

Before Ritu Bahri & Ashok Kumar Verma, J.

ROHIT @ NAWAB—Appellant

versus

STATE OF HARYANA—Respondent

CRA-S No.10555 of 2018

December 09, 2021

Indian Penal Code, 1880—Ss.364-A, 376-D, 343, 379-A, 411, 506, 120-B and 34— Accused not among kidnappers and/or persons who committed gang rape—But had affair with prosecutrix— Voluntary relationship—No injuries found on her person—Accused acquitted—Benefit of doubt—Appeal allowed—Convictions of other accused not interfered with—Sentence modified—Not open to a Court inferior to High Court and Supreme Court, while awarding life imprisonment, to further provide for any specific term of incarceration or till end of convict's life, or direct no remission, as alternate to the death penalty—Such powers only with Supreme Court and High Court.

Held that, it is not open to a court inferior to the High Court and Supreme Court, while awarding a sentence of life imprisonment under the Indian Penal Code to further provide for any specific term of incarceration or till the end of a convict's life, or to direct that there shall be no remission, as an alternate to the death penalty. That power is available only with the High Courts and the Supreme Court. Consequently, the trial Court, in the present case, while awarding the appellants Anish and Rinku, the sentence of rigorous imprisonment for remainder of natural life could not have added the rider that it should be for the rest of their natural life.

(Para 13)

Further held that, considering the aforesaid guiding principles and the mitigating and peculiar facts and circumstances of the present case, this Court is of the considered opinion that imprisonment for remainder of natural life awarded to appellants Anish and Rinku @ Vinay @ Billu under Sections 376-D, 120-B of the IPC is modified to the extent that the term of RI on appellants Anish and Rinku @ Vinay @ Billu shall be for life imprisonment. Accordingly, the order of sentence dated 30.11.2018 passed by the Addl. Sessions Judge, Fast Track Court, Sonapat is modified to the aforesaid extent. The conviction and sentence awarded to Anish and Rinku @ Vinay @

Billu, both under Sections 364-A r/w Section 120-B & 34, 343 r/w 120-B & 34 , 379-A r/w 120-B & 34, 506 and 411 of the IPC and Rajesh under Section 411 of the IPC is not interfered with.

(Para 14)

Further held that, so far as appellant Rohit in CRA-S-10555-2018 is concerned, it has come on record that he was not a member of the kidnappers and/or the persons who committed gang rape. Rohit was having love affair with the prosecutrix for the last about two years. They were intending to get married but the complainant/father of the prosecutrix did not like their relation. The prosecutrix used to talk frequently with the appellant over telephone and she had also written love letters to him. It has also come on record that prosecutrix was major and was above the age of 18 years at the time of incident and she is already a married woman. The prosecutrix has categorically admitted in her cross-examination that accused Rohit did not give any beatings to her at the time of rape with her and she cannot tell whether Rohit had put his hands on her mouth at the time of commission of rape with her. The prosecutrix further admitted that she did not suffer any injury during the commission of rape and she did not remember whether any blood was oozing or not at that time. These material facts are sufficient to show that voluntary relationship between prosecutrix and Rohit cannot be denied. Furthermore, PW-5 Dr. Nidhi Munjal while appearing into the witness box categorically deposed that on examination, no external mark of injury has been seen over her body, over breast and genitalia. L/E external genitalia labia majora normal, labia minor normal, no injury mark was present and no bleeding and no discharge was present. P/V two fingers inserted easily and uterus normal size B/L fornices clear. No injury and bleeding were present. Furthermore, the appellant-Rohit has undergone 5 years RI out of 7 years of sentence. Considering all these material facts on record and on the touchstone of reason and administration of justice, we are of the considered opinion that the prosecution has failed to prove the offence against appellant-Rohit beyond reasonable doubt. Therefore, by giving benefit of doubt, accused/appellant Rohit is acquitted of the charges framed against him.

(Para 16)

Varuna Singh, Advocate and
Mamta Panwar, Advocate
for the appellant in CRA-S-10555-2018.

Rajnikant Upadhyay, Advocate

for the appellant in CRA-S-5504-2018.

Gagneshwar Walia, Advocate
for the appellant in CRA-D-244-2019.

