

**HIGH COURT OF JUDICATURE FOR RAJASTHAN BENCH AT
JAIPUR**

(1) D. B. Criminal Appeal No. 178 / 2016

Rajesh son of Shri Ramsingh Gurjar, resident of Kaleda, Police
Station Sikandra, District Dausa (Raj.)

(At present confined in District Jail Dausa)

----Accused-Appellant

Versus

The State of Rajasthan through P.P.

----Respondent

With

(2) D. B. Criminal Appeal No. 122 / 2016

Shimbhu Singh S/o Shri Laxman Gurjar, By Caste Gurjar, R/o
Kailai, P.S. Sikandara, District Dausa

(Presently lodged in Central Jail, Jaipur)

----Appellant/Accused

Versus

State of Rajasthan through Public Prosecutor

----Respondent

With

(3) D. B. Criminal Appeal No. 123 / 2016

Dharmendra alias Pappu alias Dalal S/o Shri Bachhu Singh Gurjar,
By Caste Gurjar, R/o Pipalki, P.S. Manpur, District Dausa.

(Presently lodged in Central Jail, Jaipur)

----Appellant/Accused

Versus

State of Rajasthan through Public Prosecutor

----Respondent

For Appellant(s) : Mr. Anil Upman(In Appeal No. 178/2016)

For Appellant: Mr. Sudhir Jain with Mr. Naresh Kumar Meghwanshi
and Mr. Monu Kumar (In Appeal No.
122/2016)

For Appellant: Mr. Deepak Asopa (In Appeal No. 123/2016)

For Respondent(s) : Mrs. Sonia Shandilya, Public Prosecutor.

**HON'BLE MR. JUSTICE MOHAMMAD RAFIQ
HON'BLE MR. JUSTICE KAILASH CHANDRA SHARMA**

Judgment

25/07/2017

(Per Hon'ble Mr. Justice Mohammad Rafiq)

These three appeals are directed against common judgment dated 21.11.2015 passed by Additional Sessions Judge, Bandikui, District Dausa (for short 'the trial court') whereby accused-appellants Rajesh, Shimbhu Singh and Dharmendra alias Pappu alias Dalal have been convicted and sentenced in the manner as indicated below:

Under Section 376 (2)(g) IPC: Life imprisonment with fine of Rs. 50,000/-, in default of payment thereof, to further undergo one year's simple imprisonment.

Under Section 366 IPC: Ten years' rigorous imprisonment with fine of Rs. 10,000/- in default of payment thereof, to further undergo six months' simple imprisonment.

Under Section 366-A IPC: Ten years' rigorous imprisonment with fine of Rs. 10,000/- in default of payment thereof, to further undergo six months' simple imprisonment.

Under Section 367 IPC: Ten years' rigorous imprisonment with fine of Rs. 10,000/- in default of payment thereof, to further undergo six months' simple imprisonment.

Under Section 292 IPC: Two years' simple imprisonment with fine of Rs. 2,000/- in default of payment thereof, to further undergo two months' simple imprisonment.

Under Section 120-B IPC: Ten years' rigorous imprisonment with fine of Rs. 10,000/- in default of payment thereof, to further undergo six months' simple imprisonment.

Under Section 66-E IT Act: Three years' simple imprisonment with fine of Rs. 50,000/- in default of payment thereof, to further undergo six months' simple imprisonment.

Under Section 67 IT Act: Three years' simple imprisonment with fine of Rs. 50,000/- in default of payment thereof, to further undergo six months' simple imprisonment.

Under Section 67-A IT Act: Five years' simple imprisonment with fine of Rs. 1,00,000/- in default of payment thereof, to further undergo six months' simple imprisonment.

Under Section 67-B IT Act: Five years' simple imprisonment with fine of Rs. 1,00,000/- in default of payment thereof, to further undergo six months' simple imprisonment.

All the sentences were ordered to run concurrently.

