
(2001) 12 CAL CK 0001

In the Calcutta High Court

Case No : Criminal Appeal No's. 20 and 21 of 1995

Debidas Rudra

APPELLANT

Vs

State and Another

RESPONDENT

Date of Decision : 14-12-2001

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 164, 313
Penal Code, 1860 (IPC) — Section 34, 376, 376(2)

Citation : 106 CWN 235

Hon'ble Judges : Nure Alam Chowdhury, J; Narayan Chandra Sil, J

Bench : Division Bench

Advocate : Balai Roy and A.K. Roy, for the Appellant; S. Moitra and U.A. Dewan, for the Respondent

Final Decision : Dismissed

Judgement

Nure Alam Chowdhury Narayan Chandra Sil, J.—These two appeals were directed against the judgment dated 20-1-1995 and conviction dated 21-1-1995 for the offence u/s 376(2)(g) of the Indian Penal Code passed in connection with S. T. Case No. XXXV of 1993 by Sri R. Chakraborty, learned Additional Sessions Judge, 5th Court, Midnapore. The learned Judge was pleased to sentence the appellant Debidas Rudra to undergo imprisonment for life and also to pay a fine of Rs. 5,000/-, in default rigorous imprisonment for one year. The learned Judge was again pleased to sentence the other appellants namely Sena alias Soumendra Ray, Nupur alias Amitava Pattanayak and Topi alias Sarnendu Chowdhury to undergo rigorous imprisonment for 10 years each and also to pay a fine of Rs. 5,000/- each, in default rigorous imprisonment for one year.

2. The fact of the case in brief is that on 28-8-1991 at about 7.30 p.m. Mahasweta Majhi a girl of 17/18 years along with Sk. Abu Taher went to "Chowdhury Lodge" at Contai town and stayed there in a room. They recorded their particulars in the register of the lodge in different names. In the mid night the appellants knocked the door of the said room to open giving it out that they

were from police station. The door was opened and the appellants entered the room. They took out Abu Taher and confined him in some other place. The appellants thereafter committed rape on the defacto-com-plainant, Mahasweta Majhi one after another. Debidas Rudra, one of the appellants is a police officer of Contai Police Station. After completion of the investigation charge-sheet was submitted against the appellants u/s 376(2)(g), of the Indian Penal Code.

The case after having been committed and thereafter transferred to the Court of the learned trial Judge, the learned trial Judge had framed charge u/s 376(2)(g) read with Section 34 of the Indian Penal Code. As many as 21 witnesses were examined on behalf of the prosecution and after completion of trial the learned Judge had passed the judgment and found the appellants guilty for committing offence u/s 376(2)(g) read with Section 34 of the Indian Penal Code.

3. Mr. Balai Roy, the learned Senior Advocate appearing on behalf of the appellants submitted before us that the victim girl did not say anything specifically as regards rape by the other appellants than Debidas Rudra. It is pointed out by him that from the very beginning the victim girl started hiding her name and the purpose of her going to the lodge in question and she also appeared to have used the different names at different places. Mr. Roy has further argued that the conduct of the accused persons as claimed by the victim girl is not in consonance with the natural human conduct inasmuch as, it is claimed, the accused persons allowed the victim girl to go away instead of keeping a close vigil on her movement immediately after the alleged occurrence of rape. Mr. Roy has heavily banked upon the statement of the victim girl as a witness before the trial Court that she had lodged complaint twice and that she was examined twice by the medical officer. It is pointed out by him that there was no order of the Court concerned for the examination of the victim girl on the second occasion. It is further argued by Mr. Roy that the purported report of the examination of the victim girl for the first time had not been produced before the Court. Mr. Roy has pointed out that there was no mark of Siemens or blood on the bed-sheet and the saya (petty coat) was washed after the occurrence. Mr. Roy has further argued before us that from the evidence of the witnesses it appears that one Kayum and the other Minu Gharai are the best witnesses in the case, but Minu Gharai had not been examined by the prosecution and the evidence of Kayum is contradictory. It is further pointed out by Mr. Roy that there was delay in examination of the witnesses by the I.O. and such delay remain unexplained. Mr. Roy has referred to a number of case laws which we shall discuss at the appropriate point of time. Mr. S. Moitra, the learned Additional P. P. appearing on behalf of the State submits before us that the defence had hit the bush around in the cross-examination of the P. W. 1, the victim girl and except some suggestions there was no substantive evidence coming out from the P.W. 1 to help the defence in any way. It is pointed out by Mr. Moitra that there is adequate explanation under what circumstances and why the victim girl was examined twice by the medical officer. Mr. Moitra has further argued that there was actually only one First Information Report and the evidence of the P.W. 1 in