Vishal Nehra, Advocate
for the appellant in CRA-D-36-2019.

Ankur Mittal, Addl.A.G., Haryana and
Saurabh Mago, Asstt. A.G., Haryana
for the respondent-State.

ASHOK KUMAR VERMA, J.

(1) This order will dispose of CRA-S-10555-2018, CRA-D-244-2019, CRA-D-36-2019 and CRA-S-5504-2018 as common questions of law and facts are involved in these appeals. These appeals have been directed against the judgment of conviction dated 28.11.2018 and order of sentence dated 30.11.2018 passed by learned Additional Sessions Judge, Fast Track Court, Sonapat.

(2) Brief facts as culled out from the paper-books are that appellants/accused namely Anish, Rinku @ Vinay, Rajesh and Rohit @ Nawab were sent to face trial for commission of offence punishable under Sections 364-A, 343, 376-D, 376, 379-A, 411, 506 and 120-B of the Indian Penal Code, 1860 registered vide FIR No.64 dated 20.02.2017 by the Station House Officer, Police Station Sadar Sonapat. As per the case of the prosecution, the complainant has three daughters and one son. His third daughter left the house in March, 2016 and a case was registered in Police Station Sadar Sonapat against accused/appellant Anish that he had called and taken away complainant's daughter with him. His daughter was recovered on 31.12.2016 but said accused was not arrested. As per complainant, now said Anish had taken away his younger daughter i.e. prosecutrix on 18.02.2017 and he was trying to trace out his daughter. However, accused Anish had made call from his mobile No.8398038308 on his mobile No.9255284263 demanding ransom of Rs.3 lakhs for releasing his daughter. Accordingly, FIR was registered, the accused were arrested and they were charge-sheeted. The prosecution has examined witnesses PW-1 to PW-21 and the accused persons examined their defence witnesses.

(3) After consideration of the case of the prosecution and on marshalling the evidence of the prosecution as also the defence witnesses, the Trial Court convicted all the accused persons who are appellants before this Court in these four appeals vide judgment of

conviction dated 28.11.2018 and vide order of sentence dated 30.11.2018 the aforesaid accused persons have been awarded sentence as under:-

Name of the convict	Offence U/S	Period of Sentence (RI)	Fine imposed	Period of sentence in default of payment of fine (RI)
Anish	364-A read with Section 120-B, 34 IPC	Imprisonment for Life	Rs.20,000/-	Eight months
	376-D, 120B IPC	Imprisonment for remainder of natural life	Rs.20,000/-	Eight months
	343, 120-B, 34 IPC	Two years	-	-
	379-A, 120-B, 34 IPC	Five years	Rs.25,000/-	One year
	506 IPC	Three years	Rs.3,000/-	Three months
	411 IPC	Two years	-	-
Rinku Vinay	364-A read with Section 120-B, 34 IPC	Imprisonment for life	Rs.20,000/-	Eight months
	376-D, 120-B IPC	Imprisonment for remainder of natural life	Rs.20,000/-	Eight months
	343, 120-B, 34 IPC	Two years	-	-
	379-A, 120-B, 34 IPC	Five years	-	-

	506 IPC	Three years	Rs.3,000/-	Three months
	411 IPC	Two years	-	-
Rohit	376 IPC	Seven years	Rs.10,000/-	Five months
	506 IPC	Three years	Rs.3,000/-	Three months
Rajesh	411 IPC	Two years	-	-

(4) Furthermore, the trial court directed that all the sentences shall run concurrently. However, the period of imprisonment already undergone by the convicts during the investigation and trial of the case shall be set off against the substantive sentences under Section 428 Cr.P.C. The aforesaid impugned judgments of conviction and sentence are under challenge in these four appeals.

(5) Learned counsel appearing for appellant-Rohit @ Nawab submits that the appellant has been falsely implicated in the present case. The allegations against the appellant are only with regard to Section 376 and 506 of the IPC. In cross-examination the prosecutrix has admitted that neither she raised any alarm nor suffered any injury. The appellant was not having any weapon with him and her other family members were sleeping in the same house. She had admitted that nobody can enter her house till the time the gate was not opened from inside and she was very much conscious at the time of the alleged incident. All these facts and circumstances show that ingredients of Section 376 and 506 of the IPC are not made out against appellant Rohit. Learned counsel further submits that the appellant in his defence version has proved that he had love affair with the prosecutrix for the last around two years and both of them were intending to get married but the father of the prosecutrix did not like their relation. The prosecutrix used to talk frequently with the appellant on telephone and she had also written love letters to the appellant. As such the appellant Rohit has been wrongly implicated in the present case.

