

IN THE HIGH COURT AT CALCUTTA

(Criminal Appellate Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRA 176 of 2006

Bidyut Ruidas

Vs.

The State of West Bengal.

For the Appellant : Mr. Somnath Banerjee,
Mr. Pronojit Roy.

For the State : Mr. Narayan Prasad Agarwal,
Ms. Suruchi Saha.

Heard on : 30.06.2022

Judgment on : **23.08.2022**

Shampa Dutt (Paul), J.:

The appeal is against the judgment and order dated 13.01.2006/16.01.2006 passed by Assistant Sessions Judge, Suri, Birbhum in Sessions Trial No. 2/05 convicting the appellant for commission of offence punishable under Section 448/376/511/324 of the Indian Penal Code and sentencing him to suffer rigorous imprisonment for 6 (six) months for committing the offence punishable under Section 448 of the Indian Penal Code; 4 (four) years for committing the offence punishable under Section 376/511 of the Indian Penal Code and 6 (six) months for committing the offence punishable under Section 324 of the Indian Penal Code and fine of Rs. 500/- for the offence under Section 448 of the Indian Penal Code; Rs. 500/- for the offence under Section 376/511 I.P.C. and to Rs. 300/- for the offence under Section 324 of the Indian Penal Code and in default to suffer rigorous imprisonment for one month each for the said above offence. All the above sentence were to run concurrently.

The prosecution case is that on 12.07.2005 at about 4.15 a.m., when the complainant namely Bebi Sarkar was sleeping with her two sons in the Verandah of their house, the appellant after entering the house, forcibly made attempt to commit rape upon her. She somehow resisted him. The appellant attacked her with a knife and she sustained injury on her both hands. She raised alarm and rushed to the Kali Temple, where her husband was present and reported the incident. Her husband called the villagers at the Kali Temple and reported the incident to them.

On completion of investigation chargesheet was submitted against the appellant for offence punishable under Sections 448/376/511/324 of the Indian Penal Code. Charge was framed to which the appellant pleaded not guilty and claimed for trial.

In course of trial the prosecution examined 8 witnesses. The defence taken was of innocence and false implication.

On conclusion of trial the Ld. Judge by the judgment and order under appeal was pleased to convict and sentence the appellant as stated above.

Appellant/defence case

Mr. Somnath Banerjee, Ld. Advocate for the appellant has submitted that the conviction and sentence is not proper in view of the evidence on record that the prosecution could not prove the charge against the appellant beyond reasonable doubt. It is further submitted that the Investigating Officer of the case (PW 7) failed to collect the wearing apparels of the victim and also did not recover the knife (offending weapon) by which the appellant allegedly caused bleeding injury on the hands of the victim. Investigating Officer failed to prepare the sketch map of the place of occurrence and as such the evidence of the prosecution cannot be relied upon. It is further stated that the victim did not state anything before the medical officer (PW 8). Neither the name of the assailant nor the history of assault. That the examination of the accused/appellant under Section 313 of the Cr.P.C. was not in accordance with law and that total judgment and order finding the appellant guilty and

convicting and sentencing the appellant as follows was without proper appreciation of evidence and inspite of the prosecution case not being proved beyond all reasonable doubt. And this has caused serious miscarriage of justice to the appellant and as such the appeal is liable to be allowed and judgment and order under appeal should be set aside.

Prosecution case

Mr. Narayan Prasad Agarwal, Ld. Additional Public Prosecutor for the state submits that the Trial Court rightly appreciated the evidence on record and on considering both the oral and documentary evidence as produced before the Trial Court rightly came to the findings of guilt of the accused/appellant and accordingly rightly convicted and sentenced the appellant and as the said judgment and order under appeal does not suffer from any infirmity and being in accordance with law, the appeal is liable to be dismissed.

