

(2014) 10 DEL CK 0084

In the Delhi High Court

Case No : CRL.A. 624 and 692/2009 and Crl. M.B. No. 2548/2013

Jitender Kumar

APPELLANT

Vs

State of Delhi
 Sachin Vs State Govt. of N.C.T. of Delhi

RESPONDENT

Date of Decision : 30-10-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 164, 222, 313, 428

Evidence Act, 1872 — Section 113A

Penal Code, 1860 (IPC) — Section 302, 304B, 306, 325, 335

Citation : (2014) 10 DEL CK 0084

Hon'ble Judges : Pratibha Rani, J

Bench : Single Bench

Advocate : Ashish Kumar, Sanjeev Sharma and Naveen Gupta, Advocate for the Appellant; Rajdipa Behura, APP and Sonal Raj, PS, Advocate for the Respondent

Judgement

Pratibha Rani, J.—By filing these two Criminal Appeals bearing Nos. 624/2009 and 629/2009, convicts/Appellants Jitender Kumar @ Jai and Sachin are impugning the judgment and order on sentence dated 28.07.2009 and 04.08.2009 respectively passed by learned Addl. Session Judge in Session Case No. 195/2008 in FIR No. 272/2007 under Sections 376/ 506/ 34 IPC, PS New Usmanpur.

2. The Learned Additional Sessions Judge vide impugned judgment and order on sentence has convicted both the Appellants for committing the offence punishable under Section 376(2)(g)/ 506 IPC and sentenced them to undergo RI for a period of 10 years with fine of Rs. 5,000/- each and in default to undergo SI for six months for the offence punishable under Section 376(2)(g) IPC and further to undergo RI for a period of two years five years with fine of Rs. 2,000/- each and in default to undergo SI for a period of two months for the offence under Section 506 IPC. Both the sentences were ordered to be run concurrently with benefit of provisions of Section 428 Cr.P.C.

3. The case of the prosecution in nutshell is that on 10.07.2007 at 11.55 am,

vide DD No. 10-A, information was received at PS New Usmanpur from PCR that "galat kaam" has been done with her 14 years old daughter by the landlord and tenant and that informant was a widow. The DD was assigned to SI Ishwar Singh who was informed through wireless for necessary action in the matter.

4. When SI Ishwar Singh reached the spot alongwith Ct.Satish, he met Km. "A" (name of the Prosecutrix withheld to conceal her identity) who made her statement Ex.PW2/A before him. After making endorsement on the statement Ex.PW2/A, he sent rukka at 1.15 pm for registration of the case through Ct.Satish with a request to send the copy of the FIR to him at the spot as he was busy with the investigation at the spot. He also requested that a woman ASI be also sent to the spot.

5. The Statement Ex.PW2/A made by Km. "A" aged 14 years is to the effect that she alongwith her mother and brother reside as tenant. On the night intervening 8/9.07.2007, she alongwith her family was sleeping on the roof of the rented premises. At about 2.00 am, she came down to the first floor to use the bathroom. When she came out of the bathroom, two boys came from the verandah of the room built in front of the roof. One boy namely Jitender, who is tenant in the same building, caught her and kept his hand on her mouth while the other boy namely Sachin, who is son of the landlord, caught her right arm. Both the boys dragged her to a room situated in the front and made her to lie down on a cot (charpai). Thereafter Jai @ Jitender Kumar caught her hands and Sachin opened the string (nada) of her salwaar and did "galat kaam" with her. When she tried to raise alarm, Sachin kept his hand on her mouth and thereafter caught her both hands. Then Jitender @ Jai also forcibly did "galat kaam" with her. Thereafter both the boys left the room after threatening her that they would not spare her and her family if the incident is disclosed by her to anyone. Due to fear, she did not inform about the incident to her family. On 10.07.2007 when her condition deteriorated, her mother asked her about the cause and she narrated the entire incident to her. Her mother informed the PCR. When Police arrived, she made the above statement before the police.

6. After registration of the FIR, the Prosecutrix was got medically examined at GTB Hospital, Shahdara. Both the Appellants were arrested on the same day and sent for medical examination. The exhibits were sent to FSL and after completion of investigation, chargesheet was filed in the Court.

7. After committal of the case to the Court of Session, both the Appellants were charged for the offence punishable under Sections 376(2)(g)/ 506 IPC to which they pleaded not guilty and claimed trial.