(6) Learned counsel for other appellants namely Anish, Rinku @ Vinay @ Bilu, Rajesh @ Sonu submit that these appellants have been wrongly convicted and ordered to undergo sentence. Learned counsel submit that the prosecutrix was a consenting party as she was having love affair with accused Rohit. As per the testimony of PW-5 Dr. Nidhi Munjal who medico legally examined the prosecutrix would

reveal that there was no external mark of injury nor bleeding was present over the body of the prosecutrix. Learned counsel submit that lenient view should have been taken by the trial court while awarding sentence to accused Anish and Rinku @ Vinay @ Bilu as they have been awarded life imprisonment for remainder of natural life.

(7) Per contra learned State counsel has submitted that the appellants have been rightly convicted and sentenced by the trial court. There is cogent evidence on record to show that the appellants were engaged in the commission of the aforesaid offences. The prosecution has examined as many as 21 witnesses to prove its case. After appreciation of the evidence on record, the Trial Court has rightly convicted and sentenced the appellants/accused.

(8) We have given our thoughtful consideration to the submissions made by learned counsel for the appellants and gone through the paper-book. PW-17 the complainant/father of the prosecutrix deposed that on 18.02.2017 when they woke up, they found that his daughter i.e. prosecutrix was missing from his house. He deposed that on 20.02.2017 he moved complaint Ex.PW-17/A against accused Anish to the police regarding missing of his daughter. Further he deposed that accused Anish had extended threat to him prior to missing of prosecutrix. He demanded Rs.3 lakhs as ransom money from him on telephone by saying that he had kidnapped his daughter. PW-17 also deposed that on 23.02.2017 his daughter was recovered from the custody of accused Anish and Rinku and at that time the proxecutrix was kept confined by the accused persons in H.No.3611, Housing Board Sector-15, Sonapat and after getting recording statement of prosecutrix under Section 164 of the Cr.P.C. and her medical examination, the police handed over the custody of prosecutrix to the complainant. PW-17 further deposed that the prosecutrix told them that on the intervening night of 17-18.02.2017 accused Rohit committed rape with her when she came down at the ground floor of his house for urination and after that accused Anish and Rinku kidnapped her from his house.

(9) From the perusal of the evidence on record and the examination of the prosecutrix tendered in the witness box, it shows that on the fateful day in the night time accused Anish and Rinku after hatching criminal conspiracy abducted prosecutrix by administering some intoxicating substance and kept her confined for five days and committed gang rape upon her. They demanded Rs.3.00 lacs as ransom money from the father of the prosecutrix on telephone and they forcibly snatched her jewellery and retained the same knowing fully well that

such property was stolen and accused Rajesh also dishonestly retained the stolen jewellery i.e. the Mangal Sutra and 'OM Locket' which he purchased from accused Anish for a sum of Rs.5000/- and hypothecated the same with Muthoot Finance Ltd. and thus, the prosecution has duly established the guilt of accused Anish, Rinku and Rajesh for commission of aforesaid offences. As per PW-20 LSI Urmila, Investigating Officer, accused Rajesh suffered disclosure statement Ex.PW-5/F and in pursuance thereof got recovered the jewellery of prosecutrix from Muthoot Finance Ltd. and PW-13 Ashok Kumar, Manager of Muthoot Finance Ltd. also proved letter of pledge Ex.PW-13/A with application for personal loan Ex.PW-13/B in the name of accused Rajesh. Although it is admitted by the prosecutrix as well as complainant that no bill of jewellery was given by them to the police but PW-17-complainant during his cross- examination deposed that the jewellery was identified by his daughter in his presence. PW-20 the I.O. also deposed that the jewellery was shown to the parents of victim. Thus, as per prosecution story, the jewellery was duly identified by the prosecutrix. No explanation has been given by accused Rajesh in his statement recorded under Section 313 of the Cr.P.C. regarding the recovery of the aforesaid jewellery and the fact that he has not claimed the jewellery as his own to prove the case of the prosecution against him.