Evidence on record

Prosecution witness no. 1 Bebi Sarkar, she has stated in her evidence that there is Kali Temple in their village near her house at a distance of 5/6 minutes walking. Her husband Kiriti Sarkar attends the said Kali Temple every day at 4.00 a.m. On 27th Asar of that year, when her husband was absent from the house at about 4.30 a.m. and she was sleeping in the Verandah of the house with her son and daughter aged about 4 years and 11 months respectively. The appellant/accused Bidyut Ruidas son of Narayan Ruidas of

the same village came there and forcibly caught her in the Verandah and tore her blouse. She raised alarm. Appellant made an attempt to commit rape upon her by loosening her sari and wearing apparels. He tried to enter her private parts. She protested and saved herself from him. Appellant showed a knife and she sustained bleeding injury on her hands when she tried to save herself from his attack. She rushed to the Kali Temple of the village and stated the incident to her husband. He then called the 'para' people at 1 p.m. on that date. In that meeting, Nemai Ghosh, Papan Sarkar, Mohan Das and others were present and she stated the incident to them in the said meeting. They advised her husband to go to the P.S. Thereafter, she went to Dubrajpur hospital before lodging the diary at the P.S. where she was medically treated and then she went to the P.S. and lodged complaint. The complaint was written by Nemai Ghosh.

Prosecution witness no. 2 Nemai Ghosh. He wrote the complaint as per instruction of PW 1, the victim. He has stated that he got information about the incident at 6.00 a.m. on 12.07.2005 from Kiriti Sarkar and after getting information he rushed to Kali Temple and saw a gathering of 50/60 persons there, and Bebi Sarkar was also present who showed her injury on her hands to him. She also reported the incident to him and he accompanied Bebi Sarkar and her husband to the P.S.

Prosecution witness no. 3 Papan Sarkar has stated that the occurrence took place on 12.07.2005 at about 4.30 a.m. at that time he was sleeping in his house when Kiriti Sarkar called him and he saw Bebi Sarkar was sitting in the

said Kali Temple. She stated to him that Bidyut Ruidas entered her house and tried to commit rape upon Bebi and in doing so, he tore her blouse and loosened her sari. Bidyut also assaulted her with a knife and there was a meeting over the incident at the Kali Temple in the village. Thereafter, he went to the house of accused Bidyut Ruidas where he confessed his guilt before him. Then, as per advise of the villagers Kiriti and Bebi went to the P.S. and lodged the complaint. He was accompanied by Nema Ghosh and him to the P.S.

Prosecution witness no. 4 Kiriti Sarkar, husband of the victim. He has stated that he is the sweeper of the Kali Temple. He attended the Kali Temple in the morning at 4/4.30 a.m. daily. The occurrence took place on 27th Asar of that year at about 4.30 a.m. and on the date of occurrence his wife Bebi Sarkar came to the Kali Temple weeping having cut injury on her both hands. Her blouse was torn and she was in half naked condition. She reported to him that Bidyut Ruidas forcibly entered in the house and sat down on her breast and tried to commit rape upon her and he also assaulted her with knife. These witnesses then called the villagers at the Kali Temple where Bebi was present. She stated the incident to the police and the written complaint was lodged by her.

Prosecution witness no. 5 Mohan Das has stated that on 27th Asar at about 6.00 a.m. on being called by Kiriti he went to the Kali Temple and saw 40/50 persons, male and female were present there. He also saw Bebi at the Kali Temple with injury on her hands. She stated to him that Bidyut assaulted

her with knife at her house at about 4.30 a.m. But she did not state to him why she was assaulted by him. This witness is declared **hostile** by the prosecution.

Prosecution witness no. 6 S.I. of police Ardhendu Sekhar Mondal is the Recording Officer.

Prosecution witness no. 7 is the **I.O. Madhab Chandra Mondal** of this case who after completing the investigation submitted charge sheet u/s 448/376/511/324 I.P.C. against the accused/appellant Bidyut Ruidas.

