



(Cr.A.No. 1223/2013, 467/2015, 1237/2013, 1115/2013, 1144/2013 & 1175/2013)

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.1223 of 2013

{Arising out of judgment dated 30-10-2013 in Special (Atrocities) Sessions Trial No.7/2013 of the Special Judge (Atrocities), North Bastar Kanker}

Mannu Ram Goti, S/o Shekhu Ram Goti, aged about 24 years, Occupation Assistant Teacher, Jhaliyamali Ashram, R/o Kurubhat, Out Post Halba, Police Station Narharpur, Civil and Revenue District North Bastar Kanker (C.G.)

(In Jail)

---- Appellant

Versus

State of Chhattisgarh, Through District Magistrate, North Bastar Kanker / Station House Officer, Police Station Narharpur, District North Bastar Kanker (C.G.)

---- Respondent

Criminal Appeal No.467 of 2015

Deenanath Nagesh (Ashram Chowkidar), S/o Ramprasad Nagesh, aged about 35 years, R/o Village Jhaliyamari, Police Station Narharpur, District North Bastar Kanker (C.G.)

(In Jail)

---- Appellant

Versus

State of Chhattisgarh, through the Station House Officer, Police Station Narharpur, District North Bastar Kanker (C.G.)

---- Respondent

Criminal Appeal No.1237 of 2013

Smt. Bhabhita @ Babita Markam, aged about 29 years, W/o Vijay Markam, D/o Rajjilal, Ashram Superintendent, R/o Village Jhaliyamari, P.S. Narharpur, Civil and Revenue District Uttar Bastar Kanker (C.G.)

(In Jail)

---- Appellant

Versus

State of Chhattisgarh, Through District Magistrate, Uttar Bastar Kanker, (P.S. Narharpur), District Uttar Bastar Kanker (C.G.)

---- Respondent



(Cr.A.No.1223/2013, 467/2015, 1237/2013, 1115/2013, 1144/2013 & 1175/2013)

Criminal Appeal No.1115 of 2013

1. Sagar Katlam, Aged about 29 years, S/o Ramlal Katlam, Teacher, R/o Village Jhaliyamari, P.S. Narharpur, Civil and Revenue District Uttar Bastar Kanker (C.G.)
2. Sughan Singh Naverji, Aged about 61 years, S/o Shobhit Singh Naverji, Block Education Officer, R/o Narharpur, P.S. Narharpur, Civil and Revenue District Uttar Bastar Kanker (C.G.)
3. Jitendra Kumar Nayak, Aged 54 years, S/o Devkaran Nayak, Assistant Block Education Officer, R/o Bhiroud, P.S. Narharpur, Civil and Revenue District Uttar Bastar Kanker (C.G.)

---- Appellants

Versus

State of Chhattisgarh, Through District Magistrate, Uttar Bastar Kanker, (P.S. Narharpur), District Uttar Bastar Kanker (C.G.)
---- Respondent

Criminal Appeal No.1144 of 2013

Sukalu Netam, S/o Surjuram, aged about 40 years, Sarpanch, R/o Jhaliyamari, Police Station Narharpur, Civil and Revenue District North Bastar Kanker (C.G.)

---- Appellant

Versus

The State of Chhattisgarh, through the Station House Officer, Police Station Narharpur, Civil and Revenue District North Bastar Kanker (C.G.)
---- Respondent

AND

Criminal Appeal No.1175 of 2013

Lachchhuram Salam, S/o Shri Masiyaram Salam, Aged about 40 years, R/o Jhaliyamari, Police Station Narharpur, Distt. Uttar Bastar Kanker (C.G.)

---- Appellant

Versus

State of Chhattisgarh, Through the District Magistrate, Uttar Bastar Kanker, (Police Station Narharpur), Distt. Uttar Bastar Kanker (C.G.)
---- Respondent



(Cr.A.No.1223/2013, 467/2015, 1237/2013, 1115/2013, 1144/2013 & 1175/2013)

For Appellant in Cr.A.No.1223/2013: -

Mr. Dharmesh Shrivastava, Advocate.

For Appellants in Cr.A.Nos.467/2015 & Cr.A.No.1144/2013 : -

Mr. H.S. Patel, Advocate.

For Appellant in Cr.A.No.1237/2013 and Appellants No.1 & 3 in Cr.A. No.1115/2013: -

Mr. Sandeep Shrivastava, Advocate.

For Appellant No.2 in Cr.A.No.1115/2013: -

Mr. Anchal Kumar Matre, Advocate.

For Appellant in Cr.A.No.1175/2013: -

Mr. Arvind Sinha, Advocate.

For State / Respondent in all appeals: -

Mr. Ashish Tiwari, Govt. Advocate.

**Hon'ble Shri Sanjay K. Agrawal and
Hon'ble Shri Arvind Singh Chandel, JJ.**

Judgment On Board
(05/05/2023)

Sanjay K. Agrawal, J.

1. Since all the six criminal appeals have arisen out of one and same impugned judgment dated 30-10-2013 passed by the Special Judge (Atrocities), North Bastar Kanker in Special (Atrocities) Sessions Trial No.7/2013 and since common question of fact and law is involved in all the six appeals, they have been clubbed together, heard together and are being disposed of by this common judgment.

