

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 2117 of 1999**

1. Rajesh @ Dhanesh son of Bhandari, aged about 22 years.
2. Virendra son of Surnar Singh, aged about 22 years.

Both residents of Village- Aamagaon, P.S. Jainagar, District Sarguja (MP) (Now Chhattisgarh)

---- Appellants

Versus

- The State of M.P. Through the P. S. Jainagar, District Sarguja (MP) (Now Chhattisgarh)

---- Respondent

For Appellants	:	Mr. D.K. Prajapati, Adv.
For Respondent/State	:	Ms. Subha Shrivastava, PL

Hon'ble Smt. Justice Rajani Dubey**Order On Board**

14.09.2021

1. The present appeal arises out of the impugned judgment of conviction and order of sentence dated 12.07.1999 passed by the learned Additional Sessions Judge, Surajpur, District Sarguja (MP) in Sessions Trial No. 35/98 whereby, the learned Court below has acquitted the appellants of the offence punishable under Section 376(2) of IPC, convicted them for the offence punishable under Section 354 of the IPC and sentenced them to undergo R.I. for 2 years, each.

2. As per the prosecution case, the allegation against the present appellants is that on 13.10.1997 at about 11 AM, the present appellants along with other co-accused person committed sexual intercourse with the prosecutrix. Based on that, on 15.10.1997, FIR (Ex P/1) was registered against the appellants. After completion of investigation, charge-sheet has been filed and

the charges were framed against the appellants under Section 376(2) of the IPC.

3. So as to hold the accused/appellants guilty, the prosecution has examined as many as 9 witnesses. Statements of the accused/appellants were also recorded under Section 313 of the Cr.P.C. in which they denied the charges leveled against them and pleaded innocence and false implication in the case.

4. After hearing the parties, vide impugned judgment of conviction and order of sentence dated 12.07.1999, learned Sessions Judge has acquitted the appellants of the charge under Section 376(2) of IPC, convicted them for the offence punishable under Section 354 of the IPC and sentenced them to undergo R.I. for 2 years, each. Hence, this appeal filed by the appellants.

5. Learned counsel for the appellants submits that he is not pressing the appeal so far as it relates to the conviction part of the judgment and would confine his argument to the sentence part thereof only. According to him, appellants are facing the *lis* since 1997, i.e. for the last 24 years. Out of the total jail sentence of 2 years, they have already undergone about 23 months. They are aged about 47 years and no useful purpose would be served in again sending them to jail, therefore, in the interest of justice, it would be appropriate if the sentence imposed upon them may be reduced to the period already undergone by them.

6. Learned counsel for the State opposed the prayer made by learned counsel for the appellants and supported the impugned judgment.

7. Heard learned counsel for the parties and perused the material on record including the impugned judgment.

8. Having gone through the material on record and the evidence of the witnesses Prosecutrix (PW-1), Sushila (PW-2), Jageshwari Ekka (PW-3), Dr. Pratibha Rajol Jain (PW-8) and Janki Prasad (PW-9), involvement of the accused/appellants in the crime in question stands proved beyond reasonable doubt. This Court does not see any illegality in the findings recorded by the Court below as regards

conviction of the appellants under Section 354 of the IPC.

9. As regards sentence, keeping in view the facts that incident had taken place in the year 1997, and further that the appellants had already remained in jail about 23 months, therefore, their sentence are liable to be reduced to the period already undergone by them.

10. In view of the above consideration, the appeal is partly allowed. While maintaining the conviction of the appellants, they are sentenced to the period already undergone by them.

**Sd/-
(Rajani Dubey)
JUDGE**

V/-