A.F.R.
Reserved on – 5.3.2020
Delivered on – 5.6.2020

Case :- CRIMINAL APPEAL No. - 3609 of 2009
Appellant :- Imshad
Respondent :- State of U.P.
Counsel for Appellant :- M.P.S. Chauhan,Anil Kumar
Counsel for Respondent :- Govt. Advocate

Hon'ble Pankaj Naqvi,J.
Hon'ble Saurabh Shyam Shamshery,J.

[Per: Saurabh Shyam Shamshery, J.]

This is an appeal under Section 374(2) Criminal Procedure Code (Cr.P.C.) preferred by accused/appellant Imshad, challenging the judgment and order dated 15.4.2009 whereby he stands convicted under Section 376 IPC/Section 3(2)(V) of SC/ST Act and sentenced for life with fine of Rs.50,000/- and a default sentence of two years in Sessions Trial No.729/05, by Additional District and Sessions Judge/Special Judge/SC/ST Act, Fast Track Court No.4, Aligarh, Uttar Pradesh.

1. *PROSECUTION CASE*

I. First informant, Shiv Dhara (PW-2), mother of victim lodged a written report (Ex.Ka-1) at Police Station - Saasni Gate, Aligarh on 17.1.2005 at about 9:40 AM, against an unknown under Section 376 IPC, that she was a resident of Mohalla Sarai Rajaram, P.S. Saasni Gate, Aligarh. On 16.1.2005 (a day before), about 4 PM while

her daughter (victim), aged about 9 years was playing in the mohalla, an unknown person allured her to first floor of a vacant and dilapidated house of one Karmesh Chand Maheshwari at Pathak Street of Mohalla Jayganj and committed rape. Victim told her about the mishap in the night of 16.1.2005.

II. Accordingly, an FIR (Ex.Ka-2) was lodged and investigation commenced. Investigation Officer inspected the place of occurrence on 17.1.2005, collected bed sheet, blood stained pillow cover, three portion of cotton mattress and a torn white cloth having blood clots and also recovered blood stained green undergarment and one cream coloured pant. Recovery memos were prepared in presence of witnesses namely Dharmendra Kori and Satya Prakash.

III. Victim was medically examined on 17.1.2005 at about 2:45 PM at MIG 4, Government Hospital, Aligarh by Dr. Suneeta Sagar (PW-4). Details of medical examination are as follows :-

"***External Examination*** **–** Height - 4'1", Wt. - 23 Kg, Teeth – 12/12, Breast do not developed. No mark on injury present on any part of body."

"***Internal Examination*** **–** There is an injury present on private part. Hymen fresh torn at 6'O clock position.

There is perineal tear present at 6'O clock position, muscle deep, about 2 c.m. long. Vaginal swab taken for pathological examination for spermatozoa and for age, adv. X Ray of right hand for Carpal bones."

IV. Medical Officer, MIG Government Hospital issued supplementary medical report dated 1.2.2005 of the victim. Details of which are as follows :-

"***X-Ray report –*** Done at M.S. Hospital, Aligarh, dated 18.1.05.

X-Ray Rt. Hand < AP Lat – The centre of pisiform bone has not appeared.

Pathology report – Done at M.S. Hospital. Dead spermatozoa seen.

From above report the age of girl is about 8 yrs (Eight) and probability of rape is there."

V. On completion of investigation, the I.O. submitted a charge sheet dated 18.2.2005 against the accused/appellant under Sections 376 IPC and 3(2)(V) SC/ST Act, on which cognizance was taken, case committed to Sessions and charges framed under abovementioned Sections on 19.4.2005, to which the accused pleaded not guilty and claimed trial.

VI. In support of its case, prosecution examined victim (PW-1), Smt. Shiv Dhara/mother of the victim (PW-2), Shri Kunwar Pal Singh/subsequent Investigating Officer (PW-3) and Dr. Suneeta Sagar (PW-4).

2. ***PROSECUTION WITNESSES*** **–**

I. Victim (PW-1), aged 11 years (at the time of examination) was found to comprehend and possess competence to understand questions on the issue, examined by the trial court on 1.4.2008. She supported the prosecution case that she was allured by the accused for Rs.20, taken to a secluded place and was subjected to rape. She shouted but none came to rescue her. She narrated the incident to her mother, when she came back from work. She denied prior acquaintance with the accused. She recognized the accused when he came to hospital along with police for his medical examination while she was admitted in the hospital. She recognized the accused in the Court also. She was subjected to detail cross-examination but remained unshattered and consistent to the case of the prosecution, however, incorrectly stated about her father's death at the time of occurrence. She admitted about media coverage of the occurrence.