2. These six criminal appeals have been preferred by the accused / appellants (A-1 to A-8) under Section 374(2) of the CrPC against the impugned judgment convicting and sentencing them as under: -

Mannuram Goti (A-1)

Conviction	Sentence
Section 450 of the IPC	RI for ten years and fine of ₹ 500/-, in default, additional RI for two months



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Section 376(2)(g) read with clauses (b), (c), (f) read with Section 120B of the IPC for committing offence against victims No.1 to 12 & 15	Imprisonment for life and fine of ₹ 500/-, in default, additional SI for two months (12 times)
Section 354 of the IPC for committing offence against victims No.13 & 14	RI for three years and fine of ₹ 200/-, in default, additional SI for one month (two times)
Section 119 of the IPC	RI for five years
Section 201 of the IPC	RI for three years and fine of ₹ 500/-, in default, additional SI for two months Except sentences under Sections 119 & 201 of the IPC, other remaining sentences were directed to run consecutively

Deenanath Nagesh (A-2)

Conviction	Sentence
Section 450 of the IPC	RI for ten years and fine of ₹ 500/-, in default, additional SI for two months
Section 376(2)(g) read with clauses (b), (c), (f) read with Section 120B of the IPC for committing offence against victims No.2 to 5, 7, 9 & 10	Imprisonment for life and fine of ₹ 500/-, in default, additional SI for two months (7 times)
Section 354 of the IPC for committing offence against victims No.13 & 14	RI for three years and fine of ₹ 200/-, in default, additional SI for one month (two times)
Section 119 of the IPC	RI for five years
Section 201 of the IPC	RI for three years and fine of ₹ 500/-, in default, additional SI for two months Except sentences under Sections 119 & 201 of the IPC, other remaining sentences were directed to run consecutively



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Babita Markam (A-3)

Conviction	Sentence
Section 376(2)(b) read with clauses (c), (f), (g) read with Sections 34 & 35 read with Section 120B of the IPC	Imprisonment for life and fine of ₹ 500/-, in default, additional SI for two months
Section 119 of the IPC	RI for five years and fine of ₹ 500/-, in default, additional SI for two months
Section 201 of the IPC	RI for three years and fine of ₹ 500/-, in default, additional SI for two months
Section 506 of the IPC	RI for one year Except sentences under Sections 119 & 201 of the IPC, other remaining sentences were directed to run consecutively

Sagar Katlam (A-4)

Conviction	Sentence
Section 201 of the IPC	RI for three years and fine of ₹ 500/-, in default, additional SI for two months
Section 202 of the IPC	RI for six months
Section 506 of the IPC	RI for one year Sentences were directed to run consecutively

Sukalu Netam (A-5)

Conviction	Sentence
Section 201 of the IPC	RI for three years and fine of ₹ 500/-, in default, additional SI for two months
Section 384 read with Section 506 of the IPC	RI for two years Sentences were directed to run consecutively



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Lachhuram Salam (A-6)

Conviction	Sentence
Section 201 of the IPC	RI for three years and fine of ₹ 500/-, in default, additional SI for two months
Section 384 read with Section 506 of the IPC	RI for two years Sentences were directed to run consecutively

Sughan Singh Naverji (A-7)

Conviction	Sentence
Section 119 of the IPC	RI for five years and fine of ₹ 500/-, in default, additional SI for two months
Section 201 of the IPC	RI for three years and fine of ₹ 500/-, in default, additional SI for two months
Section 202 of the IPC	RI for six months

Jitendra Nayak (A-8)

Conviction	Sentence
Section 119 of the IPC	RI for five years and fine of ₹ 500/-, in default, additional SI for two months
Section 201 of the IPC	RI for three years and fine of ₹ 500/-, in default, additional SI for two months
Section 202 of the IPC	RI for six months
Section 384 of the IPC	RI for two years Except sentence under Section 384 of the IPC, other remaining sentences were directed to run consecutively



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3. Sole appellant in Cr.A.No.1223/2013 namely Mannuram Goti (A-1); sole appellant in Cr.A.No.467/2015 namely Deenanath Nagesh (A-2); sole appellant in Cr.A.No.1237/2013 namely Smt. Bhabhita @ Babita Markam (A-3); three appellants in Cr.A.No.1115/2013 namely Sagar Katlam (A-4), Sughan Singh Naverji (A-7) & Jitendra Kumar Nayak (A-8); sole appellant in Cr.A.No.1144/2013 namely Sukalu Netam (A-5); and sole appellant in Cr.A.No.1175/2013 namely Lachhuram Salam (A-6) have assailed their conviction and sentences imposed upon them by the learned Special Judge (Atrocities) by way of the impugned judgment of conviction & order of sentence.

4. Case of the prosecution, in short, is that 1½ years prior to 12-8-2012, accused / appellant Mannuram Goti (A-1) being Teacher and accused / appellant Deenanath Nagesh (A-2) being Security Guard in Adivasi Kanya Ashram, Jhaliyamari committed gang rape / sexual intercourse with 14 minor girls aged about 7-11 years and called meeting of Gram Panchayat Manikpur and tried to conceal the evidence and thereby committed the offence. Further case of the prosecution is that accused / appellant Babita Markam (A-3) being Superintendent of the said Ashram, being a public servant, was in position to prevent the commission of offence, but did not prevent the commission of offence and thereby committed the offence under Section 376(2)(b) read with clauses (c), (f), (g) read with Sections 34 & 35 read with Section 120B of the IPC and other related offences. Similarly, accused / appellant Sagar Katlam (A-4) being Teacher, accused / appellant Sukalu Netam (A-5) being Up-



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Sarpanch of Village Jhaliyamari, accused / appellant Sughan Singh Naverji (A-7) being Block Education Officer and accused / appellant Jitendra Kumar Nayak (A-8) being Assistant Block Education Officer, were involved in concealing the evidence, threatening the victims and also committing the offence of extortion, and thereby committed the offence. It is also the case of the prosecution that on 4-1-2013, the District Collector, North Bastar Kanker received a complaint regarding harassment and physical misbehaviour with the minor girls aged about 7-11 years who were residing at Jhaliyamari Ashram and the District Collector in order to have investigation of the said complaint constituted a team consisting of one Ms. Shail Thakur (PW-42), Women & Child Development Officer and Ms. Anju Nayak, Assistant Director, Public Relations for conducting investigation over the said complaint and for submitting report immediately. Thereafter, on 5-1-2013, both the officers reached the hostel where the girl victims were residing and recorded their statements during which the girl victims (14 in number) informed that A-1 & A-2 used to switch off the lights of the Ashram and would take off their clothes and would conduct indecent and inappropriate act one by one. It was further informed by the girl victims that the aforesaid incident was happening since 1½ years prior to August, 2012. The two officers after conducting detailed enquiry, submitted enquiry report Ex.P-130 to the higher authority based on which and also based on the report lodged by Ms. Shail Thakur (PW-42), District Programme Officer, the offence was registered being Crime No.3/2013 under Sections 376(2)(b) &