8. Prosecution examined eight witnesses to prove the guilt of the Appellants. Both the Appellants were also examined under Section 313 Cr.P.C. wherein they denied the case of prosecution and claimed themselves to be innocent. They claimed that they have been falsely implicated in this case by the mother of the Prosecutrix for the reason that anti-social elements used to visit the house of the

mother of the Prosecutrix. The residents including the family of the Appellants objected to that, resulting in their false implication.

9. Appellants have also produced two defence witnesses i.e. DW-1 Sh.Raj Kumar Chauhan, X-Ray Record Clerk, GTB Hospital and DW-2 HC Naresh Kumar. DW-1 Sh.Raj Kumar Chauhan has been examined to prove the bony age of the Prosecutrix and as per the x-ray report Ex.DW1/A, the age of the Prosecutrix is given as more than 16 years but less than 18 years. DW-2 HC Naresh Kumar was examined to prove the complaints Ex.DW2/A and B made against Smt. Balvinder Kaur by the residents of the locality about her anti-social, illegal and immoral acts and threat to implicate those persons who raise voice against her.

10. After considering the testimony of the Prosecutrix as well as medical and scientific evidence, the learned Trial Court was of the view that statement of the Prosecutrix is consistent and coherent and that there is no inconsistency in her statement. Further nothing had come out in the cross examination which could shake her credibility. Thus, both the Appellants were convicted for committing rape on the Prosecutrix and also criminally intimidating her and sentenced them in the manner referred to above.

11. I have heard learned counsel for the Appellants as well as learned APP for the State.

12. Learned counsel for both the Appellants submitted that this is a case where the two Appellants are languishing in Jail for more than seven years though the prosecution miserably failed to prove that any rape was committed on the Prosecutrix. It has been contended that although there is a delay in lodging the FIR but even if this aspect is ignored, it has come in evidence that the clothes which the Prosecutrix was wearing on the date of incident, had been washed and there is no evidence that the clothes of the Prosecutrix which were sent to FSL were the same clothes which she was wearing at the time of incident. Further the scientific and medical evidence does not prove the offence of rape being committed on the Prosecutrix by any of the Appellants. There is no evidence of any internal or external injury on the body of the Prosecutrix. Further there is no opinion by the Gynaecologist that the hymen tear was fresh. While referring to the statement of PW-5 Dr.Madhu, it has been contended that even the doctor stated that she was not in a position to state whether "A" was raped or not. Thus, in the given circumstances, at the most, both the Appellants can be convicted for committing the offence under Sections 366/ 354 IPC for taking the Prosecutrix to a room and opening the string of her salwaar. Learned counsel for both the Appellants submitted that on the basis of evidence adduced by the prosecution, the Appellants could not have been convicted under Section 376(2) (g) IPC as no rape was ever committed on the Prosecutrix by any of the Appellants. At the most, the testimony of the Prosecutrix can be believed to the extent that when she came down to use the bathroom on the first floor, she was taken to a room with intention to commit sexual intercourse. However, there is absolutely no evidence to establish that after taking her to the room, both the

Appellants or any of the Appellants committed rape on the Prosecutrix. Thus, the Court may examine the evidence in the light of their submission and despite the fact that no charge under Section 366/ 354 IPC was framed in this case, the Appellants may be held guilty for committing the offence punishable under Section 366/ 354 IPC and sentenced accordingly.

13. On behalf of State, it has been submitted that merely because the Prosecutrix has used the words "galat kaam", does not mean that the Appellants need to be acquitted of the charge of gang rape. Learned APP for the State submitted that MLC of the Prosecutrix shows that hymen was torn and during her examination before the Court, the Prosecutrix explained the acts committed by the Appellant by stating that indecent act was done with her and they had sex with her forcibly. Learned APP for the State further submitted that the failure of the Prosecutrix to explain the act of rape in detail, cannot be a ground to acquit the Appellants of the charge under Section 376(2)(g) IPC.

14. I have considered the rival contentions and also carefully gone through the Trial Court Record.

15. It is noteworthy that in respect of the incident that had taken place at about 2.00 am on the night intervening 8/9.07.2007, the statement of Prosecutrix was recorded by learned Trial Court on 03.04.2008 i.e. within nine months of the incident. The Prosecutrix was never produced before learned MM for getting her statement recorded under Section 164 Cr.P.C. and no reason for that is mentioned in the chargesheet. It is admitted by PW-2 "A" - the Prosecutrix that on that night, there was celebration at the house of Appellant Sachin on account of birthday of sister of Sachin. The birthday function was also attended by her and her family and the function continued till around 11.00 pm. She has also stated that when she was taken inside the room by the two Appellants, she did not notice any goods lying in that room or whether there was any almirah or big box. She has stated that grandparents of Sachin used to reside in that room but on that day, the grandparents of Sachin were sleeping in the Verandah. She has also stated that the cot was made of strings and there was no bed spread on that cot.