II. Smt. Shiv Dhara (PW-2), mother of PW-1 (first

informant) supported the prosecution version and narrated the occurrence as disclosed by her daughter. Her daughter recognized the accused when he came to hospital along with police for his medical examination after 5-6 days of occurrence. Her husband was alive on the day of occurrence, however, being unwell, he was on bed rest. About 100-200 villagers accompanied her to police station for lodging the FIR, however, she denied any media coverage of the occurrence. She denied lodging of the FIR only in order to receive compensation under the SC/ST Act.

III. S.I. - Kunwar Pal Singh (PW-3), the subsequent Investigating Officer authenticated the signatures and handwriting of SI N.S. Dixit, the first I.O. who also prepared recovery memos, recorded statements of the witnesses but was not examined during trial.

IV. Dr. Suneeta Sagar (PW-4), proved the medical report of the victim and confirmed that she was raped. On the basis of supplementary medical report, age of the victim on the day of occurrence was reported to be around 8 years.

3. Accused/appellant denied the prosecution case under Section 313 Cr.P.C., however, chose not to say anything in his defence.

4. ***JUDGMENT OF THE TRIAL COURT –***

The learned trial court, while convicting/sentencing the accused-appellant held as under :-

(i) PW-1 and 2 supported the prosecution case in toto.

(ii) PW-4 proved medical evidence, that victim was about 8 years old at the time of occurrence and was subjected to rape.

(iii) Evidence of victim, aged 11 years (at the time of her examination before the trial court) is reliable and on the basis of her solitary evidence, order of conviction could be passed. There was no reason to doubt trustworthiness of the witness, coupled with the fact that she also recognized the accused in the Court.

(iv) Even in the absence of non-examination of first I.O. and identification of accused in TIP, order of conviction could be based only on the basis of reliable testimony of the victim.

(v) On the question of sentence, learned trial court held that accused committed heinous crime and while awarding him life sentence took into consideration, the age of victim, social effect of crime etc.

5. ***SUBMISSIONS ON BEHALF OF THE APPELLANT –***

Shri Anil Kumar, learned counsel for the appellant challenging the conviction and sentence submitted that :-

(a) No Identification Parade was conducted even though FIR was lodged against an unknown person. Accused-appellant was falsely implicated in the case due to large scale media coverage of the incident.

(b) According to prosecution case, victim recognized the accused, when he was taken for medical examination at the hospital, which was not proved, thereafter, accused was recognized in the Court by the victim, which is not a substantive evidence.

(c) FIR was lodged after 17 hours of the occurrence, however, no plausible explanation was afforded.

(d) There was no evidence on record to substantiate the offence under Section 3 (2)(V) of SC/ST Act against the accused-appellant.

(e) Alternatively he submitted that appellant is languishing in jail since 6.2.2008 i.e. for more than 12 years, in case conviction is upheld, sentence be reduced to the period already undergone.

6. ***SUBMISSIONS ON BEHLAF OF THE STATE –***

Per contra, Shri A.N. Mulla assisted by Shri Rupak Chaubey, learned AGAs submitted that :-

(a) It is well settled that conviction could be based even on the solitary evidence of the prosecutrix, provided it inspires confidence, as in the present case. Statement of the victim is completely supported by medical evidence.

(b) Non-examination of the first Investigating Officer is not fatal for prosecution case as no prejudice could be demonstrated.

(c) Identification of the accused during trial is substantive evidence, whereas TIP is not. In the present case though no TIP took place but the victim identified the accused-appellant before the trial court, therefore, it is safe to rely upon such identification.

(d) There is no evidence on record which remotely indicates that accused-appellant was falsely implicated due to alleged large scale media coverage of the occurrence.

(e) Delay of 17 hours in lodging the FIR is not fatal for the prosecution case, considering that a 8 years old girl was raped and her mother being alone with an ailing husband has to take care of her daughter, therefore, it must have taken some time for her to lodge an FIR,

besides reporting such a case is still considered to be a taboo.

(f) Accused was a resident of a nearby mohalla, where family of victim resides, therefore, it is highly probable that appellant knew that the victim, belongs to a Scheduled Caste, offence under Section 3(2)(V) of SC/ST Act is also made out.

(g) Appellant committed heinous crime of committing rape of 8 years old girl this Court may not take a lenient view on the quantum of sentence.