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34 of the IPC vide FIR Ex.P-132 and further, considering that the minor victims belong to Scheduled Tribe, the case diary was handed-over to ST Wing Investigating Officer Reena Neelam Kujur (PW-66) for conducting investigation. On 6-1-2013, the Investigating Officer reached Jhaliyamari Ashram and prepared spot map of the place of incident vide Ex.P-207 and recorded the statements of Ms. Shail Thakur (PW-42) and 14 girl victims. Daakhil kharij register was seized vide Ex.P-208 and after obtaining permission for conducting medical examination of the girl victims, they were sent to Komal Dev Government Hospital, Kanker where they were medically examined and vaginal slides of the girl victims were also prepared. Vaginal slides of the girl victims were sent for chemical examination to the FSL, Raipur and the FSL report is Ex.P-152 in which stains of human sperm were found on the vaginal slides (Articles H, I, K, L, M, R & S) of victims examined as PW-11, PW-13, PW-15, PW-6, PW-18, PW-25 and one another victim (not examined). On the same day, clothes of accused Mannuram Goti (A-1) & Deenanath Nagesh (A-2) were also seized and the accused persons were also sent for medical examination. Medical examination of A-1 was conducted vide Ex.P-27 and he was arrested vide Ex.P-210. On 8-1-2013, seven pieces of mattresses bearing Articles I, J, K, L, M, N & O were seized from the Ashram and registers produced by accused Babita Markam (A-3), Hostel Superintendent, were seized and she was arrested vide Ex.P-212. Other accused persons Sagar Katlam (A-4), Sukalu Netam (A-5) & Lachhuram Salam (A-6) were also arrested vide



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Exs.P-211, 213, 214, respectively. Thereafter, statements of the girl victims were recorded before Silli Thomas (PW-61), Tahsildar & Executive Magistrate, Narharpur vide Exs.P-176 to P-190 and their caste certificates were seized vide Exs.P-118, P-121, P-125, P-28, P-116, P-17, P-191 to P-195 & P-107 and case diary was handed-over for investigation to Rama Patel (PW-68). Victims were medically examined by Dr. (Smt.) K.L. Thakur (PW-53) who conducted medical examination of the victim girls and prepared report Exs.P-1, P-153 to P-165.

5. Thereafter, statements of witnesses were recorded under Section 161 of the CrPC and the appellants were charge-sheeted for the aforesaid offences before the jurisdictional criminal court. The appellants abjured the guilt and entered into defence. Their defence was that they have not committed the offence and they have been falsely implicated in the offences in question.

6. In order to bring home the offence, the prosecution has examined as many as 75 witnesses and exhibited 239 documents Exs.P-1 to P-239. Articles A to T have been exhibited on behalf of the prosecution. The defence has examined none, but exhibited 24 documents Exs.D-1 & D-24.

7. The trial Court after appreciating oral and documentary evidence on record, proceeded to convict and sentence all the accused / appellants in the manner mentioned in the opening paragraph of this judgment against which these six appeals have been preferred by the appellants questioning their conviction and sentences.

8. Mr. Dharmesh Shrivastava, learned counsel appearing for appellant



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/ accused Mannuram Goti (A-1) in Cr.A.No.1223/2013, would submit that he is confining his submission to the sentence awarded to A-1 i.e. imprisonment for life, as he is in jail since 7-1-2013 and he would submit that since at the time when the offence was allegedly committed, the minimum sentence was ten years, therefore, in light of the decision of the Supreme Court in the matter of **Thongam Tarun Singh v. State of Manipur**¹, he be sentenced for the period already undergone by him by partly granting the appeal.

9. Mr. H.S. Patel, learned counsel appearing for appellants / accused Deenanath Nagesh (A-2) & Sukalu Netam (A-5) in Cr.A. Nos.467/2015 & 1144 of 2013, respectively, would submit that he would adopt the submission of Mr. Dharmesh Shrivastava and is also confining his submission to the sentence awarded to A-2 i.e. imprisonment for life, as he is in jail since 6-12-2012 and thereby already completed more than ten years in jail, therefore, in view of the decision of the Supreme Court in **Thongam Tarun Singh** (supra), he be sentenced to the period already undergone by him and his appeal be allowed in part. In respect of accused / appellant Sukalu Netam (A-5), Mr. Patel would further submit that at the time of alleged offence, A-5 was holding the post of Up-Sarpanch of the village, where the offence is alleged to have taken place, as such, his conviction for the aforesaid offences is not warranted to the facts of the case and is liable to be set aside.

10. Mr. Sandeep Shrivastava, learned counsel appearing for appellant /



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accused Babita Markam (A-3) in Cr.A.No.1237/2013, would submit that A-3 being a woman and Hostel Superintendent of Adivasi Kanya Ashram, Jhaliyamari, the trial Court is absolutely unjustified in convicting her for offence under Section 376(2)(b) read with clauses (c), (f), (g) read with Sections 34 & 35 read with Section 120B of the IPC in view of the decision rendered by the Supreme Court in the matter of **Priya Patel v. State of M.P. and another**². He would further submit that conviction of A-3 for other offences i.e. Sections 119, 201 & 506 of the IPC is not based on the evidence available on record and it is liable to be set aside.

