
(2014) 07 MP CK 0350

In the Madhya Pradesh High Court

Case No : Criminal Reference No. 7 of 2013 and Criminal Appeal No. 2311 of 2013

Additional Sessions Judge, Bijawar and Others

APPELLANT

Vs

Ganesh Lodhi and Others

RESPONDENT

Date of Decision : 15-07-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 157, 161

Evidence Act, 1872 — Section 24, 27

Penal Code, 1860 (IPC) — Section 302, 34, 376, 376(2)(g)

Citation : (2015) 1 CCR 75

Hon'ble Judges : N.K. Gupta, J;Ajit Singh, J

Bench : Division Bench

Advocate : Vijay Pandey, Deputy Advocate General, Advocates for the Appellant; Anoop Saxena, Advocates for the Respondent

Judgement

N.K. Gupta, J.—A criminal reference No. 7/2013 has been referred by the learned Additional Sessions judge, Bijawar, District Chhatarpur against the same judgment dated 23.8.2013 in S.T. No. 71/2011 against which the appellants/accused Ganesh and Ramji have preferred the criminal appeal No. 2311/2013, therefore, both the matters are being decided by this common judgment. The learned Additional Sessions Judge, Bijawar, District Chhatarpur vide judgment dated 23.8.2013 in S.T. No. 71/2011 convicted the accused Ganesh and Ramji for offences punishable under Sections 302 and 376(2)(g) of IPC and sentenced with death sentence and life imprisonment with fine of Rs. 1,000/-, in default of payment of fine, 3 months rigorous imprisonment. Since death sentence was passed by the learned Additional Sessions Judge, therefore, the death reference is referred to this Court.

2. Being aggrieved with the aforesaid judgment, conviction and sentence, the appellants Ganesh and Ramji have preferred criminal appeal No. 2311/2013.

3. The facts of the case, in short, are that, on 28.11.2010, at about 7 a.m. in the

morning, the complainant Nathu (P.W. 1) went to village Bakaswaha for shopping and therefore, he went to meet his daughter, the deceased prosecutrix. When he reached the house of his daughter, he found that Roop Singh (P.W. 3) and Jai Singh, children of the deceased were crying and they informed that the accused Ramji and Ganesh came in the previous evening and stayed in their house for the entire night. In the night, Ramji held the hands of the deceased and Ganesh assaulted her by an axe on her neck and therefore, she had died. When Nathu went inside the house, he saw the dead body of his daughter and thereafter, he came out and he found that neighbors Dhaniram (P.W. 2) and Kayyum (P.W. 4) and Jinnu Jain (P.W. 5) were present. The complainant Nathu went to the Police Station, Bakshwaha and lodged the F.I.R., Ex. P/2. A merg intimation, Ex. P/1 was also recorded. The police went to the spot and Panchayatnama Lash, Ex. P/4 was prepared and dead body of the deceased was sent for postmortem. Dr. L.L. Ahirwar (P.W. 8) did the postmortem on the body of the deceased and gave his report, Ex. P/22. He found 4 incised wounds on the neck of the deceased. Out of them, 2 wounds were fatal in nature and due to those injuries, the deceased had expired. He found that left jaw of the deceased was also broken. Vaginal swab of the deceased was taken on the slide and handed over to the concerned constable, after its sealing. Shri R.P. Verma (P.W. 12) SHO, Police Station Bakaswaha had investigated the matter. He observed the formalities of the investigation of the spot. The appellants were arrested and clothings of the accused Ramji were seized and sealed. On intimation given by Ganesh, one axe was also seized. Seized property was sent for forensic science analysis. In report, Ex. P/27, given by the FSL expert, it was found that sperm and semen particles were found in the vaginal swab of the prosecutrix and on her underwear but, such spots were not found sufficient for serum test. Similarly, on the article "K", the axe is alleged to be seized from the appellant Ganesh, blood was found on it but, it was not proved that there was any human blood on that axe, whereas blood group of the deceased was "AB".

4. After due investigation, the charge-sheet was filed before the concerned JMFC, who committed the case to the Sessions Judge, Chhatarpur and ultimately, it was transferred to the learned Additional Sessions Judge, Bijawar.

5. The appellants abjured their guilt. They took a plea that they were falsely implicated in the matter. However, no defence evidence was adduced.