The trial court further directed that amount of fine so imposed shall be given to the prosecutrix as compensation after expiry of period of filing appeal/revision as per provisions of Section 357 Cr.P.C.

Briefly stated the facts of the case are that a written complaint (Exhibit P-2) was submitted by the prosecutrix Sharda

(P.W.3) in the Court of Civil Judge (JD) and Judicial Magistrate, Sikrai on 01.03.2012 against the accused-appellants and one Ramveer @ Ballu, with regard to an incident which took place on 16.11.2010. The prosecutrix alleged that at that time her age was only 17 years and she was student of Bharat Gaurav School, Sikandara. On that day, she reached the school at 12.00 noon but the school was closed early due to sudden demise of close relative of some staff member. She reached Sikandara Crossing by tempo and from there, she started going towards her village on feet. After about 1 k.m., accused-appellants came there in a jeep and asked the prosecutrix to come in the jeep, but the prosecutrix refused. Thereupon, the accused-appellants forcibly put the prosecutrix in the jeep and covered rear opening of the jeep by curtain. The prosecutrix tried to raise hue and cry, but Rajesh stuffed a cloth in her mouth. Shimbhu overpowered her. Pappu, who was driving the jeep, accelerated the speed. They took the jeep through a 'kaccha rasta' towards 'dungar' (hills). Ramveer met on the way and the accused-appellants also took him in the jeep. They stopped the jeep near 'dungar'. The prosecutrix was forcibly alighted from the jeep and dragged into jungle till about half a kilometer where seat cover of the jeep was laid on the ground and the prosecutrix was laid on the same and her clothes were stripped. Rajesh and Pappu caught hands and legs of the prosecutrix. Thereafter, Shimbhu also put off his clothes and forcibly committed rape upon the prosecutrix. Video clip of this was also prepared on mobile and then, Shimbhu and Pappu

overpowered the prosecutrix and Rajesh committed rape with the prosecutrix. Thereafter, Pappu also committed rape with the prosecutrix. Video clipping was also prepared on mobile. The accused-appellants then dropped the prosecutrix in her village and threatened that if she discloses about this incident to anyone, her video clipping will be circulated into other mobiles and uploaded on the internet and the same will also be sent to her in-laws. The prosecutrix due to fear of her reputation and also apprehending that her engagement might not be broken, did not disclose about the incident to anyone.

Thereafter, whenever the prosecutrix used to go to school, the accused threatened her with reference to video clippings. The prosecutrix due to fear stopped going to school. She was under immense mental stress and used to cry while alone but could not muster courage to disclose this fact to anyone due to fear of accused that she might be defamed. When the prosecutrix refused to agree to her physical exploitation, the accused uploaded her video clippings on internet and circulated the same to different mobile phones. Sajjan Singh her uncle ('fufa') (husband of father's sister), happened to see such video clippings in mobile phone and told her father about the same. When they made enquiry from the prosecutrix, she disclosed the entire incident. It was contended that delay in filing criminal case against the accused occurred owing to reason that the accused wanted to defame the prosecutrix and due to fear that her engagement could be broken, she could not muster enough

courage to lodge the criminal case. The aforesaid complaint was sent to Police Station Sikandara for investigation by the court with reference to provision of Section 156(3) Cr.P.C. and regular FIR No. 80/2012 (Exhibit P-26) was registered and investigation commenced.