this regard that there were two F.I.Rs. was the sequel of confusion created in her mind. Mr. Moitra has also referred to a number of case laws which will be dealt with at the appropriate place and time.

4. There are, in fact, two parts of the case. The first part relates to the occurrence of rape and the second one relates to the reporting of the same to the Police Station. As regards the first part it appears from the F.I.R. itself that the victim girl had described herself as Mahasweta Majhi and her male-mate as Susanta Chowdhury. It is also in the F.I.R. that she along with her male-mate had been putting up in "Chowdhury Lodge" and at about mid night some persons knocked the door and out of them one disclosed himself as the O.C. of the Police Station for which Susanta opened the door when he was taken to the verandah and the appellants committed rape upon her one after another. In her examination-in-chief as the P.W. 1, the victim girl described the name of her male-mate as Abu Sheikh. As regards the incident of rape she stated that when they were taking preparation to retire to bed, the appellants started knocking the door of "Chowdhury Lodge" disclosing that they had come from Police Station. Abu Sheikh opened the door and the appellants charged Abu Sheikh for lifting of a Hindu girl and thereafter demanded huge money from Abu Sheikh which was out of the capacity for him to pay. Abu Sheikh was then taken out of the room. The appellants started introducing themselves to the P.W. 1 when the appellant Nupur identified him as a doctor to have gone there to check the victim girl and the appellant Sena Roy introduced him as a Constable of Police while the appellant Topi introduced him as a Police Inspector. Thereafter all the appellants left the victim girl alone in the room and within a minute the appellants Rudrababu entered the room in a inebriated condition. Rudrababu then committed rape upon the victim girl while the other appellant Nupur was keeping guard of the room from outside. The P.W. 1 further stated in her examination-in-chief:

After this Nupur Pattanaik opened the door and found that Rudrababu was lying in a totally drunken condition. The other accused persons namely Sena Roy and Topi also entered the room following Nupur Pattanaik. These three persons then called Rudrababu when they replied that as he was not fully satisfied so he wanted to have further sexual intercourse with me....Accused Topi, Sena Roy and Nupur Pattanaik then performed physical torture on me by way of kissing me on several parts of my body as well as by pressing my breasts severely. They also lied on body of myself.

In the cross-examination of the victim girl her statement in the F.I.R. was confronted by the defence and it was stated by her that it was not written in the F.I.R. that Nupur Pattanaik asked the accused Rudrababu to complete the work quickly and he was giving guard at the room from outside. Some other statements of the victim girl in the F.I.R. had been Confronted in her cross-examination but those are not actually, in respect of rape to have been committed by the appellants Rudrababu. Suggestions had been put to the victim

girl in her cross-examination that Rudrababu did not commit any sexual intercourse with her or that on the night of occurrence the victim girl did not meet the accused persons at all or that the other three accused persons did not commit any physical torture on her including the pressing of her breasts and all those suggestions were denied by the P.W. 1. It appears that the victim girl had made her statement u/s 164 of Cr. P. C. before the learned Judicial Magistrate and her statement before the Magistrate had been confronted in her cross-examination. There is absolutely nothing in any form not even in the form of suggestion as to why she had falsely implicated the appellants/convicts.