11. Mr. Sandeep Shrivastava, learned counsel also appearing for accused / appellants Sagar Katlam (A-4) & Jitendra Kumar Nayak (A-8) in Cr.A.No.1115/2013, would submit that A-4 is Teacher of another school and A-8 is Block Education Officer, A-4 has been convicted for offences under Sections 201, 202 & 506 of the IPC, whereas A-8 has been convicted under Sections 119, 201, 202 & 384 of the IPC, as such, no offence under Sections 384, 201 & 202 of the IPC is made out against them, even there is no evidence of contacting these accused by A-1 & A-2, therefore, these accused are liable to be acquitted. In alternative, he would also submit that these accused remained in jail for a period of more than 1½ years i.e. from 20-10-2013 to 15-7-2014, therefore, they also be sentenced to the period already undergone by them.

12. Mr. Arvind Sinha, learned counsel appearing for accused / appellant Lachhuram Salam (A-6) in Cr.A.No.1175/2013, would



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submit that A-6 was villager of the village where the offence took place, as such, his conviction for the aforesaid offences is not warranted in the facts of the case and is liable to be set aside.

13. Mr. Anchal Kumar Matre, learned counsel appearing for accused / appellant Sughan Singh Naverji (A-7), would submit that at the time of alleged offence, A-7 was holding the post of Assistant Block Education Officer, he was newly posted at the time offence and immediately after coming to know about the offence, he informed the Assistant Commissioner, Tribal Welfare vide Ex.P-141, as such, he has taken due care even without receiving any complaint of the matter and therefore his conviction for the aforesaid offences is not warranted in the facts of the case and is liable to be set aside.

14. Per contra, Mr. Ashish Tiwari, learned Govt. Advocate appearing for the State / respondent, would submit as under: -

1. A-1 & A-2 are the main authors of the crime, they have committed gang rape for a span of 1½ years repeatedly with the 14 girl victims and there is sufficient evidence in shape of oral testimony of victims (PWs 3, 6, 8, 11, 13, 15, 16, 18, 19, 22, 24, 25, 27 & 28), in addition to that, there is medical evidence of Dr. (Smt.) K.L. Thakur (PW-53) who has proved the medical reports Exs.P-1, P-153 to P-165 and further, in the FSL report Ex.P-152, stains of human sperm were found on the vaginal slides (Articles H, I, K, L, M, R & S) of victims PW-11, PW-13, PW-15, PW-6, PW-18, PW-25 and one another victim (not examined). As such, conviction of A-1 & A-2 are well merited and not liable to be interfered with. The



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manner in which these two accused / appellants have committed sexual intercourse with the minor victims for a period of 1½ years repeatedly, life sentence awarded to them is just and proper and is not liable to be reduced and as such, appeals of A-1 & A-2 deserve to be dismissed.

2. With regard to A-3, it is submitted that she being a member of the Ashram and in-charge of the Hostel, she was immediately informed by the victims as per their statements, but she did not take any action except assuring the victims that higher authorities will be informed and necessary action will be taken against them, and as such, she has rightly been held guilty for the offences in question, as the 14 girl victims have supported the case of the prosecution and therefore her appeal also deserves to be dismissed.
3. Coming to the submissions made on behalf of A-4 to A-8, learned State counsel would submit that they have also rightly been found guilty for offences under Sections 119, 201, 202, 506 & 384 of the IPC and considering the manner in which the offence has been committed against the 14 girl victims who belong to the category of Scheduled Tribe, their appeals also deserve to be dismissed and no interference is warranted.

15. We have heard learned counsel for the parties and considered their rival submissions made herein-above and also went through the record with utmost circumspection.

16. For the sake of convenience and considering the nature of



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evidence available against the accused persons / appellants, we will consider the cases of all the accused/appellants one by one and the case of A-1 & A-2 together.

Mannuram Goti (A-1) & Deenanath Nagesh (A-2)

17. Mannuram Goti (A-1) has been convicted for offence under Sections 450 & 376(2)(g) read with clauses (b), (c), (f) read with Section 120B of the IPC for committing rape against victims No.1 to 12 & 15 and he has been sentenced to undergo RI for ten years and life imprisonment ten times on each count, respectively. He has further been convicted under Section 354 of the IPC qua victims No.13 & 14 and sentenced to undergo RI for three years two times on each count. He also also been convicted under Sections 119 & 201 of the IPC and sentenced to undergo RI for five years and three years, respectively. Punishment under Sections 119 & 201 of the IPC have been directed to run concurrently, however, remaining sentences were directed to run consecutively which has been called in question.

18. Similarly, Deenanath Nagesh (A-2) has been convicted for offence under Sections 450 & 376(2)(g) read with clauses (b), (c), (f) read with Section 120B of the IPC for committing rape against victims No.2 to 5, 7, 9 & 10 and he has been sentenced to undergo RI for ten years and life imprisonment seven times on each count, respectively. He has further been convicted under Section 354 of the IPC qua victims No.13 & 14 and sentenced to undergo RI for three years two times on each count. He also also been convicted under Sections 119 & 201 of the IPC and sentenced to undergo RI



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for five years and three years, respectively. Punishment under Sections 119 & 201 of the IPC have been directed to run concurrently, however, remaining sentences were directed to run consecutively which has also been called in question.

19. The trial Court has convicted A-1 & A-2 principally on the testimony of the 14 girl victims in which they have clearly stated that 1½ years prior to 12-8-2012, A-1 & A-2 have assaulted them sexually which is supported by medical evidence Exs.P-1, P-153 to P-165 which has been proved by Dr. (Smt.) K.L. Thakur (PW-53) and further relied upon the FSL report Ex.P-152 in which stains of human sperm were found on the vaginal slides (Articles H, I, K, L, M, R & S) of victims examined as PW-11, PW-13, PW-15, PW-6, PW-18, PW-25 and one another victim (not examined).