Upon completion of investigation, charge sheet was filed against the accused in the Court of Judicial Magistrate, First Class, Sikrai on 05.07.2012. Separate proceedings were initiated against the accused Ramveer, who was juvenile and his case was committed to the Juvenile Justice Board. The Court of Magistrate after taking cognizance of the offence and considering that the case was exclusively triable by Court of Sessions, committed the same to the Court of Sessions, wherefrom, the case was made over to the Court of Additional Sessions Judge Bandikui, District Dausa. The trial court framed charges against the accused-appellants under Sections 366, 336A, 367, 292, 376 (2) (g), 120-B IPC and Sections 66A, 66E, 67, 67A, 67B I.T. Act, which they denied and claimed to be tried. To secure conviction of the accused-appellants, the prosecution examined as many as 22 witnesses and exhibited 41 documents. Thereafter, the accused-appellants were examined under Section 313 Cr.P.C. wherein they pleaded innocence and stated that they have been falsely implicated in the case. The defence produced two witnesses and got exhibited six documents. The trial court, on conclusion of trial, vide judgment and order dated 21.11.2015 convicted and

sentenced the accused-appellants in the manner indicated hereinabove. Hence, these appeals.

Learned counsel for the accused-appellants have argued that the trial court has erred in law in convicting the accused-appellants, even though there was absolutely no evidence on record, yet recorded finding of conviction against them for the alleged offence. The first information report was lodged with the delay of fifteen months without there being any explanation for such an enormous delay. The witnesses who have been relied by the learned trial court are closely related to the prosecutrix and therefore they are highly interest witnesses. They have not stated truth before the Court. Allegations contained in the complaint were substantially diluted by the prosecutrix while appearing as P.W.3 inasmuch as whatever allegations she has reiterated in her statement are not corroborated by any evidence whatsoever. Even the medical evidence did not indicate any injury on any part of her body which suggested that she was never subjected to any forcible rape. Thus, there is induction of only two possibilities; first, there is no rape committed or second that she was a consent party. It is argued that there are material contradictions in the statements of the prosecution witnesses. Each one of them has given different version of story. Some of the circumstances relied by the trial court were not put to the accused-appellants in their examination under Section 313 Cr.P.C. It is argued that story alleged by the prosecutrix that some video clippings were prepared and circulated and also uploaded on internet has not at

all been established. In fact, the prosecutrix in cross-examination has disowned any such allegation and rather stated that after she had put on the clothes, the accused had taken her photographs. Therefore, the allegation of preparing video clippings while she was being raped was totally false. There is no evidence of preparation of video clippings by the accused as nothing is on record in this regard. No such video clipping was ever put to the prosecutrix for her corroboration or otherwise. Even otherwise, from the video clipping it cannot be proved that any intercourse or penetration took place. Assertion made by the prosecutrix in the complaint that she stopped going to school has been disproved as the evidence has shown that she was regular student even thereafter.

Learned counsel argued that the trial court was wholly unjustified in believing birth certificate of the prosecutrix (Exhibit P-19); Copy of admission form of the prosecutrix in school (Exhibit P-20); Copy of Scholar Register (Exhibit P-21) to show that date of birth of the prosecutrix was 01.07.1993. Keshanta (P.W.7), mother of the prosecutrix was specifically asked as to date of birth of the prosecutrix, but she denied having any knowledge of this fact. She in cross-examination when asked about the age of her other two sons, she expressed ignorance as to what was the exact date of their birth. Dharam Singh (P.W.2) has though stated that he does not know date of birth of any of his children but remembered the date of birth of the prosecutrix, yet he has not given any specific date of birth of the prosecutrix and merely

stated that she was aged about 17 years at the time of incident. He was not confronted with admission form of the prosecutrix submitted by him. It is, therefore, argued that the fact that the prosecutrix was minor at the time of incident has not at all been established and adverse inference ought to be drawn against the prosecution with reference to Section 114(g) of the Evidence Act for withholding the best of the available witnesses, who could have stated about correctness of the aforesaid documents. Medical examination of the prosecutrix for determination of her age has also not been got conducted.