5. In her statement recorded by the Judicial Magistrate u/s 164, Cr. P. C. the victim girl described Abu Sheikh as her boy friend. She stated further that Rudrababu and Nupur were in the room while the two others were outside at the time of occurrence. She claimed that all the appellants drunk in the room and thereafter Rudrababu asked the others to go outside. It is also in her statement before the Magistrate that thereafter Rudrababu committed rape on her and soon thereafter the other three appellants entered there and committed rape on her one after another.

6. Seikh Abu Taher is the P.W. 2 who was with the victim girl in "Chowdhury lodge" on the fateful night of occurrence. He stated in his evidence that he along with Mahasweta Majhi went to the Chowdhury Lodge on the fateful night of the occurrence and after having taken their dinner they retired to the bed, but in the mid night some one started knocking the door from outside and he opened the door. He further stated that after opening the door he found Rudrababu who assaulted him and took him out of the room while Mahasweta was inside the room. He further stated that Sena and Pattanaik caught hold of him and started assaulting him. They introduced them as Barababu and Chotobabu. He also found Topi present there. It is also in his evidence that the accused appellants entered the room one by one where the victim girl was there. It appears from the cross-examination of the P.W. 2 that he was born and brought up in Contai town. The "Chowdhury Lodge", it may be mentioned, was situated in Contai town. A suggestion was put to the P.W. 2 in his cross-examination that on the night of occurrence he did not meet the accused persons at all and also that he had deposed falsely against the accused persons under the pressure of the CPI(M). There is nothing coming out from the evidence of the P.W. 2 particularly in his cross-examination as to why the CPI(M) created pressure, as claimed by the defence, upon the P.W. 2 to depose falsely against the appellants. The P.W. 2 also appears to have given his statement before the learned Judicial Magistrate u/s 164 of Cr. P. C. It appears from the statement of the P.W. 2 recorded u/s 164 of Cr. P. C. that he had some affairs with Mahasweta Majhi. He stood to support his statement recorded u/s 164 of Cr. P. C. in his evidence recorded by the learned trial Judge and it was stated by him that the accused persons went to "Chowdhury Lodge" in the mid night of the occurrence and after taking him out of the room Rudrababu and Nupur had entered the room.

7. P.W. 11 is the Medical Officer who had examined the victim girl immediately after the occurrence and on examination of the victim girl he found the followings:-

1. Breast and areola - healthy, elevated nipples, bruise mark (nail) on lower portion of the left breast with tenderness of both breasts.
2. Pubis and pubic hairs - healthy, no foreign body, no disease.
3. Valva and vagina - healthy, whitish discharge present, hymen teared and congested, labia minora congested, vagina permits one finger painfully, no foreign body.
4. Cervix and uterus - healthy, no disease.

He opined that the victim girl was not habituated with sexual intercourse and further opined "features of forcible sexual intercourse of recent origin are present in her private parts." In his cross-examination the P.W. 11 also admitted that a short factual history of the incident was not mentioned in his records. The P.W. 11 also admitted that he did not mention the age of the bruise. It is also in the cross-examination of the P.W. 11 that he did not notice any spermatozoa on the body of the victim girl either in her inner part or on the outside. It may be mentioned here that immediately after the occurrence the victim girl washed her attire and although it is not specifically mentioned by the victim girl as to whether she had washed herself particularly her private parts, there was every probability that she did so in view of the fact that she had washed her attires. It appears that the defence failed to demolish the specific evidence of the P.W. 11 that features of forcible sexual intercourse of recent origin were there in the private parts of the prosecutrix.