20. We have gone through the statements of the victims in which they have categorically supported the case of the prosecution and victims No.13 & 14 being PW-27 & PW-28 have clearly stated that A-1 & A-2 have outraged their modesty, and victims No.1 to 12 (PWs 3, 6, 8, 11, 13, 15, 16, 18, 19, 22, 24 & 25) have stated that A-1 has sexually assaulted them, and victims No.2 to 5, 7, 9 & 10 (PWs 6, 8, 11, 13, 16, 19 & 22) have stated that A-2 has sexually assaulted them. Furthermore, Dr. (Smt.) K.L. Thakur (PW-53), who has conducted medical examination of the girl victims, has also supported the case of the prosecution and has proved the medical reports. More particularly, FSL report Ex.P-152 shows that vaginal slides of victims were found to be stained with human sperm. As such, we are of the considered opinion that the finding recorded by



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the trial Court holding A-1 guilty for offence under Section 376(2)(g) read with clauses (b), (c), (f) read with Section 120B of the IPC against victims No.1 to 12 & 15 stands established and for offence under Section 354 of the IPC against victims No.13 & 14 also stands established. Even otherwise, conviction of A-1 has not been questioned, but in view of oral and documentary evidence available on record, we find that conviction of A-1 is well founded and we find no reason to interfere with the same and we accordingly, affirm the said finding. Similarly, A-1 being a public servant, finding of the trial Court that he is also guilty for offence under Sections 119 & 201 of the IPC is also well merited and we do not find any good ground to interfere in the said finding and we accordingly, hereby affirm the said finding. We also do not find any good ground to interfere with the finding of the trial Court qua Section 450 of the IPC against A-1 and we hereby affirm the said finding.

21. Similarly, we are also of the considered opinion that the finding recorded by the trial Court holding A-2 guilty for offence under Section 376(2)(g) read with clauses (b), (c), (f) read with Section 120B of the IPC against victims No.2 to 5, 7, 9 & 10 (PWs 6, 8, 11, 13, 16, 19 & 22) stands established and for offence under Section 354 of the IPC against victims No.13 & 14 also stands established. Even otherwise, conviction of A-2 has also not been questioned, but in view of oral and documentary evidence available on record, we find that conviction of A-2 is also well founded and we find no reason to interfere with the same and we accordingly, affirm the said finding. Similarly, A-2 being a public servant, finding of the trial



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Court that he is also guilty for offence under Sections 119 & 201 of the IPC is also well merited and we do not find any good ground to interfere in the said finding and we accordingly, hereby affirm the said finding. We also do not find any good ground to interfere with the finding of the trial Court qua Section 450 of the IPC against A-2 and we hereby affirm the said finding.

22. At this stage, the submission of learned counsel for A-1 & A-2 that since the date of offence is 1½ years prior to August, 2012 and Section 376 of the IPC was amended with effect from 3-2-2013 needs to be noted. Prior to amendment with effect from 3-2-2013, minimum sentence for the offence of committing gang rape was ten years which may be extendable up to life and which shall also be liable to fine, even for adequate and specific reasons to be mentioned in the judgment, the court is empowered to impose a sentence of imprisonment of either description for a term of less than ten years. Therefore, A-1 & A-2 be sentenced to the period already undergone by them as they are in jail since 7-1-2013 and 6-12-2012, respectively. Reliance has been placed on the decision of the Supreme Court in Thongam Tarun Singh (supra) in which their Lordships have held in paragraph 11 as under: -

“11. So far as quantum of sentence is concerned, Section 376 IPC punishment for rape has been amended by Act 13 of 2013 (with retrospective effect from 3-2-2013). As per the amended section, the minimum sentence of seven years is provided for the offence of rape which may extend to imprisonment for life. After the amendment, no discretion is vested with the Court to reduce the sentence. Prior to the amendment (Amendment Act 13 of 2013) for the punishment under Section 376(2)(g) IPC, it provided for rigorous



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imprisonment for a term which shall not be less than ten years but which may be for life and shall also be liable to fine. Prior to the amendment (Amendment Act 13 of 2013) by the proviso to Section 376(2) IPC, the Court has been vested with the discretion that for adequate and special reasons to be mentioned in the judgment, to impose a sentence of imprisonment of either description for a term of less than ten years."

23. True it is that Section 376(2)(g) of the IPC suffered amendment with effect from 3-2-2013 and prior to amendment, minimum sentence prescribed for gang rape was ten years and even for adequate and special reasons, less than 10 years sentence can be awarded.

24. Reverting to the facts of the case, it is quite vivid that A-1 at the relevant point of time was posted as Teacher in the said Ashram where the victims were residing as hostellers and A-2 was Security Guard. As Teacher and public servant, A-1 was given the responsibility to teach good habits and behaviour to the girls / victims staying in the Ashram and also to enhance their awareness, knowledge, intellect, etc., so that they may emerge as good citizens and go ahead in their professional life, but in breach of such duty which was entrusted by the Government to A-1, he has completely acted in total breach of his duty and committed sexual assault not only on one, but on as many as 12 victims / minor girls and outraged the modesty of two minor girls which in our opinion is extremely serious and shocks the conscience of this Court. Moreover, A-1 has concealed the evidence which goes to show that he is not a person to whom any leniency be shown in awarding sentence by reducing the sentence. As such, we are not even little bit inclined to alter the sentence either to the period already





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undergone or to the minimum sentence prescribed under Section 376(2) of the IPC as existed prior to amendment. Similarly, the duty entrusted to A-2 was to safeguard and protect the minor girls staying in the hostel physically, but contrary to that, he did not protect them physically from any assault which was likely to be made against them, but, otherwise, he himself has sexually assaulted seven girl victims and outraged the modesty of two girls and did not report the matter to the police, on the other hand, concealed the evidence which goes to show that he is not a person to be shown any leniency in awarding sentence by reducing the sentence. Accordingly, the sentences awarded to A-1 & A-2 for all the charged offences are hereby affirmed.