Prosecution witness no. 8 Dr. Kamal Mukhopadhyay attached to Dubrajpur Rural Hospital has stated that he examined Bebi Sarkar wife of Kiriti Sarkar of Dubrajpur on 12.07.2005 at about 7.30 a.m. and on examination he found cut injury on her both hands which was superficial in nature. There was no active bleeding and he opined that such injury can be caused to a person by assault by sharp cutting weapon. The injury was simple and patient was conscious. No other injury was detected.

The prosecution proved the following documents before the Trial Court.

List of documents, exhibited in Session case no. 191/2005 for the prosecution.		
Exhibit	List of documents	Date
Exhibit 1	Sign. Of PW 1 on the written complaint.	17.11.2005

Exhibit 1/1	Sign. Of PW 2 on the written complaint.	17.11.2005
Exhibit 1/2	Written complaint.	17.11.2005
Exhibit 2	Formal FIR.	21.11.2005
Exhibit 2/1	Sign. Of PW 6 in the Formal FIR.	21.11.2005
Exhibit 1/3	Endorsement of PW 6 in the written complaint.	21.11.2005
Exhibit 3	Injury report proved by PW 8.	21.11.2005

Analysis of evidence

Section 448 of the Indian Penal Code lays down as follows:-

Section 448: Punishment for house-trespass.—Whoever commits house-trespass shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

Ingredients of offence.– The essential ingredients of the offence under Sec. 448 are as follows:-

- (1) The complainant was in possession of the property;
- (2) Property consisted of a building, tent or vessel used as a human dwelling or a building used as a place of worship or for custody of property.
- (3) The accused entered into or upon such building, tent or vessel;
- (4) Having entered lawfully into such building, tent or vessel the accused remains there unlawfully;
- (5) His intention was to commit an offence, or intimidate, insult or annoy the person in possession.

Section 376 of the Indian Penal Code lays down as follows:-

Section 376: Punishment for rape.— Whoever, except in the case provided for by sub-section (2), commits rape shall be punished with imprisonment of either description for a term which shall not be less than seven years but which may be for life, or for a term which may extend to ten years and shall also be liable to fine unless the women raped is his own wife and is not under twelve years of age, in which case, he shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both:

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

Section 511 of the Indian Penal Code lays down as follows:-

Section 511: Punishment for attempting to commit offences punishable with imprisonment for life or other imprisonment.—Whoever attempts to commit an offence punishable by this Code with imprisonment for life or imprisonment, or to cause such an offence to be committed, and in such attempt does any act towards the commission of the offence, shall, where no express provision is made by this Code for the punishment of such attempt, be punished with imprisonment of any description provided for the offence, for a term which may extend to one-half of the imprisonment for life or, as the case may be, one-half of the longest term of imprisonment provided for that offence, or with such fine as is provided for the offence, or with both.

Ingredients of offence. – The essential ingredients of the offence under Sec. 511 are as follows:-

- (1) The act complained of amounted to an attempt;
- (2) Such attempt was to commit an offence with this object;
- (3) The offence was punishable with imprisonment;
- (4) The accused in such attempt did some act towards the commission of that offence.

Mens rea and Actus reus both are necessary constituents for punishing attempt under Section 511 IPC, there must be an act done with the intention of committing an offence.

The observation of the Supreme Court in Madan Lal vs. State of J & K cited in (1995 AIR 1088, 1995 SCC (3) 486) is very appropriate in this reference. The court held:-

“The difference between preparation and an attempt to commit an offence consists chiefly in the greater degree of determination and what is necessary to prove an offence of an attempt to commit rape has been committed is that the accused has gone beyond the state of preparation. If an accused strips a girl naked and then making her flat on the ground undresses himself and then forcibly rubs his erected penis on the private part of the girl but fails to penetrate the same into vagina and on such rubbing ejaculates himself then it is difficult for us to hold that it was a case of merely assault under Section 353 of Indian Penal Code and not an attempt to commit rape under Section 376 read with 511 of Indian Penal Code.”