8. The learned Senior Advocate for the appellant has referred to the ratio decided in the case of Rameshwar Vs. The State of Rajasthan, in which it was inter alia held that the only rule of law is that the rule of prudence must be present to the mind of the Judge or the Jury as the case may be and be understood and appreciated by him or them and there is no rule of practice that there must, in every case, be corroboration before a conviction can be allowed to stand. The learned Senior Advocate has also referred to the ratio decided in the case of Balakrushna Swain Vs. State of Orissa, in which it was held that in case there is unjustified and unexplained long delay on the part of Investigating Officer in recording statement of material of eye-witness during investigation of a murder case, that will render the evidence of such witness unreliable. Mr. B. Roy, the learned Senior Advocate for the appellant has also referred to the ratio decided in the case of Ganesh Bhavan Patel and Another Vs. State of Maharashtra, in which it was inter alia decided that delay of a few hours, simpliciter, in recording statements of the eye-witnesses may not, by itself, amount to a serious infirmity in the prosecution case. But it may assume such a character if there are concomitant circumstances to suggest that the investigator was deliberately marking time with a view to decide about the shape to be given to the case and

the eye-witness to be introduced. Mr. Roy has also referred to the ratio decided in the case of State of T.N. Vs. Suresh and Another, in which the ratio decided in the case of Rameshwar Kalyan Singh supra was relied upon.

9. The learned Additional Public Prosecutor has referred to the ratio decided in the case of Bharwada Bhoginbhai Hirjibhai Vs. State of Gujarat, in which the ratio decided in the case of Rameshwar Kalyan Singh (supra) as referred to by the learned Senior Advocate for the appellant, has been relied upon. It has been, inter alia, held in that case that corroboration is not the sine qua non for a conviction in a rape case. It is observed further that in the Indian setting, refusal to act on the testimony of a victim of sexual assault in the absence of corroboration as a rule, is adding insult to injury. Their Lordships questioned why should the evidence of the girl or the woman who complains of rape or sexual molestation be viewed with the aid of spectacles fitted with lenses tinged with doubt, disbelief or suspicion? In finding the answer their Lordships observed: "To do so is to justify the charge of male chauvinism in a male dominated society." It was further observed by their Lordships in that case that a girl or a woman in the tradition bound non-permissive society of India would be extremely reluctant even to admit that any incident which is likely to reflect on her chastity had ever occurred. She would be conscious of the danger of being ostracized by the society or being looked down by the society including by her own family members, relatives, friends and neighbours. She would face the risk of losing the love and respect of her own husband and near relatives and of her matrimonial home and happiness being shattered. If she is unmarried, she would apprehend that it would be difficult to secure an alliance with a suitable match from a respectable or an acceptable family. In view of these and similar factors the victims and their relatives are not too keen to bring the culprit to book. And when in the face of these factors the crime is brought to light there is a built in assurance that the charge is genuine rather than fabricated. It was further observed in that case that corroboration may be insisted upon when a woman having attained majority is found in a compromising position and there is a likelihood of her having levelled such an accusation on account of the instinct of self-preservation. Or when the "probabilities factor" is found to be out of tune. The learned Additional Public Prosecutor has also referred to the ratio decided in the case of State of Punjab Vs. Gurmit Singh and Others, in which it was observed by the Supreme Court that the testimony of the victim of sexual assault is vital and unless there are compelling reasons which necessitate looking for corroboration of her statement, the Courts should find no difficulty in acting on the testimony of a victim of sexual assault alone to convict an accused where her testimony inspires confidence and is bound to be reliable. Seeking corroboration of her statement before relying upon the same, as a rule, in such cases amounts to adding insult to injury. Why should the evidence of a girl or a woman who complains of rape or sexual molestation, be viewed with doubt, disbelief or suspicion? The Court while appreciating the evidence of a prosecutrix may look for some assurance of her statement to satisfy its judicial conscience, since she