6. The learned Additional Sessions Judge after considering the prosecution's evidence, convicted and sentenced the appellants as mentioned above. Death sentence was recorded against the appellants for offence under Section 302 of IPC.

7. We have heard the learned Counsel for the parties at length.

8. First of all it is to be considered as to whether death of the deceased was homicidal in nature. In this respect, evidence of Dr. L.L. Ahirwar (P.W. 8) who proved the post-mortem report, Ex. P/22, in which he found that 4 incised

wounds were caused on the neck of the deceased prosecutrix. Out of them, first two were fatal in nature. Description of the wounds is as under:

- (1) Incised wound 10 X 4 X 3 c.ms. on left side of neck.
- (2) Incised wound 6 X 2 X 1 c.ms. on left side of neck.
- (3) Incised wound 2 X 1 X 1 c.ms. on left side of neck.
- (4) Incised wound 2 X 1 X 1 c.ms. on left side of neck.

Entire left jaw of the deceased was found fractured and in opinion of Dr. Ahirwar those injuries were sufficient to cause death of the deceased. Looking to the opinion of Dr. Ahirwar, it was established by the prosecution that death of the deceased was homicidal in nature.

9. The prosecution has examined Roop Singh (P.W. 3) as an eye-witness, who is a child witness, aged 6 years. The deceased was the mother of child Roop Singh. According to Roop Singh, the appellants came in the previous evening of the incident to his house and resided in the night. He got up because he received a push from the left leg of the appellant Ganesh and he found that the appellant Ramji held legs of the deceased and the appellant Ganesh assaulted the deceased by an axe. He has stated that in the morning, his maternal grandfather (P.W. 1) came to his house and he told the entire story to him and Nathu has stated that after collecting facts from children, he lodged the F.I.R., Ex. P/2. A Merg Intimation, Ex. P/1 was also recorded at Police Station, Bakaswaha. However, some discrepancies arose in the story told by Roop Singh and his maternal grandfather Nathu.

10. Initially Nathu did not state about the rape committed upon the deceased prosecutrix and story told in the F.I.R., Ex. P/2 and Merg Intimation, Ex. P/1 was that the appellants killed the deceased. However, Nathu as well as Roop Singh improved the story that Roop Singh saw the appellants committing rape on the prosecutrix. However, Roop Singh has accepted that he does not know about the word "Rape". Roop Singh is a small child of 6 years who can be tutored by her maternal grandfather. If he would have seen the fact of rape committed by the appellants then, certainly he could say that he saw any of the appellants lying upon the prosecutrix or he found that the clothings of the prosecutrix were removed. Roop Singh could not say anything about that fact. Looking to his statement about the alleged rape, it appears that he was tutored by his maternal grandfather to that fact. Hence, the possibility cannot be ruled out that he was tutored about the entire incident. Roop Singh has stated that in his presence, the appellant Ramji had held the legs of the prosecutrix and the appellant Ganesh gave a blow of an axe on the neck of the prosecutrix, whereas Dr. Ahirwar found 4 different injuries on the neck of the prosecutrix and therefore, if Roop Singh was the eye-witness, he would have seen 4 assaults caused by the appellant Ganesh. It is a material contradiction between the statement of the eye-witness and the medical evidence.

11. Thirdly, it is stated by the witness Roop Singh that the accused Ramji threatened him to either sleep or else, he would also be killed. Witness Roop Singh, therefore, went to sleep and he got up only in the morning. Such conduct as depicted by the eye-witness Roop Singh appears to be unnatural. If mother of the child was injured by the accused persons then, his natural conduct could be that he would pretended himself to be sleeping but, as and when the accused persons disappeared from the house, he would have tried to make hue and cry or to get some help to his mother if she was alive. It was not possible for a child that after getting a threat, he would go to sleep till the next morning. All such discrepancies indicate that possibility of tutoring of the child witness cannot be ruled out.

12. Nathu and Roop Singh were asked about the death of Veer Singh, husband of the deceased. Both of them accepted that Veer Singh was not given any share from the family property by his father and therefore, he committed suicide. Child witness Roop Singh has stated that the appellant Ganesh was his real uncle and the accused Ramji was cousin of the accused Ganesh. Under such circumstances, after death of the deceased prosecutrix, it was for her father to implicate the brothers of the husband of the deceased, so that pressure may be created upon father-in-law of the deceased to extract some share for the children of the deceased and therefore, there was a possibility that the complainant would have implicated the appellants.