16. The MLC of the Prosecutrix shows that LMP was on 8th July, 2007; the patient changed her clothes; mother has washed all her undergarments. There was no mark of injury and bleeding was positive due to menstruation. The incident is stated to have been committed on the night intervening 8/9.07.2007 at about 2.00 am. The Prosecutrix has stated that there was no bedding spread on the cot when she was raped. In that circumstance, in view of the fact that she was menstruating, in case of being raped by two grown up persons, blood stains would have been not only on the cot but also on the floor as well on the clothing of the Prosecutrix and even on the undergarments of the Appellants. The FSL report does not establish any blood/blood stains of Prosecutrix on the undergarments of the Appellants. Otherwise also, in view of the fact that clothes of the Prosecutrix have been washed by the Prosecutrix or her mother (we are

not entering into the controversy as to who washed the clothes in view of different versions on this aspect), there was hardly any reason to send the clothes to FSL which were not worn at the time of incident or already washed.

17. W/ASI Anuradha Tyagi, though cited as a witness, has not been examined despite the fact that she was the only woman police officer in the rape case and a signatory to memos. Even the spot has not been got photographed by the Investigating Officer. Further no evidence was collected from the cot to establish that any rape was committed on that cot. Presence of blood on the cot strings during the commission of rape would have been a vital piece of evidence to establish not only the place of occurrence but also the nature of offence committed. PW-2 "A" - the Prosecutrix has given her age to be 14 years though as per her ossification test report, her age is above 16 years but less than 18 years.

18. Even if the contention of the State that string of salwaar of the Prosecutrix was opened by the Appellant Sachin is accepted that itself is not sufficient to establish the offence of gang rape for the reason that Prosecutrix has nowhere stated either in FIR or during deposition before the Court that both the Appellants also undressed themselves and thereafter there was any penetration by any of them. Further the Investigating Officer had visited the spot on 10.07.2007 and date/time of incident being 09.07.2007 at 2.00 am, the blood stains from the cot could have only dried up but not vanished. The Investigating Officer, neither in the chargesheet nor in his deposition before the Court, has mentioned about the presence of blood at the cot/place of occurrence.

19. In the above circumstances, I am of the considered view that no offence of gang rape was committed on the Prosecutrix. This fact is further established from the MLC which shows that there was no external injury on the body or private part of the Prosecutrix. There was also no fresh tear of hymen and even on the date of her examination by the Doctor i.e. on 10.07.2007 bleeding was because she was having periods.

20. On close scrutiny of the testimony of the Prosecutrix, it is difficult to agree with the view taken by learned Trial Court that gang rape was committed on the Prosecutrix on that day. The statement of the Prosecutrix, at the most, proves that when she came downstairs to go to washroom, she was forcibly taken by the two Appellants to a room in front of the bathroom and some "galat kaam" or "indecent act" was done by opening the string of her salwaar. Nothing further is proved.

21. The question that arises for consideration now is whether the Appellants can be convicted for some lesser offence if the same is proved from the testimony of the Prosecutrix despite the fact that they have not been charged for that lesser offence. Once this Court has formed an opinion that no offence of gang rape is proved against the Appellants, on the basis of evidence available on record, it is to be seen by the Court as to for what offence both the Appellants can be

convicted.

22. The legal position is well settled that if an accused is charged for a major offence but is not found guilty thereunder and if the facts established the lesser offence, he can be convicted for the same. Reliance in this regard can be placed on Tarkeshwar Sahu Vs. State of Bihar (Now Jharkhand), .

