference against the appellants-accused. The findings of guilt expressed by the learned trial Court found perverse, erroneous and deserves to be set aside and quashed.

22. In sequel, both the Criminal Appeals stand allowed. The impugned Judgment and order of conviction and resultant sentence passed by the learned 2<sup>nd</sup> Additional Sessions Judge, Shrirampur, District Ahmednagar, in Sessions Case No. 75 of 1994 dated 13-03-2002, against present appellants-accused for the offence under Sections 376 and 506 read with Section 34 of the Indian Penal Code is hereby quashed and set aside. They are acquitted from the charges pitted against them. If the appellants-accused are in jail, they be set at liberty forthwith, if not required in any other crime. The PR bond of Rs. 15,000/- (Rupees Fifteen Thousand only) with one surety of like amount be obtained from each of the appellants-accused for a period of six months as contemplated in Section 437-A of the Code of Criminal Procedure. The fine amount, if any, deposited by the appellants be refunded to them. The order about destruction of muddemal property is hereby confirmed. Accordingly, the Criminal Appeals stand disposed of in above terms.

Sd./-

[ K. K. SONAWANE ]  
JUDGE

MTK.  
\*\*\*