13. The learned Deputy Advocate General has invited the attention of this Court to the judgment passed by Hon"ble the Apex Court in case of Suryanarayana Vs. State of Karnataka, , in which it is held that if the child witness withstands the cross-examination and if the testimony inspires confidence, so as to rule out the possibility of tutoring, it could be relied upon as the sole basis for convicting the accused. Similarly, reliance is placed upon the judgment passed by Hon"ble the Apex Court in case of Dattu Ramrao Sakhare and Others Vs. State of Maharashtra, , in which it is laid that the testimony of a child witness can be relied on even in absence of oath, if he understands the nature of question and gave rational answers thereof. It is further directed that Court must see that the child is reliable and there is no likelihood of being tutored. Corroboration is not necessary. In the light of the aforesaid judgments, the evidence of witness Roop Singh is to be examined as to whether he was tutored witness or his testimony can be relied upon.

14. In the present case, Dhaniram (P.W. 2) is an important witness. Dhaniram and Nathu have accepted that initially Dhaniram was residing at village Jaitpura and he was considering the deceased as his niece due to relation of the village. The police took him as a witness for the statement of the accused persons under Section 27 of the Evidence Act and seizure etc. He is the witness of entire investigation. He did not turn hostile for seizure etc. However, for few points he was declared hostile. Under such circumstances, the evidence given by Dhaniram (P.W. 2) appears to be important. Dhaniram has stated that at about 6 a.m. in

the morning, Roop Singh came out of the house and told that someone killed his mother. He did not mention the name of anyone. It is apparent from the statement of Roop Singh that after the incident, the main door was closed from outside by latches and on his knocking, some Khatik had opened the door. It was expected from the child to inform about the death of his mother to the person, who opened the door but, the child Roop Singh could not exactly say as to who opened the latches. Parsadi Khatik (P.W. 13) was examined to establish that he had opened the latches but, he turned hostile and he did not say anything about the incident. According to the witness Nathu, when he reached to the house of the deceased, both the children were weeping and there was nobody except them, whereas Dhaniram (P.W. 1) has accepted that after hearing the cries of Roop Singh etc. he, Kayyum (P.W. 4) and Jinnu Jain (P.W. 5) went to the spot at about 6 a.m. in the morning. Dhaniram has categorically stated that one Ramlal informed the police by phone and when the police came to the spot, the parents of the deceased were called from village Jaitpura. According to the witnesses Dhaniram, Kayyum and Jinnu Jain, they reached at the spot at about 6 a.m. in the morning, whereas, Nathu claims that he reached at the spot at 7 a.m. in the morning. Looking to such discrepancies, where child witness Roop Singh did not inform any of the witnesses namely Dhaniram, Kayyum and Jinnu that the appellants had stayed in his house in the previous night and they killed his mother, his testimony is not trustworthy.

15. Dhaniram, Kayyum and Jinnu Jain have stated that they did not find the appellants in the house of the deceased in the night. They did not hear the voice of appellants or the deceased relating to quarrel. They did not hear that TV was on in the late night. According to the prosecution, the quarrel had started at 8 p.m. in the night and the evidence under Section 161 of the Cr.P.C. was recorded of these neighboring witnesses Dhaniram, Kayyum and Jinnu Jain that they heard the sound of quarrel at about 8 p.m. The version which is not supported by these witnesses now appears to be incorrect because according to Roop Singh himself, his mother was in habit to keep her shop open upto 11 p.m. and if quarrel would have started at 8 p.m. then, she would have been killed before closure of her shop and therefore, at the time of the incident, her shop would have been opened and dead body could not be obtained on the mattress used by her for sleeping. Under such circumstances, though these witnesses have partly turned hostile, their version which is against their case diary statements appears to be correct. They did not hear any noise of quarrel at 8 p.m. because such quarrel could not take place at 8 p.m.