DISCUSSION –

7. DELAY IN LODGING THE FIR –

The occurrence took place at 4 P.M. on 16.1.2005. According to prosecution story, victim told her mother (PW-2) about the occurrence same day at about 7-8 P.M. but FIR was lodged next day (17.1.2005) at 9:40 A.M., with delay of more than 12 hours. Learned counsel for the appellant contended that there is no explanation for the delay.

8. In ***Deepak vs. State of Haryana: 2015 (4) SCC 762***, it has been held in para 15 that :-

> *"**15.** The Courts cannot overlook the fact that in sexual offences and, in particular, the offence of*

> *rape and that too on a young illiterate girl, the delay in lodging the FIR can occur due to various reasons. One of the reasons is the reluctance of the prosecutrix or her family members to go to the police station and to make a complaint about the incident, which concerns the reputation of the prosecutrix and the honour of the entire family. In such cases, after giving very cool thought and considering all pros and cons arising out of an unfortunate incident, a complaint of sexual offence is generally lodged either by victim or by any member of her family. Indeed, this has been the consistent view of this Court as has been held in State of Punjab vs. Gurmit Singh & Ors.."*
>
> ***(emphasis supplied)***

9. In ***P.Rajagopal and others Etc. vs. State of Tamil Nadu*** reported in ***2019 (5) SCC 403***, it has been held in para 12 that :-

> *"**12.** Normally, the Court may reject the case of the prosecution in case of inordinate delay in lodging the first information report because of the possibility of concoction of evidence by the prosecution. However, if the delay is satisfactorily explained, the Court will decide the matter on merits without giving much importance to such delay. The Court is duty-bound to determine whether the explanation afforded is plausible enough given the facts and circumstances of the case. The delay may be condoned if the complainant appears to be reliable and without any motive for implicating the accused falsely. [See Apren Joseph v. State of Kerala and Mukesh v . State (NCT of Delhi)]"*
>
> ***(emphasis supplied)***

10. PW-2 stated in evidence that she neither made any effort to lodge a report on the day of occurrence for fear

of shame, nor she shared the same with her neighbours. The report came to be lodged next day, as the condition of her daughter (victim) was worsening, when she was left with no option but to lodge a report. Another relevant circumstance is that her husband was unwell and bed ridden and she alone had to manage everything. Thus, in view of above circumstances and the legal position, there was no inexplicable delay in lodging the FIR so as to falsely implicate the accused.

11. ***STERLING WITNESS*** –

In the present case, an eight year girl (PW-1) was raped. She not only identified the accused-appellant during trial but supported the prosecution in its totality. She remained consistent and unshaken during detail cross examination and narrated entire occurrence and manner of sexual assault. Medical evidence corroborates ocular evidence. This solitary witness inspires confidence. It is a settled principle that conviction in a rape case could be based on the sole testimony of the victim without corroboration, if the witness is a 'sterling witness'.

12. In a recent judgment of ***Santosh Prasad @ Santosh Kumar vs. State of Bihar,*** reported in ***2020 SCC Online SC 194***, the Apex Court held that :-

*"**5.4** Before considering the evidence of the prosecutrix, the*

decisions of this Court in the cases of Raju (supra) and Rai Sandeep @ Deepu, relied upon by he learned Advocate appearing on behalf of the appellant-accused, are required to be referred to and considered.

5.4.1 *x x x x x x x x x x x x x x x x x x x x x x x x x x x*

5.4.2 *In the case of Rai Sandeep alias Deepu (supra), this Court had an occasion to consider who can be said to be a "sterling witness". In paragraph 22, it is observed and held as under:*

> *"22 In our considered opinion, the "sterling witness" should be of a very high quality and calibre whose version should, therefore, be unassailable. The court considering the version of such witness should be in a position to accept it for its face value without any hesitation. To test the quality of such a witness, the status of the witness would be immaterial and what would be relevant is the truthfulness of the statement made by such a witness. What would be more relevant would be the consistency of the statement right from the starting point till the end, namely, at the time when the witness makes the initial statement and ultimately before the court. It should be natural and consistent with the case of the prosecution qua the accused. There should not be any prevarication in the version of such a witness. The witness should be in a position to withstand the cross-examination of any length and howsoever strenuous it may be and under no circumstance should give room for any doubt as to the factum of the occurrence, the persons involved, as well as the sequence of it. Such a version should have co-relation with each and every one of other supporting material such as the recoveries made, the weapons used, the manner of offence committed, the scientific evidence and the expert opinion. The said version should consistently match with the version of every other witness. It can even be stated that it should be akin to the test applied in the case of circumstantial evidence where there should not be*