It is argued that recovery of CPU and monitor from Ganesh Mobile Point vide Exhibit P-8 cannot be held to have been proved against the accused-appellant Rajesh as attesting witness to that memo namely Aditya Kumar Saini (P.W.8) has turned hostile and not supported the case of the prosecution and another attesting witness Kailash Chand was not produced. This recovery was made pursuant to information allegedly given by the accused-appellant Rajesh under Section 27 of the Evidence Act (Exhibit P-32). Similarly, recovery of mobile of the accused Rajesh vide Exhibit P-22 also cannot be held to have been proved because only attesting witness, Ram Singh(P.W.19) has turned hostile and another witness Ram Dayal has not been produced. Similarly, recovery of mobile of the accused Dharmendra (Exhibit P-12) cannot be held to have been proved against the accused as only attesting witness produced by the prosecution Malkhan Singh (P.W.11) turned hostile and another attesting witness Jagan has

not been produced. Prosecution case is that Shivilal (P.w.5) had the video clipping in his mobile handset and he transferred the same by blue tooth to mobile phone of Rajendra Singh (P.W.21), Deputy Superintendent of Police whereas Shivilal (P.W.5) in his statement has denied having given any such video clipping to Rajendra Singh (P.W.21) by blue tooth. Moreover, this also cannot be believed because mobile handset of Shivilal (P.W.5) has not been recovered. Statement of Girraj (P.W.15) constable also cannot be believed. It is argued that none of the offence can be held proved beyond reasonable doubt. Mere fact that the complaint was lodged with delay of one year and three months is sufficient to discard the entire prosecution case. It is argued that the prosecutrix/complainant falsely implicated the accused-appellants only because she wanted to extract money which is the defence of the accused-appellants. Identification of the place of incident at the instance of accused-appellant Rajesh (Exhibit P-6); accused-appellant Shimbhu Singh (Exhibit P-7) and accused-appellant Dharmendra @ Pappu @ Dalal (Exhibit P-14) pursuant to information obtained from them under Section 27 of the Evidence Act did not lead to discovery of any new fact as this fact was already known to the police time before, when similar identification of the place of incident was got done by them at the instance of juvenile Ramveer, which fact was also put to Rajendra Singh (P.W.21) who failed to deny the same.

Alternatively, learned counsel for the accused-appellants argued that if this Court is not persuaded to interfere

with the conviction of the accused-appellants, in the facts of the present case, particularly when much time has gone and that the accused appellants were in their early twenties, this Court, considering that the accused-appellants are in jail for more than five years, may consider sentencing them to the period already undergone by invoking proviso to Section 376 (2) whereunder the Court is empowered to award sentence, even lesser than 10 years, which is the minimum sentence. There was no extraordinary reason in the present case to award the maximum sentence of life imprisonment.

Learned Public Prosecutor opposed the appeals and supported the judgment passed by the trial court. She argued that allegations against the accused-appellants are heinous inasmuch as charges against them have been proved by cogent evidence. It is argued that delay in lodging of the complaint would be inconsequential in the present case because the prosecutrix was a girl of 17 years of age at the time of incident and she has sufficiently explained the reason as to why she could not muster courage to disclose to her family members as to what happened with her. She was also apprehending that this might defame not only her reputation but her entire family and endanger her proposed marriage with Ummed Singh. Learned Public Prosecutor argued that the prosecutrix was minor at the time of incident which is proved by her birth certificate (Exhibit P-19A); copy of admission form of the prosecutrix in the school (Exhibit P-20A) and Copy of Scholar Register (Exhibit P-21A). Birth

certificate of the prosecutrix (Exhibit P-19A) has been proved by Mohan Lal Koli (P.W.18), Head Master of the school concerned. He has stated that he is the one who issued certificate and proved the fact that name of the prosecutrix was recorded at Serial No. 31 in S.R. Register original of which he brought to the Court and photostat copy of which was Exhibit P-21A. Certificate (Exhibit P-19A) dated 04.02.2013 was issued under his signatures. Learned Public Prosecutor argued that this being government record, there is no possibility of the same being false or forged. Age of the prosecutrix on the basis of said document as on the date of incident, i.e. 16.11.2010 comes to about 17 years. It is argued that the prosecutrix is speaking truth, which is eventually proved from circular (Exhibit P-24) and photo copy of Attendance Register (Exhibit P-25), documents of the school dated 01.03.2012 that on that day the school was closed earlier because of death of brother of the administrator of that school. The place of incident is a deserted place on hills in the jungle. The police recovered video clipping of rape being committed upon the prosecutrix. The police also recovered cell phone with the help of which said video clip was prepared. Computer system on which video clipping was uploaded has also been seized. The jeep which was used in the crime was recovered at the instance of the accused Dharmendra vide Exhibit P-13.