16. The learned Deputy Advocate General has submitted that the testimony of the witness Roop Singh is duly corroborated by timely lodged F.I.R., Ex. P/2 and therefore, his statement is trustworthy. In this connection, if the F.I.R., Ex. P/2 is examined then, it would be apparent that according to Nathu, he came to the spot at 7 a.m. in the morning and after getting knowledge of the incident, he rushed to the police station and F.I.R. was lodged at 7.15 a.m. and prima facie, it appears that F.I.R. was lodged promptly but, if version of Dhaniram is considered

then, it would be apparent that Nathu came to the spot when he was called by the police. Nathu tried to explain that he came to Bakaswaha for marketing and therefore, he also went to the house of his daughter to meet her. His explanation appears to be unnatural because shops of the market would have opened after 10 a.m. and therefore, it was not necessary for Nathu to leave his village at 6 a.m. in the morning. Secondly, if he came all alone for the purpose of marketing then, there was no possibility of his family members to remain present at the time when the document of Panchayatnama Lash, Ex. P/4 (memo relating to description of dead body) was prepared. In that memo, dead body was identified by Ramsakhi, unmarried sister of the deceased and Preetam Singh, brother of the deceased along with Nathu, father of the deceased. Presence of Ramsakhi and her brother indicates that statement of Dhaniram is correct. Witness Nathu did not come to the house of his daughter at 7 a.m. on his own and he reached to the spot when he was called by the police. Under such circumstances, it would be apparent that Nathu Singh did not reach to the spot at 7 a.m. and therefore, he could not lodge the F.I.R., Ex. P/2 at 7.15 a.m. The F.I.R. registered by the police appears to be ante timed.

17. When F.I.R. itself is under question for being delayed or ante timed then, it is necessary to examine as to whether the provisions of Section 157 of the Cr.P.C. were complied with or not. In this connection, the witness R.P. Verma (P.W. 12) has exhibited the counter of F.I.R., Ex. P/2-A to show that it was sent to the concerned Magistrate within time. According to the circulars issued by the High Courts, it is necessary for every Magistrate to mention the date and time on each counter of F.I.R. when it was received. On the document, Ex. P/2-A, no such endorsement is found and, therefore, it was for the prosecution to prove that at what time the counter F.I.R. was despatched to the concerned Magistrate and when it was received by the concerned Magistrate. If the F.I.R. was recorded at 7.15 a.m. then, certainly the counter of F.I.R. should have been reached to the concerned Magistrate in the beginning of his working hours i.e. at about 11 a.m. but, neither any dispatch book, nor any receipt book is shown by SHO Shri R.P. Verma to establish that the counter F.I.R. was received by the concerned Magistrate on the same very day. In this connection, the judgment passed by Hon"ble the Apex Court in case of Ishwar Singh Vs. State of U.P., , may be referred, in which it is mentioned that it is for the prosecution to prove that the counter F.I.R. was sent to the concerned Magistrate forthwith and if it is not sent within the reasonable period then, it may be presumed that the prosecution had sufficient time to introduce new facts and to improve the entire story of the prosecution. In such a situation, the entire prosecution story comes in the clouds of doubt.

18. In such circumstances, it would be apparent that F.I.R. cannot be believed as a corroborative piece of evidence. It appears that it is an ante timed document, in which the story was introduced by the investigation officer as well as by Nathu (P.W. 1) and the child witness Roop Singh, who was in custody of witness Nathu and came to the Court in his custody then, possibility of his tutoring cannot be

discarded. If the discrepancies in the evidence of child witness Roop Singh is considered then, it would be apparent that he could not say anything about the rape. When he came out of the house he did not tell to Dhaniram, Kayyum and Jinnu Jain that the appellants killed his mother. He says only a single blow was given by the appellant Ganesh, whereas Dr. Ahirwar found 4 incised wounds on the left neck of the deceased. If Roop Singh was an eye witness, he would have seen all the 4 assaults caused by the appellant Ganesh. The conduct of Nathu appears to be unnatural that he claims to reach the house of the deceased at 7 a.m., whereas looking to his purpose, it was not necessary for him to leave his village at 6 a.m. in the morning in the cold season. It was natural that if latches of the front door were closed from outside then, someone must have opened the latches and the child would have informed that person and neighbours about the incident, whereas Nathu claims that he was the first person who reached to the spot and he found that Roop Singh and his brother were crying, whereas Dhaniram claims that initially he and other neighbours had reached to the spot.