The Supreme Court In Aman Kumar vs. State of Haryana, on 10th February, 2004, in Appeal (crl.) 1016 of 1997 held:-

“An attempt to commit an offence is an act or series of acts, which leads inevitably to the commission of the offence, unless, something, which the doer of the act neither foresaw nor intended, happens to prevent this and an attempt may be described to be an act done in part-execution of a criminal design, amounting to more than mere preparation, but, falling short of actual consummation and possession, except for failure to consummate, all the elements of the substantive crime. In other words, an attempt consists in it the intent to commit a crime, falling short of, its actual commission. It is further stated by court that in order to find an accused guilty of an attempt with intent to commit rape, court has to be satisfied that the accused, when he laid hold

of the prosecutrix, not only desired to gratify his passions upon her person, but that, he intended to do so at all events and notwithstanding any resistance on her part.”

Section 324 of the Indian Penal Code lays down as follows:-

Section 324: Voluntarily causing hurt by dangerous weapons or means.—

Whoever, except in the case provided for by section 334, voluntarily causes hurt by means of any instrument for shooting, stabbing or cutting, or any instrument which, used as weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Ingredients of offence. – The essential ingredients of the offence under Sec. 324 are as follows:

- (1) Accused voluntarily caused bodily pain, disease or infirmity to the victim;
- (2) Accused did so intentionally or with knowledge that the hurt would cause bodily pain, disease or infirmity to the victim;
- (3) It was caused –
 - (a) By any shooting instrument; or
 - (b) By any stabbing instrument; or

- (c) By any cutting instrument; or
- (d) By any instrument, if used as a weapon of offence, likely to cause death; or
- (e) By means of any poison; or
- (f) By means of any corrosive substance; or
- (g) By means of any explosive substance; or
- (h) By means of any animal.

The Supreme Court in *Bharwada Bhoginbhai Hirjibhai vs. State of Gujarat* (1983 AIR 753) held as follows:-

“Corroboration is not the sine-quo-non for a conviction in a rape case. In the Indian setting, refusal to act on the testimony of a victim of sexual assault in the absence of corroboration as a rule, is adding insult to injury. Viewing the evidence of the girl or the women who complains of rape or sexual molestation with the aid of spectacles fitted with lenses tinged with doubt, disbelief or suspicion, is to justify the charge of male chauvinism in a male dominated society.”

“Corroboration may be considered essential to establish a sexual offence in the backdrop of the social ecology of the Western World. It is wholly unnecessary to import the said concept on a turn-key basis and to transplant it on the Indian soil regardless of the altogether different atmosphere, attitudes, mores, responses of the Indian Society, and its profile. The identities of the two worlds are different.”

The Court further held :-

“Rarely will a girl or a woman in India make such false allegations of sexual assault, whether she belongs to the urban or rural society, or, sophisticated, or, not-so sophisticated, or, unsophisticated society. Only very rarely can one conceivably come across an exception or two and that too possibly from amongst the urban elites. Because:-

- (1) A girl or a woman in the tradition bound non-permissive Society of India would be extremely reluctant even to admit that any incident which is likely to reflect on her chastity had ever occurred;*
- (2) She would be conscious of the danger of being ostracised by the Society or being looked down by the society including by her own family members, relatives, friends, and neighbours;*
- (3) She would have to brave the whole world;*
- (4) She would face the risk of losing the love and respect of her own husband and near relatives, and of her matrimonial home and happiness being shattered;*
- (5) If she is unmarried, she would apprehend that it would be, difficult to secure an alliance with a suitable match from a respectable or an acceptable family;*
- (6) It would almost inevitably and almost invariably result in mental torture and suffering to herself;*
- (7) The fear of being taunted by others will always haunt her;*
- (8) She would feel extremely embarrassed in relating the incident to others being over powered by feeling of shame on account of the upbringing in a tradition bound society where by and large sex is taboo;*
- (9) The natural inclination would be to avoid giving publicity to the incident lest the*

family name and family honour is brought into controversy;