25. Now, it is next contended by Mr. Dharmesh Shrivastava & Mr. H.S. Patel, learned counsel appearing for A-1 & A-2, respectively, that A-1 has been sentenced to life imprisonment 12 times, whereas A-2 has been sentenced to life imprisonment seven times and both have been convicted for offences under Sections 450, 376(2)(g) read with clauses (b), (c), (f) read with Section 120B, 354, 119 & 201 of the IPC, and except sentences under Sections 119 & 201 of the IPC, all sentences have been directed to run consecutively which is apparently contrary to the well settled law in this behalf and learned counsels would rely upon the Constitution Bench decision of the Supreme Court in the matter of Muthuramalingam and others v. State represented by Inspector of Police³ to buttress their submission and would submit that while multiple sentences for imprisonment for life can be awarded for multiple



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murders or other offences punishable with imprisonment for life, however, the life sentences so awarded cannot be directed to run consecutively and therefore that part of the order be set aside.

26. We find force in this submission of learned counsels for A-1 & A-2.

Their Lordships of the Supreme Court in Muthuramalingam (supra) have formulated following question in paragraph 1 of the report regarding, "*Whether consecutive life sentences can be awarded to a convict on being found guilty of a series of murders for which he has been tried in a single trial?*", and their Lordships considered the issue and pertinently answered the question in paragraphs 34 & 35 as under: -

"34. In conclusion our answer to the question is in the negative. We hold that while multiple sentences for imprisonment for life can be awarded for multiple murders or other offences punishable with imprisonment for life, the life sentences so awarded cannot be directed to run consecutively. Such sentences would, however, be superimposed over each other so that any remission or commutation granted by the competent authority in one does not ipso facto result in remission of the sentence awarded to the prisoner for the other.

35. We may, while parting, deal with yet another dimension of this case argued before us namely whether the court can direct life sentence and term sentences to run consecutively. That aspect was argued keeping in view the fact that the appellants have been sentenced to imprisonment for different terms apart from being awarded imprisonment for life. The trial court's direction affirmed by the High Court is that the said term sentences shall run consecutively. It was contended on behalf of the appellants that even this part of the direction is not legally sound, for once the prisoner is sentenced to undergo imprisonment for life, the term sentence awarded to him must run concurrently. We do not, however, think so. The power of the court to direct the order in which sentences will run is unquestionable in





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view of the language employed in Section 31 CrPC. The court can, therefore, legitimately direct that the prisoner shall first undergo the term sentence before the commencement of his life sentence. Such a direction shall be perfectly legitimate and in tune with Section 31 CrPC. The converse however may not be true for if the court directs the life sentence to start first it would necessarily imply that the term sentence would run concurrently. That is because once the prisoner spends his life in jail, there is no question of his undergoing any further sentence. Whether or not the direction of the court below calls for any modification or alteration is a matter with which we are not concerned. The regular Bench hearing the appeals would be free to deal with that aspect of the matter having regard to what we have said in the foregoing paragraphs."

27. The aforesaid conclusion of their Lordships would show that multiple sentences for imprisonment for life can be awarded for multiple murders or other offences punishable with imprisonment for life, but the life sentences so awarded cannot be directed to run consecutively, however, such sentences would be superimposed over each other for the purposes of any remission or commutation. Accordingly, though it is permissible that first term sentence would undergo and thereafter life sentence would undergo, but considering the facts and circumstances of the case, we are of the considered opinion that ends of justice would be served if all the life sentences would run concurrently along with term sentences awarded to A-1 & A-2 for offence under Sections 450, 354, 119 & 201 of the IPC. It is ordered accordingly. We accordingly modify the running of sentences as awarded by the trial Court and it is modified accordingly. As such, the appeals of Mannuram Goti (A-1) & Deenanath Nagesh (A-2) are dismissed accordingly, subject to modification in running of sentences, as directed herein-above.



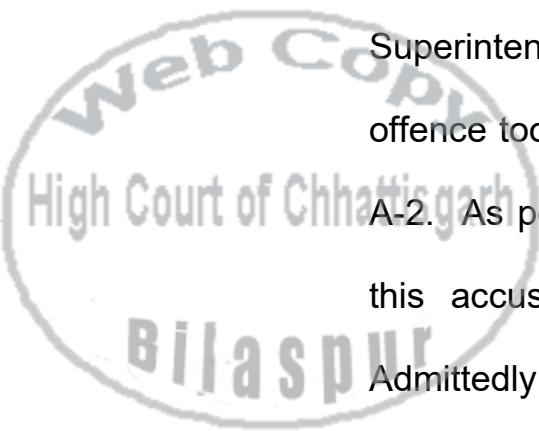


(Cr.A.No.1223/2013, 467/2015, 1237/2013, 1115/2013, 1144/2013 & 1175/2013)

Babita Markam (A-3)

28. Babita Markam (A-3) has been convicted for offence under Section 376(2)(b) read with clauses (c), (f), (g) read with Sections 34 & 35 read with Section 120B of the IPC and sentenced to undergo life imprisonment. She has further been convicted under Sections 119 & 201 of the IPC and sentenced to undergo RI for five years and three years, respectively. She has also been convicted under Section 506 of the IPC and sentenced to undergo RI for one year.