19. One Ramlal informed the police on phone and thereafter, police called the witness Nathu from his village. The witness Roop Singh made an allegation against the appellants that they committed rape upon the prosecutrix and thereafter, killed her. If the story told by the witness is accepted as it is then, it would be apparent from the evidence given by other witnesses that the deceased was a widow, who was not given any share in the family property by her father-in-law. The accused Ganesh, real brother-in-law of the deceased was initially residing in the same locality but, thereafter, he went to stay with his father. If he had strained relations with the deceased then, certainly he would not have been permitted to take dinner in the house of the deceased and to stay in the night. Ganesh had his own house in the same village then, there was no necessity for him to stay in the house of the deceased for the entire night and if the prosecutrix permitted him to stay in the house then, it would be apparent from her conduct that she permitted the appellants to stay in the house for the entire night, so that she could have cohabitation with them otherwise, there was no reason for such stay. If the prosecutrix was ready to have cohabitation with the appellants then, there was no possibility of any resistance from her side and there was no need to the appellants to kill her. Under such circumstances, the allegation as prepared in the F.I.R., Ex. P/2 and told by the child witness Roop Singh appears to be unnatural and therefore, if he claims to be an eye witness for such an unnatural instance then, his testimony cannot be believed.

20. If law laid down by Hon"ble the Apex Court in cases of Dattu Ramrao Sakhare (supra) and Suryanarayan (supra) is applied in the present case then, it would be apparent that there is a lot of material contradictions between the statements given by the child witness and circumstances shown by the witnesses Dhaniram, Kayyum and Jinnu Jain. It is also doubtful that the F.I.R. was lodged on the same time, which is shown in the F.I.R., Ex. P/2. On the contrary, it appears that it is an ante timed document. Under such circumstances, in the light of aforesaid judgments of Hon"ble the Apex Court, the evidence of witness

Roop Singh cannot be accepted eye witness.

21. Upon ocular evidence being discarded then, it becomes the duty of the Court to consider other circumstantial evidence with a view to assess that it is sufficient in the ordinary course to prove the guilt of the accused. In the present case, first circumstance shown by the prosecution is that the appellants came to the house of the deceased in the previous evening and they resided in her house. Dhaniram (P.W. 2) has accepted that he saw the appellants in the evening in front of the shop of the prosecutrix but, Dhaniram, Kayyum and Jinnu jain did not accept that they heard any noise of any quarrel between the appellants and the deceased in the night or they heard the sound of TV viewed by the appellants in the night in the house of the deceased. They had no knowledge as to whether the appellants resided in the house of the deceased or that night. In this context, witness Roop Singh (P.W. 3) has stated that the appellants resided in the house of the deceased in the night. However, as discussed above, when the appellant Ganesh had his own house in the same village then, there was no need to the appellants to stay in the house of the deceased prosecutrix and there was no need to the deceased to invite them for dinner and therefore, it appears that the child witness Roop Singh is fully tutored and therefore, by considering the entire evidence, it is not proved beyond doubt that the appellants stayed in the house of the deceased prosecutrix for the entire night. It is proved by Dhaniram that they were seen in front of the shop but, such a fact cannot be considered as a fact of last seen because if they were found in front of the shop in the evening then, at about 11 p.m., the deceased prosecutrix must have closed the doors of her shop and after taking her dinner, she must have slept on her mattress and therefore, by mere presence of the appellants in the evening in front of the shop of the deceased, no circumstantial evidence is created against them relating to the factum of last seen.

22. Second circumstance shown by the prosecution is that the appellant Ganesh admitted his guilt under Section 27 of the Evidence Act and a memo, Ex. P/9 was recorded. Thereafter, one axe was recovered from the appellant Ganesh and a memo, Ex. P/11 was recorded. Similarly, clothings of the appellant Ganesh were seized with a memo, Ex. P/12. However, no human blood was found either on the clothings or on axe and therefore, seizure of axe as well as clothings is not a material evidence against the appellants. The confession given by the appellants under Section 27 of the Evidence Act is to be considered for a limited purpose, relating to a new fact arising during investigation and, therefore, a very little portion of that confession is admissible under Section 27 of the Evidence Act, whereas remaining portion is inadmissible under Section 24 of the Evidence Act. Under such circumstances, only that portion can be accepted that the appellant Ganesh threw an axe in a gutter. However, according to the FSL report, Ex. P/27, no human blood was found on the clothings of the appellant Ganesh as well as on the axe recovered from him and, therefore, confession under Section 27 of the Evidence Act given by the appellant Ganesh has no evidentiary value and it cannot be considered as a circumstance against the appellant.