(10) Another aspect of the present case is that as per prosecution story, accused Anish and Rinku had kidnapped the prosecutrix on one Activa scooter. During interrogation accused Anish suffered disclosure statement Ex.PW-15/C and got demarcated the place of occurrence vide memo Ex.PW-11/A whereas accused Rinku suffered disclosure statement Ex.PW-15/D and got demarcated the place of occurrence vide memo Ex.PW-11/B. Accused Rinku in pursuance of his disclosure statement also got recovered Honda Activa scooter and loan sanctioned letter and receipt of loan vide memo Ex.PW-15/E and he also got recovered one pair of gold earring of the prosecutrix from Muthoot Finance Ltd. vide recovery memo Ex.PW-14/C.

(11) From the sequence of events and case of the prosecution, it is established on record that accused Anish, Rinku and Rajesh have rightly been found to be involved in the commission of offence. The attributions against them are serious in nature as they have been found to have committed detestable and heinous offence of kidnapping, gang rape against the wishes of the prosecutrix and under criminal intimidation by threatening the prosecutrix and asking for ransom

money from her father. Ex.PW5/B- MLR of the prosecutrix clearly shows that possibility of sexual assault cannot be ruled out. The nefarious act of these accused persons against the prosecutrix is traumatic and detestable. In view of the totality of facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court feels no hesitation to conclude that the learned trial court has committed no error of law, while passing the impugned judgment of conviction qua accused Anish, Rinku and Rajesh. No patent illegality or perversity has been pointed out by the learned counsel for these appellants, which is *sine qua non* for interference in the same. In these circumstances, we are of the considered opinion that the accused Anish, Rinku and Rajesh have rightly been convicted.

(12) So far as award of sentence of life imprisonment for remainder of natural life upon accused Anish and Rinku is concerned, the legal position with regard to the power of the trial Courts to award sentences with that rider has been made explicit in the Constitution Bench judgment of the Supreme Court in *Union of India* versus *Sriharan @ Murugan*¹ in paras 103 to 105, in the following words:-

"103. That apart, in most of such cases where death penalty or life imprisonment is the punishment imposed by the trial Court and confirmed by the Division Bench of the High Court, the concerned convict will get an opportunity to get such verdict tested by filing further appeal by way of Special Leave to this Court. By way of abundant caution and as per the prescribed law of the Code and the criminal jurisprudence, we can assert that after the initial finding of guilt of such specified grave offences and the imposition of penalty either death or life imprisonment when comes under the scrutiny of the Division Bench of the High Court, it is only the High Court which derives the power under the Penal Code, which prescribes the capital and alternate punishment, to alter the said punishment with one either for the entirety of the convict's life or for any specific period of more than 14 years, say 20, 30 or so on depending upon the gravity of the crime committed and the exercise of judicial conscience befitting such offence found proved to have been committed.

104. We, therefore, reiterate that, the power derived from

¹ (2016) 1 SCC 1

the Penal Code for any modified punishment within the punishment provided for in the Penal Code for such specified offences can only be exercised by the High Court and in the event of further appeal only by the Supreme Court and not by any other Court in this country. To put it differently, the power to impose a modified punishment providing for any specific term of incarceration or till the end of the convict's life as an alternate to death penalty, can be exercised only by the High Court and the Supreme Court and not by any other inferior Court.

105. Viewed in that respect, we state that the ratio laid down in *Swamy Shraddananda* [(2008) 13 SCC 767] that a special category of sentence; instead of Death; for a term exceeding 14 years and put that category beyond application of remission is well founded and we answer the said question in the affirmative. We are, therefore, not in agreement with the opinion expressed by this Court in *Sangreet and another vs. State of Haryana*, 2013 (2) SCC 452 that the deprivation of remission power of the Appropriate Government by awarding sentences of 20 or 25 years or without any remission as not permissible is not in consonance with the law and we specifically overrule the same.”