Learned Public Prosecutor argued that the fact that no injury was found on any part of the body of the prosecutrix would be inconsequential as in the present case admittedly criminal case

was registered against the accused-appellants after more than a year and by that time, all such injuries would have healed. Therefore, guilt of the accused has rightly been held to have been proved by the learned trial court. Video clip was in circulation which fact is proved from the fact that the uncle of the prosecutrix watched the video clipping in circulation and disclosed this fact to father of the prosecutrix. It is on their assurance and encouragement that the prosecutrix could muster courage of going to the court and file criminal complaint against the culprits. It is, therefore, prayed that the appeals be dismissed.

We have given our anxious consideration to rival submissions and carefully perused the record of the case.

The prosecutrix herself is the leading witness in the present case. She has substantially proved what she alleged in the complaint, although with minor deviations here and there. What she has stated is that she was student in senior class of Bharat Gaurav Public School. On 16.11.2010, she started from her home at 11.00 A.M. for going to school. On that day, there was bereavement in the family of the Head Master of the school, therefore, the school was closed early. She came from her school in the tempo to Sikandara at about 1.30 P.M. She was waiting for another vehicle to go to her native but when no vehicle came, she started on her feet. Even as she had covered a distance of about one kilometer, suddenly a jeep came from behind and stopped near her. Dharmendra, Shimbhu and Rajesh were sitting in the jeep. Dharmendra was driving the jeep and enquired from the

prosecutrix where she was going. When she stated that she was going to her village, Dharmendra offered lift to her. The prosecutrix refused. Then Rajesh, who was sitting in the rear, got down from the jeep and forcibly threw her inside the jeep and covered hood of the jeep. When she tried to raise hue and cry, Rajesh stuffed a piece of cloth in her mouth. Then jeep moved in the direction of a hill on a 'kaccha rasta'. After five minutes, the jeep stopped. Ramveer also climbed into the jeep. She knew Ramveer because he was her classmate. Then jeep moved in the direction of the hills. Thereafter, the jeep stopped and all four of them got down from the jeep. She started crying. They forcibly dragged her out of the jeep and moved in the direction of a 'pagdandi'. Seat cover of jeep was laid on the ground and these people forcibly put off her clothes. She started crying. Then each one of them, one after another, committed rape upon her. They threatened the prosecutrix that if she disclosed this to anyone, they would murder her. The prosecutrix put on her clothes. Pappu @ Dharmendra took her photographs by mobile phone. In the court, the prosecutrix correctly identified all the three accused-appellants and stated that one of the accused Ramveer was not present in the court. She stated that her age was 17 years and date of birth was 01.07.1993. She further stated that thereafter, the accused dropped her in the village and again threatened that if she disclosed about this incident to anyone, they would murder her. After 4-5 days, these people again met her on the way of Sikandara Crossing and asked the prosecutrix to

come with them. When the prosecutrix refused, they threatened that they would show the photographs which they had taken to her in-laws and would upload them on the internet. The prosecutrix further stated that these people used to frequently threaten her so much so that she even stopped going to school. One of her 'fufa' (uncle), Sajjan Singh (P.W.9) informed her father that he had seen photographs of the prosecutrix which were in circulation in the mobile phones of several boys. After this, when her family members enquired, the prosecutrix disclosed entire story to her mother, father, uncle and aunt. Then, she went to Police Station Sikandara with her family members. The police personnel refused to lodge the report saying that the incident was too old. Thereafter, they filed criminal complaint (Exhibit P-2) in the Court of Civil Judge (JD) and Judicial Magistrate, Sikrai. Her medical examination took place vide Exhibit P-3. Her statement under Section 164 Cr.P.C. was recorded on 22.03.2012 which is Exhibit P-4.