any missing link in the chain of circumstances to hold the accused guilty of the offence alleged against him. Only if the version of such a witness qualifies the above test as well as all other such similar tests to be applied, can it be held that such a witness can be called as a "sterling witness" whose version can be accepted by the court without any corroboration and based on which the guilty can be punished. To be more precise, the version of the said witness on the core spectrum of the crime should remain intact while all other attendant materials, namely, oral, documentary and material objects should match the said version in material particulars in order to enable the court trying the offence to rely on the core version to sieve the other supporting materials for holding the offender guilty of the charge alleged."

5.4.3 *In the case of Krishna Kumar Malik v. State of Haryana (2011) 7 SCC 130, it is observed and held by this Court that no doubt, it is true that to hold an accused guilty for commission of an offence of rape, the solitary evidence of the prosecutrix is sufficient provided the same inspires confidence and appears to be absolutely trustworthy, unblemished and should be of sterling quality."*

(emphasis supplied)

13. We have scanned the deposition of PW-1 keeping the aforesaid decisions in mind. She remained consistent during her entire testimony. She withstood entire cross-examination. Her version is also supported by medical evidence, therefore, the witness is absolutely trustworthy, unblemished and of sterling quality.

14. ***NON-EXAMINATION OF INVESTIGATING OFFICER*** **–**

As we have held that PW-1 is a 'sterling witness', there is no material contradiction or improvements in her testimony, therefore, even non-examination of first Investigating Officer is of no consequence, as the second I.O. (PW-3) was examined who confirmed the handwriting/signatures of the first I.O. on relevant papers to which there is no serious challenge, coupled with the fact that non-examination of the first I.O., did not result in any prejudice to the accused.

15. In this regard, it is useful to refer judgment of the Supreme Court in ***State of Karnataka vs. Bhaskar Kushali Kotharkar and Others: (2004) 7 SCC 487*** where it has been held in para 10 and 11 that :-

> ***"10.*** *There is very strong and convincing evidence to prove that these respondents along with others had attacked deceased Prakash, PW-1 and PW-2. The Sessions Judge had given valid reasons for finding these respondents guilty. The Single Judge was not justified in reversing the conviction and sentence solely on the ground that investigating officer was not examined by the prosecution. As the respondents were not prejudiced by the non-examination of the investigating officer and also the constable who recorded the FI statement. The finding of the learned Single Judge is erroneous, therefore, we set aside the same. In Behari prasad and Ors. v. State of Bihar, [1996] 2 SCC 317, this Court held that non examination of the investigating officer is not fatal to the prosecution case especially when no prejudice was likely to be suffered by the accused.*
>
> ***11.*** *In Bahadur Naik v. State of Bihar, [2000] 9*

> *SCC 153, this Court held that when no material contradictions have been brought out, then non-examination of the investigating officer as a witness for prosecution was of no consequence and under such circumstance no prejudice had been caused to the accused by such non examination."*
>
> ***(emphasis supplied)***

16. ***NO TEST IDENTIFICATION PARADE*** **–**

Learned counsel for the appellant vehemently argued that no TIP was conducted which indicates false implication of the appellant as he was unknown to the prosecutrix/victim. We are not impressed with this contention as TIP is not a substantive evidence unlike dock identification which is substantive evidence.

17. In ***Mulla and Another vs. State of U.P.,*** reported in ***(2010) 3 SCC 508,*** it has been held by the Apex Court in para Nos.42, 43, 44 and 45 that :-

> *"**42.** Failure to hold test identification parade does not make the evidence of identification in court inadmissible, rather the same is very much admissible in law. Where identification of an accused by a witness is made for the first time in Court, it should not form the basis of conviction.*
>
> ***43.** As was observed by this Court in Matru v. State of U.P.., (1971) 2 SCC 75, identification tests do not constitute substantive evidence. They are primarily meant for the purpose of helping the investigating agency with an assurance that their progress with the investigation into the offence is proceeding on the right lines. The identification can only be used as*

corroborative of the statement in Court. (Vide Santokh Singh v. Izhar Hussain, (1973) 2 SCC 406).