23. In Tarkeshwar Sahu's case, the accused was convicted for committing the offence punishable under Sections 376/ 511 IPC. After being convicted by the Court of Session, his appeal was dismissed by the High Court. Aggrieved by the dismissal of the appeal by the High Court, he preferred appeal before the Supreme Court. The Supreme Court noticed that there was evidence to the effect that after forcibly taking the Prosecutrix to Gumti to outrage her modesty, nothing further could be done as Prosecutrix raised alarm. She was rescued by her father and the villagers. In para 9 of the report, the following question was formulated, which in the given circumstances, was required to be considered :

"Now, the moot question which squarely falls for our consideration pertains to the correct and appropriate sections of the Indian Penal Code under which the Appellant is required to be convicted according to the offence he had committed.
"

24. After discussing Section 375 IPC and earlier decisions in paras 11 to 17 of the report, the Supreme Court arrived at the conclusion that the conviction of the Appellant under Section 376/ 511 IPC was wholly unsustainable. In para 19 of the report, the Supreme Court has considered as to whether in the absence of any other charge, could the accused be acquitted or he could be convicted for committing any other offence. Here it would be apposite to quote paras 18 to 27 of the report which are as under :

"18. In the backdrop of settled legal position, when we examine the instant case, the conclusion becomes irresistible that the conviction of the appellant under Sections 376/ 511 IPC is wholly unsustainable. What to talk about the penetration, there has not been any attempt of penetration to the slightest degree. The appellant had neither undressed himself nor even asked the prosecutrix to undress so there was no question of penetration. In the absence of any attempt to penetrate, the conviction under Section 376/ 511 IPC is wholly illegal and unsustainable.

19. In the instant case, the accused has been charged with Sections 376/ 511 IPC only. In absence of charge under any other section, the question now arises - whether the accused should be acquitted; or whether he should be convicted for committing any other offence pertaining to forcibly outraging the modesty of a girl. In a situation like this, we would like to invoke Section 222 of the Code of Criminal Procedure, which provides that in a case where the accused is charged with a major offence and the said charge is not proved, the accused may be convicted of the minor offence, though he was not charged with it. Section 222 Cr.P.C. reads as under:

222. When offence proved included in offence charged.-(1) When a person is charged with an offence consisting of several particulars, a combination of some only of which constitutes a complete minor offence, and such combination is proved, but the remaining particulars are not proved, he may be convicted of the minor offence, though he was not charged with it.

(2) When a person is charged with an offence and facts are proved which reduce it to a minor offence, he may be convicted of the minor offence, although he is not charged with it.

(3) When a person is charged with an offence, he may be convicted of an attempt to commit such offence although the attempt is not separately charged.

(4) Nothing in this section shall be deemed to authorise a conviction of any minor offence where the conditions requisite for the initiation of proceedings in respect of that minor offence have not been satisfied.

In this section, two illustrations have been given which would amply describe that when an accused is charged with major offence and the ingredients of the major offence are missing and ingredients of minor offence are made out then he may be convicted for the minor offence even though he was not charged with it. Both the illustrations given in the said section read as under:

(a) A is charged under Section 407 of the Indian Penal Code (45 of 1860) with criminal breach of trust in respect of property entrusted to him as a carrier. It appears that he did commit criminal breach of trust under Section 406 of that Code in respect of the property, but that it was not entrusted to him as a carrier. He may be convicted of criminal breach of trust under the said Section 406.

(b) A is charged under Section 325 of the Indian Penal Code (45 of 1860), with causing grievous hurt. He proves that he acted on grave and sudden provocation. He may be convicted under Section 335 of that Code.

20. In the case *Lakhjit Singh and Anr. v. State of Punjab* this Court had an occasion to examine the similar question of law. In this case, the accused was charged and tried under Section 302 of the Indian Penal Code but ingredients of Section 302 were missing but ingredients of Section 306 were present, therefore, the Court deemed it proper to convert the conviction of the appellant from Section 302 to Section 306 IPC. In this case, it was urged that the accused cannot be tried under Section 306 IPC because the accused were not put to notice to meet a charge under Section 306 IPC and, therefore, they are prejudiced by not framing a charge under Section 306 IPC; therefore, presumption under Section 113A of Indian Evidence Act cannot be drawn and consequently a conviction under Section 306 IPC cannot be awarded. According to this Court, in the facts and circumstances, Section 306 was attracted and the appellants' conviction under Section 302 IPC was set aside and instead they were convicted under Section 306 IPC.

21. A three-Judge Bench of this Court in the case of *Shamnasheb M. Multtani Vs.*

State of Karnataka, had an occasion to deal with Section 222 of the Code of Criminal Procedure. The Court came to the conclusion that when an accused is charged with a major offence and if the ingredients of major offence are not proved, the accused can be convicted for minor offence, if ingredients of minor offence are available. The relevant discussion is in paragraphs 16, 17 and 18 of the judgment, which read as under:

16. What is meant by "a minor offence" for the purpose of Section 222 of the Code? Although the said expression is not defined in the Code it can be discerned from the context that the test of minor offence is not merely that the prescribed punishment is less than the major offence. The two illustrations provided in the section would bring the above point home well. Only if the two offences are cognate offences, wherein the main ingredients are common, the one punishable among them with a lesser sentence can be regarded as a minor offence vis-a-vis the other offence.

