

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 120 of 2005**

1. Bhuwan Pal Singh Kanwar, S/o Cheddi Lal Kanwar, aged about 20 years, Occupation-Agriculture, R/o Village- Dindola Bhata, Thana & Tehsil- Katghora, District- Korba, (C.G.)
2. Jai Pal Singh Kanwar, S/o Kanwal Singh Kanwar, aged about 26 years, Occupation-Agriculture, R/o Village- Amarpur Bagdewa, Thana & Tehsil- Katghora, District- Korba, (C.G.)

---- Appellants**Versus**

- State of Chhattisgarh Through Station House Officer, Police Station- Katghora, District- Korba (C.G.).

---- Respondent

For Appellants : Mr. Arvind Dubey, Advocate

For Respondent/State : Mr. Raghvendra Verma, G.A.

Hon'ble Smt. Justice Rajani Dubey**Order On Board****27/09/2021**

1. The present appeal arises out of the impugned judgment of conviction and order of sentence dated 09.02.2005 passed by the District Sessions Judge, Korba, District- Korba, in Sessions Case No. 24/2004 whereby, the trial court has acquitted the appellants of the charges punishable under Sections 376(2) r/w 34 and 506(B) of IPC and convicted and sentenced them as under :-

S.No.	Conviction	Sentence
01.	Under Section 354 r/w 34 of the IPC	R.I. for two years and to pay fine of Rs. 5000/- each

2. Brief facts of the case are that on 03.05.2004, at about 1:00 A.M., when the prosecutrix had gone to urinate, accused persons caught her and took out of village, and, thereafter, Jai Pal Singh

Kanwar (appellant No.2) caught hold of her hands and Bhuwan Singh Kanwar (appellant No.1) removed her clothes and committed rape on her. It is stated that on seeing Shatrughan and Chandrabhuvan coming towards them, they ran away from the spot. Prosecutrix told about the incident to her parents and, thereafter, Panchayat was convened. FIR (Ex.P/7) was lodged against the appellants under Section 354 r/w 34 of the IPC. After investigation, charge-sheet was filed against the appellants and charges were framed accordingly.

3. So as to hold the accused/appellants guilty, the prosecution has examined as many as 13 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 09.02.2005 passed by the District Sessions Judge, Korba, District- Korba, the appellants have been convicted and sentenced as mentioned in paragraph 1. Hence, the present appeal.

5. Learned counsel for the appellants submits that learned trial court has erred in holding the appellants guilty for the offence as aforementioned. He further submits that the conviction and sentence of the appellants is bad, improper, incorrect and illegal. The impugned judgment of conviction and sentence is contrary to the facts, evidence and law applicable to the facts and circumstances of the case. According to him, 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. The incident is said to have taken place in the year 2004, and thereby more than 17 years have rolled by since then, appellants have already remained in jail for 22 days, 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 has no objection to this preposition.

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

8. Having gone through the material on record and the evidence of the witnesses, it can be established that the involvement of the accused/appellants in the crime in question has been proved beyond reasonable doubt. This Court does not see any illegality in the findings recorded by court below as regards conviction of the appellants under Section 354 r/w 34 of the IPC.

9. As regards sentence, keeping in view the facts that the incident took place in the year 2004 and thereafter 17 years have rolled by since then, the appellants have already remained in jail for 22 days, I am of the view that ends of justice would be served, if the sentence imposed on them is reduced to the period already undergone by them.

10. In view of the above, the appeal is partly allowed. While maintaining the conviction of the appellants, they are sentenced to the period already undergone by them. The appellants are reported to be on bail. Their bail bonds shall stand discharged.

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

R/-