23. The learned Deputy Advocate General has also submitted that in the vaginal swab of the prosecutrix and on her underwear, Forensic Science Laboratory found semen particles and sperms on them and it is a circumstance against the appellants. The Forensic Science Laboratory did not mention that the semen and sperm particles found on the underwear and vaginal swab elides of the deceased were of the appellants and, therefore, by presence of such semen spots and sperms, it cannot be said that those were of the appellants. Forensic Science Laboratory in its report, Ex. P/27 found that the spots found on articles H-1, H-2 and J-1 were not sufficient for serum examination but, it is nowhere made clear that as to why serum was not prepared from the spots found on articles-I i.e. slide of vaginal swab of the deceased. Similarly, the serum slides of the appellants "F" and "G" were also available with the Forensic Science Laboratory and these 3 articles were sufficient for preparation of serum relating to semen and sperms. It is nowhere clear as to why the serum of article - "I" and articles "F" and "G" was not prepared and compared. Under such circumstances, the prosecution failed to prove that in the vaginal swab of the prosecutrix, semen or sperms of the appellants were found.

24. Also, if the memo under Section 27 of the Evidence Act recorded by the appellants is considered as a whole then, it would be apparent that there was an admission that Ramji committed rape with the prosecutrix while she was sleeping and when the appellant Ganesh demanded for cohabitation then, due to her refusal, she was killed and therefore, there was no evidence that the appellant Ganesh did any intercourse with the prosecutrix therefore, atleast the semen sample of the appellant Ramji could be compared from the semen obtained from the vaginal swab of the deceased prosecutrix.

25. The learned Deputy Advocate General has tried to submit that strong motive was there against the appellants that they committed rape and killed the deceased. However, the prosecution utterly failed to prove the motive of the crime. It is established from the evidence of Dhaniram and Roop Singh that Ganesh was real brother-in-law of the deceased who was also ousted by his father and therefore, initially, he was residing in the same locality along with his wife, in which the prosecutrix was residing. Thereafter, he shifted his residence to his father's house, situated in the same village in another locality and, therefore, the appellants had cordial relations with the deceased prosecutrix. There was no dispute relating to any property between the deceased prosecutrix and the appellants otherwise, they would not have been permitted to reside in the house of the deceased. Again if a motive is gathered from the overt-act of the appellants that when the prosecutrix refused to have relations with the appellant Ganesh, she was killed but, as discussed above, if she was not ready to have cohabitation with the appellants then, there was no reason for her to permit the appellants to stay in the house for the entire night when the appellant Ganesh has his own house in the same village. Under such circumstances, no motive has been proved by the prosecution against the appellants to kill the deceased.

26. On the basis of the aforesaid discussion, if the entire circumstantial evidence adduced by the prosecution is considered then, chain of circumstantial evidence is broken. It is not complete and, therefore, no conclusion of the crime can be obtained by the circumstantial evidence. In this connection, the judgment passed by Hon''ble the Apex Court in case of Majendran Langeswaran Vs. State (NCT of Delhi) and Another, , may be perused, in which it is laid that while dealing with the conviction based of circumstantial evidence, circumstances from which conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so established should also be consistent with only one hypothesis i.e. guilt of accused Onus lies on prosecution to prove that chain of event is complete and not to leave any doubt in the mind of the Court. In the light of aforesaid judgment, if evidence of the present case is considered then, the prosecution has failed to prove a complete chain of circumstantial evidence. It is not proved beyond doubt that the appellants were the persons, who committed rape upon the deceased prosecutrix and killed her. Under sue circumstances, the benefit of doubt is to be give to the appellants and they could not be convicted either for offence punishable under Section 376 or 302 of IPC. Under such circumstances, the appellants cannot be sentenced. The reference sent by the learned Additional Sessions judge cannot be accepted. The conviction as well as the sentence directed by the trial Court for offence punishable under Sections 302/34, 376(2)(g) of IPC cannot be sustained. Consequently, the appeal filed by the appellants is hereby allowed. Their conviction as well as sentence for offence punishable under Sections 302/34, 376(2)(g) of IPC are hereby set aside. The appellants are acquitted from all the charges appended against them.

27. The appellants are in jail and therefore, office is directed to issue release warrants, so that they shall be set free without any delay. Copy of the judgment be sent to the trial Court along with its record for information and compliance.