(10) The parents of an unmarried girl as also the husband and members of the husband's family of a married woman, would also more often than not, want to avoid publicity on account of the fear of social stigma on the family name and family honour;

(11) The fear of the victim herself being considered to be promiscuous or in some way responsible for the incident regardless of her innocence;

(12) The reluctance to face interrogation by the investigating agency, to face the court, to face the cross examination by Counsel for the culprit, and the risk of being disbelieved, acts as a deterrent. In view of these factors the victims and their relatives are not too keen to bring the culprit to books. And when in the face of these factors the crime is brought to light there is a built in assurance that the charge is genuine rather than fabricated.”

“On principle the evidence of a victim of sexual assault stands on par with evidence of an injured witness. Just as a witness who has sustained an injury (which is not shown or believed to be self-inflicted) is the best witness in the sense that he is least likely to exculpate the real offender, the evidence of a victim of a sex-offence is entitled to great weight, absence of corroboration notwithstanding. And while corroboration in the form of eye witness account of an independent witness may often be forthcoming in physical assault cases, such evidence cannot be expected in sex offences, having regard to the very nature of the offence. It would therefore be adding insult to injury to insist on corroboration drawing inspiration from the rules devised by the courts in the Western World.”

In the Koppula Venkat Rao vs. State of Andhra Pradesh (AIR 2004 SC 1874) the Supreme Court held:-

“The plea relating to applicability of Section 376 read with Section 511, IPC needs careful consideration. In every crime, there is first, intention to commit, secondly, preparation to commit it, thirdly, attempt to commit it. If the third stage, that is, attempt is successful, then the crime is complete. If the attempt fails the crime is not complete, but law punishes the person attempting the act. Section 511 is a general provision dealing with attempts to commit offences not made punishable by other specific sections. It makes punishable all attempts to commit offences punishable with imprisonment and not only those punishable with death. An attempt is made punishable, because every attempt, although it falls short of success, must create alarm, which by itself is an injury, and the moral guilt of the offender is the same as if he had succeeded. Moral guilt, must be united to Injury in order to justify punishment. As the injury is not as great as if the act had been committed, only half the punishment is awarded.

A culprit first intends to commit the offence, then makes preparation for committing it and thereafter attempts to commit the offence. If the attempt succeeds, he has committed the offence; if it fails due to reasons beyond his control, he is said to have attempted to commit the offence. Attempt to commit an offence can be said to begin when the preparations are complete and the culprit commences to do something with the intention of committing the offence and which is a step towards the commission of the offence. The moment he commences to do an act with the necessary intention, he commences his attempt to commit the offence. The word "attempt" is not itself defined, and must, therefore, be taken in its ordinary meaning. This is exactly what the

provisions of Section 511 require. An attempt to commit a crime is to be distinguished from an intention to commit it, and from preparation made for its commission. Mere intention to commit an offence, not followed by any act, cannot constitute an offence. The will is not to be taken for the deed unless there be some external act which shows that progress has been made in the direction of it, or towards maturing and effecting it. Intention is the direction of conduct towards the object chosen upon considering the motives which suggest the choice. Preparation consists in devising or arranging the means or measures necessary for the commission of the offence. It differs widely from attempt which is the direct movement towards the commission after preparations are made. Preparation to commit an offence is punishable only when the preparation is to commit offences under Section 122 (waging war against the Government of India) and Section 399 (preparation to commit dacoity). The dividing line between a mere preparation and an attempt is sometimes thin and has to be decided on the facts of each case. There is a greater degree of determination in attempt as compared with preparation.