(13) Thus, after the judgment of the Constitution Bench of the Supreme Court in *V. Sriharan* (supra), it is not open to a court inferior to the High Court and Supreme Court, while awarding a sentence of life imprisonment under the Indian Penal Code to further provide for any specific term of incarceration or till the end of a convict's life, or to direct that there shall be no remission, as an alternate to the death penalty. That power is available only with the High Courts and the Supreme Court. Consequently, the trial Court, in the present case, while awarding the appellants Anish and Rinku, the sentence of rigorous imprisonment for remainder of natural life could not have added the rider that it should be for the rest of their natural life.

(14) Furthermore, considering the aforesaid guiding principles and the mitigating and peculiar facts and circumstances of the present case, this Court is of the considered opinion that imprisonment for remainder of natural life awarded to appellants Anish and Rinku @ Vinay @ Billu under Sections 376-D, 120-B of the IPC is modified to the extent that the term of RI on appellants Anish and Rinku @ Vinay @ Billu shall be for life imprisonment. Accordingly, the order of

sentence dated 30.11.2018 passed by the Addl.Sessions Judge, Fast Track Court, Sonapat is modified to the aforesaid extent. The conviction and sentence awarded to Anish and Rinku @ Vinay @ Billu, both under Sections 364-A r/w Section 120-B & 34, 343 r/w 120-B & 34 , 379-A r/w 120-B & 34, 506 and 411 of the IPC and Rajesh under Section 411 of the IPC is not interfered with.

(15) In view of the above and subject to aforesaid modification in case of sentence awarded under Sections 376-D and 120-B of the IPC to Anish and Rinku, these appeals (CRA-D-36- 2019, CRA-D-244-2019 and CRA-S-5504-2018) filed by Anish, Rinku and Rajesh, respectively shall stand dismissed.

(16) So far as appellant Rohit in CRA-S-10555-2018 is concerned, it has come on record that he was not a member of the kidnappers and/or the persons who committed gang rape. Rohit was having love affair with the prosecutrix for the last about two years. They were intending to get married but the complainant/father of the prosecutrix did not like their relation. The prosecutrix used to talk frequently with the appellant over telephone and she had also written love letters to him. It has also come on record that prosecutrix was major and was above the age of 18 years at the time of incident and she is already a married woman. The prosecutrix has categorically admitted in her cross-examination that accused Rohit did not give any beatings to her at the time of rape with her and she cannot tell whether Rohit had put his hands on her mouth at the time of commission of rape with her. The prosecutrix further admitted that she did not suffer any injury during the commission of rape and she did not remember whether any blood was oozing or not at that time. These material facts are sufficient to show that voluntary relationship between prosecutrix and Rohit cannot be denied. Furthermore, PW-5 Dr. Nidhi Munjal while appearing into the witness box categorically deposed that on examination, no external mark of injury has been seen over her body, over breast and genitalia. L/E external genitalia labia majora normal, labia minor normal, no injury mark was present and no bleeding and no discharge was present. P/V two fingers inserted easily and uterus normal size B/L fornices clear. No injury and bleeding were present. Furthermore, the appellant-Rohit has undergone 5 years RI out of 7 years of sentence. Considering all these material facts on record and on the touchstone of reason and administration of justice, we are of the considered opinion that the prosecution has failed to prove the offence against appellant-Rohit beyond reasonable doubt. Therefore, by giving benefit of doubt,

accused/appellant Rohit is acquitted of the charges framed against him.

(17) In view of the above, criminal appeal being CRA-S- 10555-2018 filed by appellant Rohit @ Nawab is allowed and the impugned judgment of conviction and order of sentence qua accused/appellant Rohit @ Nawab is set aside. Consequently, subject to aforesaid modification in case of sentence awarded to Anish and Rinku, these appeals (CRA-D-36-2019, CRA-D-244-2019 and CRA- S-5504-2018) filed by Anish, Rinku @ Vinay @ Billu and Rajesh @ Sonu are dismissed. Pending application(s), if any, in these appeals shall stand disposed of accordingly. Release order of appellant Rohit @ Nawab to set him free has already been issued vide separate order passed today by this Court. However, the sentence of Rajesh @ Sonu was suspended by the trial court on 30.11.2018 and thereafter the same was extended by this Court on 18.12.2018 during the pendency of his appeal. Consequent upon the dismissal of his appeal, Rajesh @ Sonu is directed to surrender before the trial court to complete his remaining sentence accordingly.

Shubreet Kaur