is a witness who is interested in the outcome of the charge levelled by her, but there is no requirement of law to insist upon corroboration of her statement to base conviction of an accused. The evidence of a victim of sexual assault stands on a par with the evidence of an injured witness and to an extent is even more reliable. Just as a witness who has sustained some injury in the occurrence, which is not found to be self-inflicted, is considered to be a good witness in the sense that he is least likely to shield the real culprit, the evidence of a victim of a sexual offence is entitled to great weight, absence of corroboration notwithstanding. Corroborative evidence is not an imperative component of judicial credence in every case of rape. Corroboration as a condition for judicial reliance on the testimony of the prosecutrix is not a requirement of law but a guidance of prudence under given circumstances. It must not be overlooked that a woman or a girl subjected to sexual assault is not an accomplice to the crime but is a victim of another persons's lust and it is improper and undesirable to test her evidence with a certain amount of suspicion, treating her as if she were an accomplice. Inferences have to be drawn from a given set of facts and circumstances with realistic diversity and not dead uniformity lest that type of rigidity in the shape of rule of law is introduced through a new form of testimonial tyranny making justice a casualty. Courts cannot cling to a fossil formula and insist upon corroboration even if, taken as a whole, the case spoken of by the victim of sex crime strikes the judicial mind as probable.

10. The learned Additional Public Prosecutor has again referred to the ratio decided in the case of State of Andhra Pradesh Vs. Gangula Satya Murthy, in which it was, inter alia, held that the Courts are expected to show great responsibility while trying an accused on charges of rape. They must deal with such cases with utmost sensitivity. The Courts should examine the broader probabilities of a case and not get swayed by minor contradictions or insignificant discrepancies in the statement of the witnesses, which are not of a fatal nature to throw out allegations of rape. This is all the more important because of late crime against women in general and rape in particular is on the increase. It is an irony that while we are celebrating woman's rights in all spheres, we show little or no concern for her honour. It is a sad reflection and it must be emphasised that the Courts must deal with rape cases in particular with utmost sensitivity and appreciate the evidence in the totality of the background of the entire case and not in isolation.

11. The learned Additional Public Prosecutor has also referred to the ratio decided in the case of Prithi Chand Vs. State of Himachal Pradesh, in which it was suggested in the course of cross-examination that one Ratna, the son of P.W. 8, Phulan Devi was intimate with the prosecutrix and he had raped the girl. In his statement u/s 313 of the Cr. P. C., he put forth the case that when he returned to his village in the evening, he saw some ladies at the girl's house and heard the girl saying that she was subjected to rape by Ratna. In these circumstances it was held by the Supreme Court that it was not possible to believe that the prosecutrix and her parents would allow the real culprit to escape and falsely

involve an innocent person for the commission of the crime. It was also observed in that case that except for the suggestion made in the cross-examination of P.W. 8, Phulan Devi, Ratna's mother and the statement u/s 313, Cr. P. C. there was no other material on record which could give credence to the suggestion.

12. The learned Additional Public Prosecutor has also referred to the ratio decided in the case of Pramod Mahto and Others Vs. State of Bihar, wherein it was held that once it is established that the appellants had acted in concert and entered the house of the victims and thereafter raped, then all of them would be guilty u/s 376, I.P.C. in terms of Explanation I to Clause (g) of Sub-section (2) of Section 376, I.P.C. irrespective of whether she had been raped by one or more of them.

13. Mr. S. Moitra, the learned Additional P. P. has also referred to the ratio decided in the case of P.V.G. Raju Guru Vs. State of Andhra Pradesh, in which it was, inter alia, held that when a crime like rape is committed by a person in authority, e.g. a police officer, the Court's approach should not be the same as in any other case involving a private citizen. By our criminal laws wide powers are conferred on police officers investigating cognizable offences. The infrastructure of our criminal investigation system recognises and indeed protects the right of a woman to decent and dignified treatment at the hands of the investigating agency. It was also observed that a person in authority, such police officer, carries with the the awe of office which is bound to condition the behaviour of his victim. The Court must not be oblivious of the emotional turmoil and the psychological in jury that a prosecutrix suffers on being molested or raped. She suffers a tremendous sense of shame and the fear of being shunned by society and her near relatives, including her husband. Instead of treating her with compassion and understanding as one who is an injured victim of a crime, she is, more often than not, treated as a sinner and shunned. It must, therefore, be realised that a woman who is subjected to sex-violence would always be slow and hesitate about disclosing her plight. The Court must, therefore, evaluate her evidence in the above background.