An attempt to commit an offence is an act, or a series of acts, which leads inevitably to the commission of the offence, unless something, which the doer of the act neither foresaw nor intended, happens to prevent this. An attempt may be described to be an act done in part execution of a criminal design, amounting to more than mere preparation, but falling short of actual consummation, and, possessing, except for failure to consummate, all the elements of the substantive crime. In other words, an attempt consists in it the intent to commit a crime, falling short of, its actual commission or consummation/completion. It may consequently be defined as that which if not prevented would have resulted in the full consummation of the act attempted. The illustrations given in Section 511 clearly show the legislative intention to make

a difference between the cases of a mere preparation and an attempt.

In order to find an accused guilty of an attempt with intent to commit a rape, Court has to be satisfied that the accused, when he laid hold of the prosecutrix, not only desired to gratify his passions upon her person, but that he intended to do so at all events, and notwithstanding any resistance on her part. Indecent assaults are often magnified into attempts at rape. In order to come to a conclusion that the conduct of the accused was indicative of a determination to gratify his passion at all events, and in spite of all resistance, materials must exist. Surrounding circumstances many times throw beacon light on that aspect.

The sine qua non of the offence of rape is penetration, and not ejaculation. Ejaculation without penetration constitutes an attempt to commit rape and not actual rape. Definition of "rape" as contained in Section 375 IPC refers to "sexual intercourse" and the Explanation appended to the Section provides that penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape. Intercourse means sexual connection. In the instant case that connection has not been established.

When the evidence of the prosecutrix is considered in the proper perspective, it is clear that the commission of actual rape has not been established. However, the evidence is sufficient to prove that attempt to commit rape was made."

"Thought of a man is not triable for the devil himself knoweth not the thought of a man. However, when such intent is expressed in words and can be inferred from his acts, the person can be held criminally responsible."

The case of the victim/complainant of house trespass/attempted rape/sustaining cut injuries by knife while resisting the alleged rape attempt by the appellant/accused, has been supported by the other witnesses to the extent that at the time of occurrence her husband was away at the Kali Temple (where he regularly goes at the same time). The victim was sleeping in the open Verandah with her children aged only 4 years and the other 11 months old. When she somehow escaped and reached the Kali Temple, her husband was told everything by her. She had her clothes torn and her hands were cut with bleeding injuries. That she had suffered sharp cut injuries on her hand has been corroborated by PW 8 the Doctor who examined her and Exhibit 3 the injury report, though it is noted in the injury report there was **no “active bleeding”**. No other injuries were detected.

The witnesses who had seen her immediately after the incident are PW 2, PW 3, PW 4 (Husband of the victim), and PW 5 (Hostile), and they saw her at the Kali Temple with injuries in her hand, just after the alleged incident occurred. These witnesses have deposed to that effect.

The evidence of the victim (PW 1) to the extent that the accused/appellant tried to put his private part in hers **is a development during trial**. Such statement is not there in the written complaint. She also states that the accused tried to loosen her wearing apparel. (Later in evidence it has been stated, that her clothes were torn by the accused.) Then again the victim/complaint and the other witnesses have all stated that the victim

suffered bleeding injuries in her both hands due to the attack by knife by the accused but PW 8 (Doctor) of Exhibit 3 (injury report) has deposed that the injury report shows that there was no active bleeding and there were no other injuries. As such the said findings do not support the contents of the written complaint. The case of the attempted rape **(details with specific allegation)** has been developed during evidence/trial in court. **The time of incident and subsequent gathering at the Kali Temple where the victim narrated the incident has been corroborated by the witnesses, who have all corroborated about the incident as heard from the victim.**

The time of occurrence (4.30 a.m.) early morning also gives weight to the prosecution case, as such incident as narrated usually occur during such time of the day and it is further believable as the victim's husband was absent every day at that time and his schedule was known to the accused being a co-villager who took advantage of the situation. Luckily the victim managed to escape and narrate the incident in the Kali Temple to her husband and other witnesses.