17. The composition of the offence under Section 304B IPC is vastly different from the formation of the offence of murder under Section 302 IPC and hence the former cannot be regarded as minor offence vis-a-vis the latter. However, the position would be different when the charge also contains the offence under Section 498A IPC (husband or relative of husband of a woman subjecting her to cruelty). As the word "cruelty" is explained as including, inter alia,

harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

18. So when a person is charged with an offence under Section 302 and 498A IPC on the allegation that he caused the death of a bride after subjecting her to harassment with a demand for dowry, within a period of 7 years of marriage, a situation may arise, as in this case, that the offence of murder is not established as against the accused. Nonetheless, all other ingredients necessary for the offence under Section 304B IPC would stand established. Can the accused be convicted in such a case for the offence under Section 304B IPC without the said offence forming part of the charge?

22. On careful analysis of the prosecution evidence and documents on record, the appellant cannot be held guilty for committing an offence punishable under Sections 376/ 511 IPC. According to the version of the prosecution, the appellant had forcibly taken the prosecutrix to his Gumti for committing illicit intercourse with her. But before the appellant could ravish the prosecutrix, she raised an alarm and immediately thereafter, her father PW1 Ram Charan Baitha and other co-villagers residing in the vicinity assembled at the spot and immediately thereafter, the appellant and the prosecutrix came out of the Gumti. In this view of the matter, no offence under Sections 376/ 511 IPC is made out.

23. In this view of the matter, it has become imperative to examine the legal

position whether the offence of the appellant falls within the four corners of other provisions incorporated in the Indian Penal Code relating to outraging the modesty of a woman/girl under Sections 366 and 354.

Section 366 IPC is set out as under:

366. Kidnapping, abducting or inducing woman to compel her marriage, etc. - Whoever kidnaps or abducts any woman with intent that she may be compelled, or knowing it to be likely that she will be compelled, to marry any person against her will, or in order that she may be forced or seduced to illicit intercourse, or knowing it to be likely that she will be forced or seduced to illicit intercourse, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and whoever, by means of criminal intimidation as defined in this Code or of abuse of authority or any other method of compulsion, induces any woman to go from any place with intent that she may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall be punishable as aforesaid.

24. The essential ingredient of the offence punishable under Section 366 IPC is that when a person has forcibly taken a minor girl with the intention as specified in that section, then the offence is clearly made out. In the instant case, the appellant at about 1.30 a.m. has forcibly taken the prosecutor/victim to his Gumti with the intention of committing illicit intercourse then the offence committed by the appellant would fall within the four fore corners of Section 366 IPC. In our considered view, the essential ingredients of the offence punishable under Section 366 IPC are clearly present in this case. We deem it appropriate to briefly reproduce the ratio of some decided cases.

In AIR 1933 98 (Rangoon) the Full Bench has observed as under:

The intention of the accused is the basis and the gravamen of an offence under Section 366. In considering whether an offence has been committed under this section, the volition, the intention and the conduct of the woman are nihil ad rem except in so far as they bear upon the intent with which the accused kidnapped or abducted her. If the accused kidnapped or abducted the woman with the necessary intent, the offence is complete whether or not the accused succeeded in effecting his purpose, and even if in the event the woman in fact consented to the marriage or the illicit intercourse taking place.

This Court in *Rajendra v. State of Maharashtra* (1997) SCC (Cri) 840 observed as under:

Where the Courts had given cogent and convincing reasons for recording their finding that the accused had kidnapped the victim girl with intent to seduce her to illicit intercourse, conviction of accused under Section 366 was not interfered with.

The High Court of Delhi in *Niranjan Singh v. State (Delhi)* (1986) 2 Cri 335 indicated that in what circumstances an offence under Section 366 IPC is made

out. In this case, the Court, while dealing with a case under Section 366 IPC, observed as under:

Where from the statement of prosecutrix, a girl of six years age it was evident that the accused took her on the pretext of getting her some biscuits to public toilets took off her salwar and also his own pant made her to lie on the floor and bent down on her when he was caught hold by a watchman in the locality, the accused would not be guilty of an attempt to rape however he would be guilty of an offence under Section 366 IPC.