14. Thus after having considered the case laws referred by both the parties before us it appears that the appreciation of evidence in a case like rape stands slightly on different footing from the other general cases. The woman in the Indian society is not accustomed to the sexually free society like there western counter-parts and they are always under tremendous taboo and inhibition as regards sexual affairs and when ultimately they after having overcome such constraints have to come out of the cocoon with their submissions before the Court or the authorities, Courts are required to be guided by the rule of prudence.

15. In the instant case an unmarried Hindu girl with her Muslim boy friend went out and stayed in hotel where they had intentionally suppressed their real names in the records of the hotel for the obvious reason and having smacked this relation of the prosecutrix and her male-mate, the lustful appellants including the son of the hotelier immediately extended their paw under the cover of the

darkness of dead night. They started sprawling around in the night and ultimately with the help of the authority in power, a police officer got their nocturnal prey and satisfied their lust. This is the prosecution story in short.

16. It has been emphatically argued on behalf of the appellants that the girl is a woman of questionable character and she had allowed herself to be enjoyed by his male-mate, but this does not give any liberty to the appellants to commit such an offence like rape. It is also pointed out on behalf of the appellants that the prosecutrix had taken different names at different places. But to our mind this is what is very much conducive to the state of affairs of the Indian society, for, unlike that of the permissive society, the Indian woman are not free from their sexual inhibition and this is probably what prompted her to suppress her real name.

17. As regards the question of delay in examination of the witnesses it is found from the record that immediately after the occurrence there was a tremendous public upsurge and the police station was gheraoed by a strong mob of about 5,000 in number. We are also not oblivious of the fact that in the instant case a police officer was the prime accused and the investigation was made by his colleague of the same Police Station. We are of the view that all the surrounding circumstances may be the reason for some delay in examination of the witnesses. The main point which had been seriously canvassed by the learned Senior Advocate for the appellant before us is as regards two medical reports on the examination of the victim girl. On our scrutiny it appears that the medical officer has explained the reason for making such reports twice and there appears absolutely nothing in the record that the medical report which has been placed and relied upon by the prosecution was in any way different from the earlier one. In fact, it has been clarified by the medical officer in his evidence that such medical reports were prepared within the difference of some minutes as because the case number had been written wrongly in the former medical report. The defence does not appear to have brought out any case otherwise in this connection and the surrounding circumstances also stand to buttress the medical report proved in the instant case.

18. The learned Senior Advocate for the appellants also argued before us that this is a concocted case instituted at the instance of the local people and the complaint lodged by the prosecutrix was made after the consultation with the club people who were all antagonistic against the appellant Debidas Rudra, Police Officer. Here we shall take ourselves once again back to the facts and so also the second part of the case. It appears that after the occurrence the victim girl could anyhow manage to escape from the hotel leaving her belonging there and started running through the roads. On the way she met some persons who had come to her rescue. It is in the evidence of the victim girl as P.W. 1 as to how she ultimately reached to the club people and then to the S.D.P.O., Contai. The evidence of the P.W. 1 finds support from the evidence of her male-mate Sk. Abu Taher who is the P.W. 2 in the instant case. To a Court's question, the P.W. 1