We cannot brush aside evidence of even other prosecution witnesses only because some of them are related to the prosecutrix. In fact, the fact about photographs and video clipping became known to the family only when a close relative of the prosecutrix Sajjan Singh (P.W.9) came across the photographs and video clipping under circulation. Rajendra Singh (P.W.21) has also stated that pursuant to information given by accused Rajesh under Section 27 of the Evidence Act vide Exhibit P-32, monitor and CPU of a computer system were recovered at his instance

from a shop, Ganesh Mobile Point, situated at Geejgarh Road, Sikandara from possession of one Dinesh Kumar vide recovery memo Exhibit P-8, site plan of which was Exhibit P-9. Aditya Kumar Saini (P.W.8) has also proved that monitor and CPU were taken from possession of Dinesh Kumar and his signatures are on Exhibit P-8.

Ram Singh (P.W.19), attesting witness of Exhibit P-22 has proved that mobile handset of Nokia C-5 make of Rajesh contained obnoxious video clipping which was recovered at his instance from an iron almirah of his house. As per information given by Dharmendra under Section 27 of the Evidence Act vide Exhibit P-34, his mobile handset with memory card was recovered from his house vide Exhibit P-12. Video clipping from his cell phone was sent through Bluetooth by Shiv Lal (P.W.5) on the basis of which a CD was prepared in the Computer Branch of Superintendent of Police Office, Dausa and memo (Exhibit P-5) was prepared for this purpose. Shiv Lal (P.W.5) put his signatures on such memo. He has stated that prosecutrix happens to be his cousin through her mother. He has admitted that he sent the video clipping through Bluetooth to cell phone of Deputy Superintendent of Police from which the CD was prepared. Sajjan Singh (P.W.9) has also proved that such video clipping was in circulation. Girraj Prasad (P.W.15) has stated that on 14.03.2012, he was working as Assistant Sub Inspector in the Computer Section of the Office of Superintendent of Police, Dausa. Witness Shiv Lal forwarded a video clipping through Bluetooth of his

mobile phone on the mobile handset of Deputy Superintendent of Police and he prepared two cassettes and CD Player, each of which was containing such video clipping, which were sealed vide Exhibit P-5. Tej Singh (P.W.17) has stated that on 15.03.2012, he was working as Malkhana Incharge in Police Station Sikandara. On that day, two cassettes along with CD player of the make of Sony Company, one old mobile phone, one monitor, one CPU, another mobile phone and two other mobile phones were deposited in Malkhana, which were entered in Malkhana Register (Exhibit P-18), certified copy of which was Exhibit P-18A. Rajendra Singh (P.W.21) has proved deposit of these articles in Forensic Science Laboratory. FSL Report is Exhibit P-41 which proves that video file namely 'Ppk video0006000(01).3gp' and video file namely 'Ppk video0006000.3gp' found stored in the memory card exhibits H-3 and I-3 respectively, which are copied alongwith the other video files in the folder namely 'Exhibit-H-3_Phys-202-12' and 'Exhibit-H-3_Phys-202' respectively stored in the CD marked-X, in this laboratory. Video files namely 'Ppk video0006000(01).3gp' and video file namely 'Ppk video0006000.3gp' found stored in the mobile phone exhibit-I-1. The video files are found stored in the hard disc exhibit G-2-1 but some of video file exhibit could not be accessed with the available software. However, video files found stored in the hard disc exhibit-G-2-1are also copied in the folder namely 'Exhibit-G-2-1_Phys-202-12' stored in the CD marked-X.