44. *The necessity for holding an identification parade can arise only when the accused persons are not previously known to the witnesses. The whole idea of a test identification parade is that witnesses who claim to have seen the culprits at the time of occurrence are to identify them from the midst of other persons without any aid or any other source. The test is done to check upon their veracity. In other words, the main object of holding an identification parade, during the investigation stage, is to test the memory of the witnesses based upon first impression and also to enable the prosecution to decide whether all or any of them could be cited as eyewitnesses of the crime.*

45. *The identification proceedings are in the nature of tests and significantly, therefore, there is no provision for it in the Code and the Indian Evidence Act, 1872. It is desirable that a test identification parade should be conducted as soon as possible after the arrest of the accused. This becomes necessary to eliminate the possibility of the accused being shown to the witnesses prior to the test identification parade. This is a very common plea of the accused and, therefore, the prosecution has to be cautious to ensure that there is no scope for making such allegation. If, however, circumstances are beyond control and there is some delay, it cannot be said to be fatal to the prosecution."*

(emphasis supplied)

18. In ***Mukesh & Anr. vs. State for NCT of Delhi & Others reported at 2017 (6) SCC 1,*** it has been held in para 143 and 144 that :-

> ***"143.*** *In Santokh Singh v. Izhar Hussain and another, it has been observed that the identification can only be used as corroborative of the statement in court.*

> ***144.*** *In Malkhansingh v. State of M.P., it has been held thus:*
>
> "*7. … The identification parades belong to the stage of investigation, and there is no provision in the Code of Criminal Procedure which obliges the investigating agency to hold, or confers a right upon the accused to claim a test identification parade. They do not constitute substantive evidence and these parades are essentially governed by Section 162 of the Code of Criminal Procedure. Failure to hold a test identification parade would not make inadmissible the evidence of identification in court. The weight to be attached to such identification should be a matter for the courts of fact. …*" *And again:*
>
> "*16. <u>It is well settled that the substantive evidence is the evidence of identification in court and the test identification parade provides corroboration to the identification of the witness in court, if required</u>. However, what weight must be attached to the evidence of identification in court, which is not preceded by a test identification parade, is a matter for the courts of fact to examine. ….*"
>
> ***(emphasis supplied)***

19. In view of aforesaid, mere fact that TIP was not conducted in the present case would not vitiate the testimony of PW-2 (victim) who identified the accused at the hospital and also in the court during trial.

20. We, in view of the above discussions, are of the view that PW-2 (victim) being a sterling witness and conviction under Section 376 IPC can be based on her solitary, reliable and trustworthy evidence.

<u>WHETHER CONVICTION UNDER SECTION 3(2)(V)</u>

<u>OF SC/ST ACT IS SUSTAINABLE</u> ?

21. We now have to consider whether conviction u/s 3(2) V of SC/ST Act is sustainable or not ?

22. Learned counsel for the appellant argued that there was no evidence on record that accused committed offence of rape, only because the victim was a member of Schedule Caste or Schedule Tribe.

23. The Apex Court in a recent judgment of ***Khuman Singh vs. State of Madhya Pradesh: 2019 SCC Online 1104*** in para 12, 13 and 14 has held that :-

> *"**12**. ……The object of Section 3(2)(v) of the Act is to provide for enhanced punishment with regard to the offences under the Indian Penal Code punishable with imprisonment for a term of ten years or more against a person or property knowing that the victim is a member of a Scheduled Caste or a Scheduled Tribe.*
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> ***13.** In Dinesh alias Buddha v. State of Rajasthan (2006) 3 SCC 771, the Supreme Court held as under:-*
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> "*15. Sine qua non for application of Section 3(2)(v) is that an offence must have been committed against a person on the ground that such person is a member of Scheduled Castes and Scheduled Tribes. In the instant case no evidence has been led to establish this requirement. It is not case of the prosecution that the rape was committed on the victim since she was a member of Scheduled Caste. In the absence of evidence to that effect, Section 3(2)(v) of the Atrocities Act been applicable then by operation of law, the sentence would have been imprisonment for life and fine.*

> *As held by the Supreme Court, the offence must be such so as to attract the offence under Section 3(2)(v) of the Act. The offence must have been committed against the person on the ground that such person is a member of Scheduled Caste and Scheduled Tribe. In the present case, the fact that the deceased was belonging to "Khangar"-Scheduled Caste is not disputed. There is no evidence to show that the offence was committed only on the ground that the victim was a member of the Scheduled Caste and therefore, the conviction of the appellant-accused under Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act is not sustainable.*

(emphasis supplied)

24. In the present case, prosecution has not brought any evidence on record which could even suggest that accused committed offence of rape, only for the reason that the victim was a member of Schedule Caste or Schedule Tribe as the accused had no prior acquaintance with the victim. Accordingly, conviction under Section 3(2)(V) of S.C./S.T. Act is not sustainable, liable to be set aside.

