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Crl.A.No. 143 OF 2001
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Item No. Court No. Section
106 01 IIA

S U P R E M E C O U R T O F I N D I A
Record of Proceedings

Criminal Appeal No. 143/2001

Shatrughan & Ors. Appellant (s)

vs.

State of Chattisgarh & Ors. Respondent(s)

(with office report)

Date:06/08/2002 This/These matter(s) was/were called on for hearing today.

CORAM:

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE K.G. BALAKRISHNAN
HON'BLE MR. JUSTICE ARIJIT PASAYAT

For the Appellant (s): Mr. B S Jain, Adv.
Mr. Ajay Veer Singh, Adv.
Mr. Goodwill Indeevar, Adv.

For the Respondent(s): Ms. Geetanjali Mohan, Adv.
Mr. Prakash Shrivastava, Adv.

UPON hearing the counsel the Court made the following
ORDER

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Heard counsel for the parties from 2.10 P.M. to 2.25 P.M.

As far as the appellants are concerned, the appeal is allowed in terms of the signed order and the conviction is set aside. They be set at liberty forthwith, unless they are required to be in custody otherwise.

(D.P. Walia)
Court Master

(S.L. Goyal)
Court Master

(Signed Order is placed on the file)

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.....L.....I.....T.....T.....T.....T.....T.....T.....T.....J.R

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 143 OF 2001@@
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Shatrughan & Ors. ..Appellant

vs.

State of Chattisgarh & Ors. ..Respondents

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The appellants have been convicted under Section 376(2)(g) of the Indian Penal Code, 1860 (in short "IPC") and sentenced to undergo rigorous imprisonment for five years and to pay fine.

Briefly stated the case of the prosecution as per the First Information Report lodged by PW-1 Bhagmati is that she had gone with her servant Bansi to the house of Booti Bai for purchasing certain tiles. When she was sitting there, two accused persons, namely, Sounpat Ram and Sukhdeo caught her and took her towards the Nallah where they committed rape on her. She ran away thereafter and sought shelter in the house of Samaroo PW-7. Samaroo's wife gave her a piece of cloth to cover herself. But, Sounpat and Sukhdeo along with the appellants herein are stated to have come to the house of Samaroo and started shouting that Bhagmati should be turned out of the house. Another accused Ramavtar brought Bhagmati out of the house and she was again taken to the Nallah where

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Ramavtar, Ram Kishnu, Ram Khilawan, Sukhiram, Sounpat and Sukhdeo allegedly committed rape on her.

Investigation was undertaken, and on completion thereof, charge-sheet was filed. The trial court, on the basis of the evidence on record, convicted all the accused, including the appellants herein, under Section 376(2)(g) IPC and sentenced them to undergo rigorous imprisonment for 10 years and pay fine of Rs.1,000/- and in default of payment of fine to undergo rigorous imprisonment for six months on the ground that they had committed gang rape. The High Court in appeal upheld the conviction of the accused who had allegedly committed rape on the prosecutrix, but in so far as the appellants herein are concerned, their sentence was reduced to five years' rigorous imprisonment in place of 10 years' rigorous imprisonment, as none of them allegedly committed rape.

In this appeal by special leave, the only contention which has been raised by the learned counsel for the appellants is that on the facts as alleged, there is nothing to show that the 19 appellants shared a common intention, and neither there was a pre-concert nor any deliberation to the commitment of the offence of gang rape.

Explanation I to Section 376(2) IPC, inter alia,@@
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provides that where a woman is raped by one or more in a group of persons acting in furtherance of their common intention,

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each of the persons shall be deemed to have committed gang rape within the meaning of this sub-section. On the facts as stated in the FIR and also from the evidence on record, the only part which is ascribed to the appellants is that when the prosecutrix was taking shelter in the house of Samaroo, they along with the accused Saunpat and Sukhdeo shouted to the effect that Bhagmati should be turned out of the house. Thereafter it is alleged that Bhagmati was taken to the Nallah and gang rape was committed by others. There is no evidence on record to indicate that there was any pre-concert or deliberation on the part of the appellants herein for committing the said offence on the prosecutrix. We are satisfied that Explanation I to Section 376(2) could not be invoked in the present case in regard to the appellants. As far as the perpetrators of the crime are concerned, their conviction by the High Court has become final. As far as the appellants are concerned, we allow this appeal and set aside the conviction. They be set at liberty forthwith, unless they are required to be in custody otherwise.

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.....CJ.

.....J.
(K.G. BALAKRISHNAN)

.....J.
(ARIJIT PASAYAT)

New Delhi;
August 6, 2002.