29. Admittedly, at the time of offence, A-3 was working as Hostel Superintendent in Adivasi Kanya Ashram, Jhaliyamari, where the offence took place and where the offence was committed by A-1 & A-2. As per the deposition of victims No.13 & 14 (PWs 27 & 28), this accused allowed A-1 & A-2 to sleep near the Ashram. Admittedly, she is a woman officer working as Hostel Superintendent at the time when the offence was committed. The question as to whether a woman officer can be prosecuted for the offence of gang rape came up for consideration before the Supreme Court in **Priya Patel** (supra) in which question was framed by their Lordships in paragraph 2 of the report that, “*Can a lady be prosecuted for gang rape is the interesting question involved in this appeal*”. Their Lordships after due consideration held that a woman cannot be said to have an intention to commit rape and a woman cannot be prosecuted for alleged commission of the offence punishable under Section 376(2)(g) of the IPC, and observed as under in paragraphs 8 & 9 of the report: -

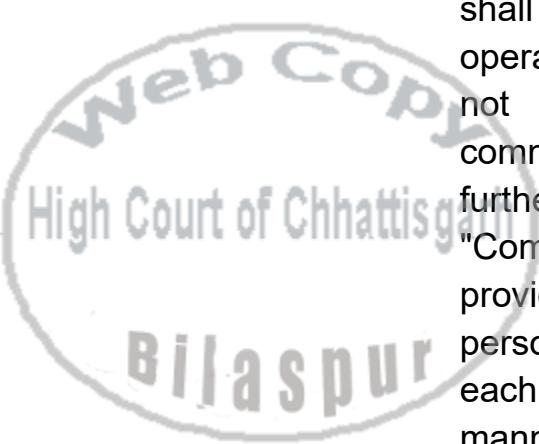




(Cr.A.No.1223/2013, 467/2015, 1237/2013, 1115/2013, 1144/2013 & 1175/2013)

“8. A bare reading of Section 375 makes the position clear that rape can be committed only by a man. The section itself provides as to when a man can be said to have committed rape. Section 376(2) makes certain categories of serious cases of rape as enumerated therein attract more severe punishment. One of them relates to "gang rape". The language of sub-section (2) (g) provides that whoever commits "gang rape" shall be punished, etc. The Explanation only clarifies that when a woman is raped by one or more in a group of persons acting in furtherance of their common intention, each such person shall be deemed to have committed gang rape within this sub-section (2). That cannot make a woman guilty of committing rape. This is conceptually inconceivable. The Explanation only indicates that when one or more persons act in furtherance of their common intention to rape a woman, each person of the group shall be deemed to have committed gang rape. By operation of the deeming provision, a person who has not actually committed rape is deemed to have committed rape even if only one of the group in furtherance of the common intention has committed rape. "Common intention" is dealt with in Section 34 IPC and provides that when a criminal act is done by several persons in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it was done by him alone. "Common intention" denotes action in concert and necessarily postulates a pre-arranged plan, a prior meeting of minds and an element of participation in action. The acts may be different and vary in character, but must be actuated by the same common intention, which is different from the same intention or similar intention. The sine qua non for bringing in application of Section 34 IPC that the act must be done in furtherance of the common intention to do a criminal act. The expression "in furtherance of their common intention" as appearing in the Explanation to Section 376(2) relates to the intention to commit rape. A woman cannot be said to have an intention to commit rape. Therefore, the counsel for the appellant is right in her submission that the appellant cannot be prosecuted for alleged commission of the offence punishable under Section 376(2)(g).

9. The residual question is whether she can be charged for abetment. This is an aspect which has not





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been dealt with by the trial court or the High Court. If in law, it is permissible and the facts warrant such a course to be adopted, it is for the court concerned to act in accordance with law. We express no opinion in that regard."

30. In view of the authoritative pronouncement by their Lordships of the Supreme Court holding that woman cannot be prosecuted for offence under Section 376(2)(g) of the IPC, we hereby set aside the conviction of Babita Markam (A-3) for offence under Section 376(2) (b) of the IPC. Accordingly, conviction of A-3 for offence under Section 376(2)(b) read with clauses (c), (f), (g) read with Sections 34 & 35 read with Section 120B of the IPC is hereby set aside and she is acquitted of the said charge.

31. A-3 has also been convicted under Sections 119, 201 & 506 of the IPC and sentenced to undergo RI for five years, three years and one year, respectively. She has been convicted basically on the basis of testimony of the girl victims – PW-3, PW-6, PW-8, PW-11, PW-13, PW-15, PW-16, PW-18, PW-19, PW-22, PW-24, PW-25, PW-27 & PW-28, who have categorically stated that A-3 was informed about the incident and the crime committed by A-1 & A-2 was within her knowledge, yet, no offence was registered or no action was taken on the complaint and furthermore, statement of Pilaram (PW-43) also proves that A-3 had knowledge of the crime. Similarly, FIR was lodged by Ms. Shail Thakur (PW-42), District Programme Officer after conducting enquiry which goes to show that A-3 did not take any action even when she was categorically informed by the victims and kept the matter pending and thus, tried to conceal the evidence knowing fully well that offence has been



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committed against the girl victims. As such, conviction of A-3 under Sections 119 & 201 of the IPC is well merited and we find no good ground to interfere with the finding recorded by the trial Court convicting her under Sections 119 & 201 of the IPC. However, finding no evidence with regard to conviction of A-3 under Section 506 of the IPC, we set aside the finding recorded by the trial Court convicting her for offence under Section 506 of the IPC and she is acquitted of the said charge. Even otherwise, so far as A-3 is concerned, there is no evidence of hatching conspiracy with the other co-accused. Since A-3 had already suffered sentences for offences under Sections 119 & 201 of the IPC, we direct that she be released forthwith unless required in any other case.

Sagar Katlam (A-4)

32. Sagar Katlam (A-4) has been convicted for offence under Sections 201 & 202 of the IPC and sentenced to undergo RI for three years and six months, respectively. He has also been convicted under Section 506 of the IPC and sentenced to undergo RI for one year. He is Teacher in the Adivasi Kanya Ashram, Jhaliyamari and has been convicted based on his conduct of screening the offenders from lawful action and being aware of the incident of commission of crime against the minor girl victims, yet, he failed to lodge any report to the police authorities. His conviction is supported by the statements of the girl victims which also shows that the incident was within the knowledge of A-4 and he failed to discharge his role as per Section 40 of the CrPC. As such, A-4 being aware of the commission of offence did take any appropriate steps and failed to



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discharge his duty. Consequently, conviction of A-4 under Sections 201 & 202 of the IPC is well merited and we do not find any good ground to interfere with the said finding recorded by the trial Court. Accoridngly, his conviction under Sections 201 & 202 of the IPC is hereby affirmed. However, finding no evidence with regard to conviction of A-4 under Section 506 of the IPC, we set aside the finding recorded by the trial Court convicting him for offence under Section 506 of the IPC and he is acquitted of the said charge. A-4 was in jail from 8-1-2013 i.e. the date of his arrest to at least till 17-7-2014 when he was granted bail by this Court and released on 17-7-2014, thereby he remained in jail for a period of 1 year 6 months 4 days. We award the sentence of the period already undergone by him i.e. 1 year 6 months 4 days for offences under Sections 201 & 202 of the IPC. He is already on bail. He need not surrender. However, his bail bonds will remain in operation for a period of six months in view of Section 437-A of the CrPC.