25. ***QUANTUM OF SENTENCE –***

Lastly, we have to deal with the argument regarding quantum of sentence. It is useful to refer following judgments passed by the Supreme Court on the issue.

26. In ***Bavo alias Manubhai Ambalal Thakore vs. State of Gujarat: 2012 (2) SCC 684,*** in paras 12, 13, 14, it has been held that :-

*"**12**. The learned counsel for the appellant relied on a decision of this Court in Narayanamma (Kum) vs. State of Karnataka and Others (1994) 5 SCC 728 and contended that the life imprisonment is not warranted and sentence may be reduced to the period already undergone. The said decision relates to the rape on a minor girl aged 14 years. While the trial Judge convicted and sentenced the accused to three years RI, the High Court reversed the same and acquitted the accused. It was challenged before this Court. After considering the entire materials, this Court set aside the order of the High Court and affirmed the conclusion arrived at by the trial Court. Though this Court expressed displeasure in awarding only three years RI for the crime of rape, taking note of length of time, not inclined to enhance it and confirmed the sentence awarded by the trial Court.*

***13.** Counsel for the appellant relied on another decision of this Court in Rajendra Datta Zarekar vs. State of Goa, (2007) 14 SCC 560. The said case also relates to the offence under Section 376. The victim was aged about 6 years and the accused was aged about 20 years. Ultimately, this Court confirmed the conviction and sentence of 10 years as awarded by the High Court. However, the fine amount of Rs. 10,000/- awarded under Section 376(2)(f) being found to be excessive reduced to Rs. 1,000/-.*

***14.** Considering the fact that the victim, in the case on hand, was aged about 7 years on the date of the incident and the accused was in the age of 18/19 years and also of the fact that the incident occurred nearly 10 years ago, the award of life imprisonment which is maximum prescribed is not warranted and also in view of the mandate of Section 376(2)(f) IPC, we feel that the ends of justice would be met by imposing RI for 10 years. Learned counsel appearing for the appellant informed this Court that the appellant had already served nearly 10 years.*

(emphasis supplied)

27. In ***Thongam Tarun Singh vs. State of Manipur: 2019 SCC Online SC 709,*** it has been held in paras 11 and 12 that :-

> *"**11.** The question falling for consideration is whether there are adequate and special reasons warranting exercise of discretion to reduce the sentence of imprisonment. What is 'adequate and special reasons' would depend upon several factors and no strait-jacket formula can be imposed. No catalogue can be prescribed for adequacy of reasons nor instances can be cited regarding special reasons. They differ from case to case.*
>
> ***12.** It is stated that at the time of occurrence, appellant no. 1 was working as a police driver and appellant no. 2 was a singer having good reputation, performing as a singer on the stage and both the appellants were aged about 24-25 years, at the time of the occurrence. It is also stated that both the appellants have no criminal antecedents and they hail from backward area. Learned counsel for the appellants have also produced certificate issued from the Jail Authorities to show that the conduct of the appellants (post conviction) are very good and satisfactory and they have been participating in the sports/garden activities and other programmes of the Jail. Considering the facts and circumstances of the case and that the appellants have no criminal antecedents and also the conduct of the appellants in the Jail (post conviction), the sentence of imprisonment of fifteen years (for the conviction under Section 376 (2)(g) IPC) and sentence of imprisonment of ten years (for the conviction under Section 120B IPC) are reduced to eight years."*
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> ***(emphasis supplied)***

28. Considering that no case is made out against the

accused-appellant under Section 3(2)(V) of SC/ST Act, he is languishing in jail since 6.2.2008 (i.e. more than 12 years), further he was about 20 years at the time of occurrence and today he is about 34 years and no other criminal history is reported, we, therefore, modify the sentence under Section 376 IPC to sentence already under gone.

29. The appeal is ***partly allowed***. The conviction/sentence under Section 376 IPC r/w Section 3(2)(V) of SC/ST Act is altered to conviction under Section 376 IPC only on sentence undergone while acquitting the appellant under Section 3(2)(V) of SC/ST Act. Appellant is in jail. He shall be released forthwith, if not detained in any other case.

30. A certified copy of this judgment be sent to the trial court for necessary compliance.

Order Date : 5.6.2020
Rishabh

(Saurabh Shyam Shamshery, J.) (Pankaj Naqvi, J.)