The injuries on her hand, though superficial also support the case of the victim (Exhibit 3). Accordingly the Trial Judge rightly held:-

“There is no contradiction in the oral evidence of the victim and other witnesses in respect of the offence committed by the accused. There is no eye witness to the occurrence but from the oral evidence of the victim and other witnesses it is proved beyond all reasonable doubt that the accused committed the offence of house trespass, attempt to

commit rape and for caused simple injury by a sharp weapon to the victim” and rightly convicted the appellant.

Conclusion

The analysis of evidence as discussed above clearly proves the prosecution case beyond reasonable doubt. The innocence of the appellant has not been proved, nor caused any shadow of doubt over on the prosecution case.

From the findings based on both oral and documentary evidence it is seen that the Trial Court came to the right finding and it has been established by the prosecution that there was an attempt by the accused to commit the offence of rape upon the prosecutrix.

This is a very old case dated 13.01.2006 relating to an incident dated 12.07.2005 (more than 17 years).

The incident occurred more than 17 years back. Thus considering the case of the prosecution and the complainant, and the facts and circumstances of the case/the materials on record, this court is of the view that if the sentence of the appellant is modified to a certain extent keeping in mind the age of case (almost 17 years) and **the hope that the appellant during all these years (almost 17 years) had the opportunity of introspection and the feeling of regret, the same shall serve the ends of justice.**

The initiation, trial, conviction and appeal has taken away the most important part of the appellant's mental, social and working life.

As such now the **only question that now remains to be considered is as regards the sentence.** The appellant aged 22 years at the relevant time, has behaved in an indecent and irresponsible manner. The victim was the young mother of two infant children. The appellant took advantage of the husband's absence in the early morning when he performed his duty in the Kali Temple.

Accordingly relying upon the view of the Supreme Court as cited above (1983 AIR 753), this court is also of the view that a certain degree of leniency can be shown towards the appellant considering the fact that this is an appeal of the year 2006 and the incident in this case occurred **on 12.07.2005 that is more than 17 years back.** Also at the time of incident the appellant was aged only about 22 years. Keeping in mind the view of the Supreme Court while considering the position of the appellant in the case before it, this court is also of the view that the appellant must have also suffered great humiliation in the society, having been convicted and sentenced and also being in jail for more than one year during investigation and trial, when finally he was granted bail by this court.

Thus taking into consideration the circumstances and an overall view of the entire matter, this court is of the view that the ends of justice will be served if the substantive sentence imposed by the Trial Court is modified keeping in mind the above developments.

The Trial Court convicted and sentenced to the appellant as follows:-

- (1) Under Section 376/511 IPC- 4 years R.I. and fine of Rs. 500 i.d. R.I. for one month more.
- (2) Under Section 448 IPC- 6 months R.I. and fine of Rs. 500 i.d. R.I. for one month more.
- (3) Under Section 324 IPC- 6 months R.I. and fine of Rs. 300 i.d. R.I. for one month more.

All the above sentences to run concurrently.

The above sentence is modified as follows:-

- (1) Under Section 376/511 IPC- to suffer R.I. for one year and four months.
- (2) Under Section 448 IPC- to suffer R.I. for six months.
- (3) Under Section 324 IPC- to suffer R.I. for six months.

All the above sentences to run concurrently.

The period of detention, if any, undergone by the appellant during investigation, enquiry and trial shall be set off against the substantive sentences imposed upon him in terms of Section 428 Cr.P.C.

Bail bond of the appellant is cancelled. The appellant is directed to surrender forthwith and serve out the remainder of his sentence (if any) within one month from date.

In the event he fails to do so, trial court shall take appropriate steps to apprehend him and execute the sentence in accordance with law.

The appeal is, allowed to the aforesaid extent.

Let a copy of this judgment along with the lower court records be sent down to the trial court immediately.

Urgent Photostat Certified copy of this Judgment, if applied for, be supplied expeditiously after complying with all necessary legal formalities.

(Shampa Dutt (Paul), J.)