

HIGH COURT OF CHHATTISGARH, BILASPUR

Order Sheet

**CRA No. 450 of 2016**

1. Parsuram, S/o Lal Sai Uraon Aged About 25 Years R/o Barpali, P.S. - Kartala, District Korba Chhattisgarh.
  2. Banwari S/o Ratiram Kanwar Aged About 45 Years R/o Barpali, P.S. - Kartala, District Korba Chhattisgarh
- Appellants**

**Versus**

State Of Chhattisgarh Through The P.S. Kartala, District Korba, Chhattisgarh

**---Respondent**

| 27/11/2018                                          | <p>Mr. Kalyan Kalamkar, counsel for the appellant/s.</p> <p>Mr. Anupam Dubey, Dy. G.A. for the State.</p> <p>Heard on I.A. No.1/2018, application for suspension of sentence and grant of bail.</p> <p>Heard.</p> <p>The appellants have been convicted under the impugned judgment of conviction and order of sentence dated 11.02.2016 passed by learned Additional Session Judge (FTC) Korba (C.G.) in Sessions Trial No.96/2013 &amp; 74/2014 respectively for the offence as follows :</p> <table><tr><th>Conviction</th><th>Sentence</th></tr><tr><td>Under Section 376(2)(b) read with Section 34 of IPC</td><td>Rigorous Imprisonment for 10 years and fine of Rs.3000/- and in default of payment of fine, six months SI to each accused.</td></tr><tr><td>Under Section 302 read with Section 34 of IPC</td><td>Imprisonment for life and fine of Rs.3000/-, in default of which, additional S.I. for six months each accused.</td></tr><tr><td>Under Section 201 read with Section 34 of IPC</td><td>Rigorous Imprisonment for three years and fine of Rs.1000/- and in default of payment of fine, 2 months SI to each accused.</td></tr></table> <p>Learned counsel for the appellants submits that the only basis for the</p> | Conviction | Sentence | Under Section 376(2)(b) read with Section 34 of IPC | Rigorous Imprisonment for 10 years and fine of Rs.3000/- and in default of payment of fine, six months SI to each accused. | Under Section 302 read with Section 34 of IPC | Imprisonment for life and fine of Rs.3000/-, in default of which, additional S.I. for six months each accused. | Under Section 201 read with Section 34 of IPC | Rigorous Imprisonment for three years and fine of Rs.1000/- and in default of payment of fine, 2 months SI to each accused. |
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| Conviction                                          | Sentence                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |            |          |                                                     |                                                                                                                            |                                               |                                                                                                                |                                               |                                                                                                                             |
| Under Section 376(2)(b) read with Section 34 of IPC | Rigorous Imprisonment for 10 years and fine of Rs.3000/- and in default of payment of fine, six months SI to each accused.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |            |          |                                                     |                                                                                                                            |                                               |                                                                                                                |                                               |                                                                                                                             |
| Under Section 302 read with Section 34 of IPC       | Imprisonment for life and fine of Rs.3000/-, in default of which, additional S.I. for six months each accused.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |            |          |                                                     |                                                                                                                            |                                               |                                                                                                                |                                               |                                                                                                                             |
| Under Section 201 read with Section 34 of IPC       | Rigorous Imprisonment for three years and fine of Rs.1000/- and in default of payment of fine, 2 months SI to each accused.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |            |          |                                                     |                                                                                                                            |                                               |                                                                                                                |                                               |                                                                                                                             |

appellants' conviction is the evidence of Sumit (PW12) to make out a case of last seen whereas, his evidence, itself, does not inspire confidence. He would submit that according to this witness, he has not stated the date and time when he saw the appellants with the deceased. His statement that he had gone to the police station after two days and that memorandum statement is recorded on 27<sup>th</sup> of July, renders the evidence of this witness completely doubtful. He would submit that except this, there is no other evidence to connect the appellants with the alleged commission of offence.

On the other hand, learned State counsel opposes the prayer and submits that Sumit (PW12) has stated that the deceased was seen along with the appellants and thereafter on 23<sup>rd</sup> of July, her dead body was found and the medical report shows presence of spermatozoa in the cloths, which is indicative of rape. He would submit that from the recovery of clothes seized from the possession, presence of spermatozoa was found.

We have heard learned counsel for the parties, it appears that the conviction of the appellants seems to be based on the evidence of Sumit (PW12) as an evidence of last seen but Sumit (PW12) does not state regarding the date and time and this appears to be the basis for conviction.

Therefore, in view of the above, we are inclined to grant bail to the appellants.

Accordingly, the bail application is allowed. It is directed that the substantive jail sentence awarded to the appellants is suspended and the appellants shall be released on bail on each of them furnishing a personal bond of Rs.25,000/- along with two local sureties of the like amount to the satisfaction of the Trial Court, for their appearance before the Registry of this Court on 15<sup>th</sup> January, 2019. Thereafter, the appellants shall appear before the concerned Trial Court on all such further dates as may be directed by the said Court, interval being not less than 6 months, till final disposal of this appeal.

**Sd/-**  
**(Manindra Mohan Shrivastava)**  
**Judge**

**Sd/-**  
**( Rajani Dubey)**  
**Judge**