replied, "In order to avoid a scandalous situation I disclosed my name as Bebi Bera by suppressing my original name." The P.W. 1 appears to be under the impression that she had lodged two complaints of the incident to the police but on close scrutiny of her evidence it appears that it was probably due to the confusion created in her mind, for, she first met the SDPO, Contai who after knowing the incident from her took her immediately to the Police Station for lodging the formal complaint. In fact, there was no occasion for the P.W. 1 to lodge two different complaints. The learned Senior Advocate for the appellants has pointed out that the second medical examination of the victim girl was not authorised by the Court and as such the same could not be taken into consideration by the trial Court. It appears from the record that the medical examination of the victim girl was authorised by the Court and the question of her examination twice by the medical officer was occasioned only due to the mentioning of wrong name by the victim girl and for mentioning the wrong case number. There appears overwhelming evidence as to what prompted the victim girl to suppress her real name at different stages and keeping surrounding circumstances in view we do not find any illegality in the manner the victim girl was examined by the medical officer particularly when the medical officer was consistent in his cross-examination being unshaken to depose that features of forcible sexual intercourse of recent origin were there in the private parts of the victim girl. The learned Senior Advocate for the appellants has also raised questions as to why the bed-sheet of the hotel room does not contain any mark of blood or semens. It appears from the evidence of the victim girl that after the occurrence she washed her wearing apparels and it may be a case of ordinary experience that whether the bed-sheet contains such marks is always dependent on how much of blood and semens have been soaked into the wearing apparels of the victim girl.

19. The argument of Mr. B. Roy, learned Senior Advocate for the appellants that according to the P.W. 1 rape was actually committed only by the appellant Debidas Rudra and not the others is now taken into consideration. We have already quoted the evidence of the victim girl as P.W. 1 at page 5 and 6 ante in our judgment in this regard and it appears therefrom that she had complained of the physical torture and sexual molestation by the other three appellants. It is further in her evidence that all the four appellants had made such Joint lustrous venture and as such all the four appellants went there and the most ineluctable conclusion that can be drawn from her evidence is that the other three appellants allowed the appellant Debidas Rudra, may be because he was a police officer, first to commit rape upon the victim girl and the other three appellants were perhaps to do the same in tandem. Thus, there appears sufficient evidence to establish that all the appellants had acted in concert and entered the room of the hotel where the victim girl along with her male-mate had been putting up in the fateful night and thereafter she was raped by one of the appellants and physically and sexually molested by the other appellants. The defence could not make out any case as to why the witnesses particularly the prime witnesses like

the P.Ws. 1 and 2 being the people of most ordinary strata of the society and the club boys who are generally remained obliged to the police, should go against the appellants in their evidence. And thus all the appellants have come within the dragnet of Explanation I to Clause (g) of Sub-section (2) of Section 376, I.P.C. irrespective of whether the other three appellants had raped the victim girl. The Explanation in question reads as under :

Where a women is raped by one or more in a group of persons acting in furtherance of their common intention, each of the person shall be deemed to have committed gang rape within the meaning of this sub-section.

(emphasis added)

The Hon''ble Supreme Court in deciding the case of Promod Mahto v. State of Bihar supra had observed that the above Explanation had been introduced by the legislature with a view to effectively deal with the growing menace of gang rape and as such it is not necessary that the prosecution should adduce clinching proof of a complected act of rape by each one of the accused on the victim or on each one of the victims where there are more than one in order to find the accused guilty of gang rape and convict them u/s 376, I.P.C.

20. Now to sum up our discussions we find nothing illegality or irregularity in the finding of the learned trial Court as regards the conviction of the appellants and also as regards the sentence inflicted upon them. The learned trial Judge is fully justified in inflicting separate kinds of sentences to the appellants, for, the appellant, Debidas Rudra is after all a police officer and all the appelants keeping him in front took the advantage of the situation and gave out while knocking the door of the victim girl that they had come from the Police Station.

21. In view of what has been discussed in the foregoing lines the appeal is dismissed on contest. The judgment of conviction and sentence passed by the learned trial Judge are hereby affirmed, A copy of this judgment along with the L.C.R. be sent down to the learned lower Court forthwith.

The appellants who are on bail are directed to surrender before the Court below to serve out the sentence.