Besides, the prosecutrix has asserted that the school was closed down early on the day of incident which fact finds

corroboration from statement of Dharam Singh (P.W.2), who has stated that on 16.11.2010 school was closed early. Keshanta (P.W.7) has also stated that on that day, school was closed early because some relative of the Headmaster had died. In view of above, the trial court cannot be held to have acted contrary to law in punishing the accused-appellants for the alleged offences as mentioned above. Therefore, this Court is not inclined to interfere with the findings recorded by the trial court.

Coming now to the alternate submission on the question of sentence, we find that the accused-appellants were in their early twenties and prosecutrix was aged 17 years at the time of incident. They are in jail for more than five years. According to Section 376(2)(g) IPC though the sentence awardable to an accused may extend to life imprisonment, but minimum sentence is prescribed as ten years. True it is that every case of rape should be viewed seriously and convicts should be awarded the befitting sentence. But the learned trial court in making the choice of sentence of life imprisonment in the present case has not made any discussion whatsoever. It has not given any reason why it has chosen to award the maximum sentence and for what reason, the minimum sentence of ten years would not be sufficient considering that appellants were in their early twenties. At the same time, however, we are not inclined to accept the argument that lesser sentence than ten years by invoking proviso to Section 376(2)(g) should be awarded only because the appellants have not completed the sentence of ten years in prison. Proviso to

Section 376(2) though does give such power to the Court, which can be invoked only for adequate and special reasons to be mentioned in the judgment, which may justify the award of sentence of imprisonment of less than ten years. Emphasis on the adequate special reasons has been made because the legislature has otherwise intended "imprisonment for a term which shall not be less than ten years" as the minimum sentence.

The Supreme Court in **Bavo @ Manubhai Ambalal Thakore vs. State of Gujarat-(2012) 2 SCC 684** was dealing with a case where the victim was aged 7 years on the date of incident and the accused was in the age of 18/19 years and also the fact that the incident occurred nearly 10 years ago. It was observed therein by the Supreme Court that the award of life imprisonment, which was a maximum prescribed, is not warranted. That was a case in which the conviction was recorded under Section 376(2)(f). The Supreme Court held that ends of justice would be met if sentence of rigorous imprisonment of 10 years is awarded. In doing so, the Supreme Court relied on its earlier judgement in **Rajendra Datta Zarekar vs. State of Goa-(2007) 14 SCC 560**, which case also relates to an offence under Section 376 (2) (g) where the victim was aged 6 years and the accused was aged 20 years and the Supreme Court ultimately confirmed the sentence of 10 years as awarded by the High Court.

In the facts of the case, therefore, while we reject the argument of learned counsel for the appellants to reduce the sentence to the period already undergone by the accused-

appellants, we are persuaded to accept the alternative prayer of awarding the minimum prescribed sentence of 10 years to the accused-appellants for their conviction under Section 376 (2)(g) IPC instead of life imprisonment and accordingly we modify the sentence.

In the result, the appeals are partly allowed. Conviction of the accused-appellants under Section 376(2)(g) IPC is maintained but instead of life imprisonment, they are sentenced to ten years rigorous imprisonment and fine of Rs. 50,000/-, in default of payment of fine, each of the accused-appellant shall further undergo one year's simple imprisonment. Conviction and sentence of the accused-appellants for offences under Sections 366, 366-A, 367, 292, 120-B IPC and under Sections 66-E, 67, 67-A, 67-B of IT Act along with fine as imposed by the trial court is maintained. All the sentences shall run concurrently. It is directed that amount of fine so imposed shall be given to the prosecutrix as compensation after expiry of period of filing special leave petition/appeal as per provision of Section 357 Cr.P.C.

Office is directed to place a copy of this order on record of each connected criminal appeal.

(KAILASH CHANDRA SHARMA)J.

(MOHAMMAD RAFIQ) J.

Manoj