In Vishnu v. State of Maharashtra (1997) CrLJ 1724 (Bom) the High Court of Bombay observed as under:

The accused were alleged to have kidnapped the girl below 16 years of age from the lawful guardianship of her parents and taken her to another city. The co-accused had simply met the girl and had not instigated her to accompany the accused. Hence, her conviction was set aside. So far accused was concerned, his offence of kidnapping was proved beyond all doubts and he was convicted Under Section 363/ 366 IPC. Accused was however acquitted of the charge of rape Under Section 375 IPC as hymen of girl was intact and there were no outward sign of injuries or violence suggesting the sexual intercourse and consequently no rape could be said to have taken place.

25. In the instant case, the act of the accused proves that during the kidnapping of the prosecutrix or forcibly taking her to the Gumti, the accused had intention or knew it likely that the prosecutrix would be forced to have illicit intercourse. Hence, it is not a mere case of kidnapping for indecent assault but the purpose for which kidnapping was done by the accused has been proved. It is a different matter that the accused failed at the stage of preparation of committing the offence itself.

26. In view of the foregoing facts and circumstances of the case, we are of the opinion that the crime committed by the accused was at initial stage of preparation. The offence committed does not come within the purview of offence punishable under Sections 376/ 511 IPC. The offence committed squarely covers the ingredients of Sections 366 and 354 IPC. The appellant was charged under Sections 376/ 511 IPC but on invoking the provisions of Section 222 of the Code of Criminal Procedure the accused charged with major offence can always be convicted for the minor offence, if necessary ingredients of minor offence are present.

27. On the basis of evidence and documents on record, in our considered view, the appellant is also guilty under Section 354 IPC because all the ingredients of Section 354 IPC are present in the instant case."

25. In view of the above legal position on the subject, it is time to examine the testimony of the Prosecutrix to ascertain if the necessary ingredients of Section 366/ 354 IPC stand satisfied. PW-2 "A" - the Prosecutrix has clearly stated in her

complaint Ex.PW2/A and in her deposition before the Court that on the night intervening 8/9.07.2007 at about 2.00 am when she came downstairs to go to bathroom, she was forcibly taken to a room and made to lie on a cot by the two Appellants and that string of her salwaar was opened. She has described the act done by the two Appellants to be "galat kaam"/indecent. The Prosecutrix has nowhere stated at any stage that the two Appellants have also undressed themselves and there was any penetration. Possibility of not indulging in sexual act due to the reason that Prosecutrix was menstruating at that time, appears to be strong. The mere act of forcibly taking away the Prosecutrix to a room and opening the string of her salwaar satisfies the ingredients of Sections 366/ 354 IPC and both the Appellants are liable to be convicted for the said offences. It may be noted here that there was no charge framed against the Appellants for committing the offence punishable under Sections 366/ 354 IPC. As already held, the evidence adduced by the prosecution is not sufficient to prove the offence of gang rape being committed on the Prosecutrix on 09.07.2007 at 2.00 am. However, as per Section 222 Cr.P.C., if a person is charged with major offence and if ingredients of major offence are not proved, he can be convicted for the lesser offence. Since the offences punishable under Sections 366/ 354 IPC are minor offences, there is no legal bar in convicting both the Appellants for committing the offences punishable under Sections 366/ 354/ 34 IPC.

26. In view of the above discussion, both the appeals are partly allowed. The Appellants Jitender @ Jai and Sachin are acquitted of the offence punishable under Section 376(2)(g) IPC. Their conviction under Section 506 IPC and substantive sentence awarded to them for the said offence i.e. to undergo RI for two years is maintained, however, the sentence awarded to them in default of payment of fine of Rs.2000/- each is modified to the extent that in default of payment of fine, they shall undergo SI for 15 days.

27. Both the Appellants are also convicted for committing the offence punishable under Section 366/ 34 IPC and sentenced to undergo RI for seven years with fine of Rs.2000/- each and in default to undergo SI for 15 days.

28. Appellants are further convicted for committing the offence punishable under Section 354/ 34 IPC and sentenced to undergo RI for two years.

29. All the sentences shall run concurrently. The Appellants shall also be entitled to benefit under Section 428 Cr.P.C. The Appellants, if not wanted in any other case, be set at liberty after undergoing the above sentences.

30. Both the appeals stand disposed of in above terms. TCR be sent back alongwith the copy of this order.

31. A Copy of the order be sent to the concerned Jail Superintendent for information and necessary compliance.