Sukalu Netam (A-5) & Lachhuram Salam (A-6)

33. Both Sukalu Netam (A-5) & Lachhuram Salam (A-6) have been convicted for offence under Sections 201 & 384 read with Section 506 of the IPC and sentenced to undergo RI for three years and two years, respectively.
34. Sukalu Netam (A-5) has been convicted based on the testimonies of victims No.1 (PW-3), No.2 (PW-6), No.3 (PW-8), No.4 (PW-11), No.5 (PW-13), No.7 (PW-16), No.9 (PW-19) and No.10 (PW-22), who have categorically stated that he had threatened them with life and told them not to disclose about the incident to anyone.



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Similarly, Lachhuram Salam (A-6) has been convicted based on the testimonies of victims No.1 (PW-3), No.2 (PW-6) and No.3 (PW-8), who have categorically stated that he had threatened them with life and told them not to disclose about the incident to anyone. However, in view of the decision of the Supreme Court in the matter of R.S. Nayak v. A.R. Antulay and another⁴ and in view of the definition of "Extortion" contained in Section 383 of the IPC which is punishable under 384 of the IPC and further, in view of the decision of the Supreme Court in the matter of Ram Chandra v. State of U.P.⁵, we are of the considered opinion that no offence under Section 384 as well as 506 of the IPC is established against A-5 and A-6, however, we find that there is sufficient evidence available on record to convict them under Section 201 of the IPC. Accordingly, conviction of A-5 & A-6 under Section 384 read with Section 506 of the IPC is set aside and they are acquitted of the said charge, however, their conviction under Section 201 of the IPC is hereby affirmed. Since they were in jail from 8-1-2013 to 15-7-2014, thereby already suffered the sentence of 1 year 6 months 4 days, we award the sentence of the period already undergone by them i.e. 1 year 6 months 4 days for offence under Section 201 of the IPC. They are already on bail. They need not surrender. However, their bail bonds will remain in operation for a period of six months in view of Section 437-A of the CrPC.

Sughan Singh Naverji (A-7) & Jitendra Kumar Nayak (A-8)

35. Both Sughan Singh Naverji (A-7) & Jitendra Kumar Nayak (A-8)

4 AIR 1986 SC 2045

5 AIR 1957 SC 381



(Cr.A.No.1223/2013, 467/2015, 1237/2013, 1115/2013, 1144/2013 & 1175/2013)

have been convicted for offences under Sections 119, 201, 202 & 384 of the IPC and sentenced to undergo RI for five years, three years, six months and two years, respectively. A-7 – Block Education Officer & A-8 – Assistant Block Education Officer have been convicted for their conduct of not reporting the incident even after knowing about the same as per Ex.P-14. Their role has been established by Pilaram (PW-43), Ishwar (PW-44) and Yashwant (PW-60). Further, victims No.1 (PW-3) and No.3 (PW-8), both, have stated that both these accused (A-7 & A-8) had threatened them not to disclose about the incident to anyone. However, in view of the decision of the Supreme Court in R.S. Nayak (supra) and in view of the definition of “Extortion” contained in Section 383 of the IPC which is punishable under 384 of the IPC and further, in view of the decision of the Supreme Court in Ram Chandra (supra), we are of the considered opinion that no offence under Section 384 of the IPC is established against A-7 and A-8, however, we find that there is sufficient evidence available on record to convict them under Sections 119, 201 & 202 of the IPC. Accordingly, conviction of A-7 & A-8 under Section 384 of the IPC is set aside and they are acquitted of the said charge, however, their conviction under Sections 119, 201 & 202 of the IPC being well merited is hereby affirmed. Since they remained in jail from 13-1-2013 to 15-7-2014, thereby already suffered the sentence of 1 year 6 months 4 days, we award the sentence of the period already undergone by them i.e. 1 year 6 months 4 days for offences under Sections 119, 201 & 202 of the IPC. They are already on bail.



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They need not surrender. However, their bail bonds will remain in operation for a period of six months in view of Section 437-A of the CrPC.

36. In conclusion, the appeals of A-1 & A-2 being Cr.A. Nos.1223/2013 & 467/2015 are dismissed with modification in running of their sentences awarded by the trial Court. However, the appeal of A-3 being Cr.A. No.1237/2013 is partly allowed by acquitting her of the charges under Section 376(2)(b) read with clauses (c), (f), (g) read with Sections 34 & 35 read with Section 120B of the IPC and Section 506 of the IPC. The appeals of A-4, A-5, A-6, A-7 & A-8 being Cr.A.Nos.1115/2013, 1144/2013 & 1175/2013 are also partly allowed by sentencing them to the period already undergone by them by maintaining their conviction for offences under Sections 201 & 202 of the IPC in respect of A-4, Section 201 of the IPC in respect of A-5 & A-6 both and Sections 119, 201 & 202 of the IPC in respect of A-7 & A-8 both.

37. Accordingly, all the appeals stand finally disposed of.

38. Let a certified copy of this judgment along with the original record be transmitted to the trial Court concerned for necessary information and action, if any.

Sd/-
(Sanjay K. Agrawal)
Judge

Sd/-
(Arvind Singh Chandel)
Judge