

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO.511 of 2015

SAJAL SURESH KUMAR JAIN

APPELLANT(S)

VERSUS

THE STATE OF GUJARAT

RESPONDENT(S)

WITH

CRIMINAL APPEAL NO.512 of 2015

CRIMINAL APPEAL NO.513 of 2015

CRIMINAL APPEAL NO.514 of 2015

CRIMINAL APPEAL NO.515 of 2015

O R D E R

1. We have heard learned counsel for the parties and perused the relevant material.
2. These appeals take exception to the judgment and order dated 27.12.2012 passed by the High Court of Gujarat affirming the decision of the trial Court convicting the accused-appellants for offences punishable under Sections 376(2)(g), 342, 328, 324, 323, 201, 212, 120B, 114 read with Section 34 Indian Penal Code and sentenced to undergo life imprisonment.
3. Besides arguing on merits, leaned senior counsel

for the accused-appellants contended that except accused-appellant (Dharmendra @ Karan @ Montu, A-12) who has undergone more than 12 years of incarceration all other accused-appellants (Sugam @ Monty Jaiswal, A-1), (Ashok @ Mandan Jaiswal, A-2), (Chandan Jaiswal, A-3) (Sajal Suresh Kumar Jain, A-4) have already undergone 13 years of actual sentence and if remission period is taken in to account, the sentence period undergone by them would be over 17 years.

4. He submits that the sentence period specified when the offence was committed on 31.12.2003/01.01.2004, punishable under Section 376(2)(g) was rigorous imprisonment for a minimum term of 10 years which could be extended upto life imprisonment with power of the Court to give less than 10 years of sentence by recording adequate and special reasons therefor.

5. He further submits that the entire case of the prosecution is founded on Exhibit 283 (complaint), which, in law, in the facts of this case cannot be considered as a dying declaration within the meaning of Section 32(1) of the Evidence Act. Similar Position would apply to Exhibit 571 (suicide note) even if the same was to be taken into account. Thus, the facts

stated in both these documents being inadmissible in law coupled with absence of any other substantive evidence against the accused-appellants, the conviction under Section 376(2)(g) IPC in particular cannot be maintained. Besides, contends learned counsel the medical records clearly depict that no spermatozoa was found on the vagina and the other evidence creates serious doubt as to whether the victim was conscious at the relevant time. For, there is evidence to suggest that she was completely in an inebriated condition.

6. He submits that even so the accused-appellants are willing to accept the conviction, as recorded by the trial Court and confirmed by the High Court for the stated offences provided the sentence period be modified to already undergone as that would be more than the minimum 10 years as specified for the stated offence at the relevant time.

7. As aforesaid, learned senior counsel for the accused-appellants has taken us through the relevant records, but in the peculiar facts of the present case, we deem it appropriate to accept the submission of the appellants to confine the present decision to the quantum of sentence.

8. Learned counsel for the State has left it to the discretion of the Court to decide on the quantum of sentence.

9. Considering the provisions as applicable at the relevant time when the incident occurred and coupled with the formidable plea regarding the inadmissibility of Exh.283 and 571 including the other circumstances emanating from the record, in particular, the subsequent conduct of the accused-appellants while in jail and even during the furlough period as reported by the jail authorities and recorded in the order dated 01.11.2018, we are inclined to accept the submission made by the learned senior counsel for the appellants to modify the sentence to the period already undergone. That would meet the ends of justice. The relevant part of the order dated 01.11.2018, reads thus:

“.....There is no dispute that all the accused have completed more than 13 years in custody, except in the case of A-12 who has completed more than 12 years. Regarding the conduct it is seen that all have been pursuing their studies in jail and on account of their good conduct in jail, they have been granted furlough also.

They are also not involved in any other criminal case.”

10. Accordingly, while confirming the conviction

of the accused-appellants, we modify the sentence period awarded by the trial Court and confirmed by the High Court to the period already undergone.

11. As the accused-appellants are on interim bail for a period of three months vide order dated 01.11.2018 passed by this Court and in view of the above, the accused-appellants are not required to surrender in connection with the stated offence unless their custody is required in any other case. Bail-bonds of the accused-appellants shall stand discharged.

12. The appeals are disposed of accordingly.

....., J.
(A.M. KHANWILKAR)

....., J.
(AJAY RASTOGI)

NEW DELHI
DECEMBER 12, 2018.

ITEM NO.101

COURT NO.12

SECTION II-B

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(s). 511/2015

SAJAL SURESH KUMAR JAIN

Appellant(s)

VERSUS

THE STATE OF GUJARAT

Respondent(s)

WITH

Cr1.A. No. 512/2015 (II-B)

Cr1.A. No. 515/2015 (II-B)

Cr1.A. No. 513/2015 (II-B)

Cr1.A. No. 514/2015 (II-B)

Date : 12-12-2018 These appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE A.M. KHANWILKAR

HON'BLE MR. JUSTICE AJAY RASTOGI

For Appellant(s)

Mr. U.R. Lalit, Sr. Adv.
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Mr. Amit Anand Tiwari, AOR
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Mr. Kunal Verma, Adv.
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Ms. Devyani Gupta, Adv.
Mr. Vishal Prasad, Adv.
Mr. Piyush Bhardwaj, Adv.
Mr. Shashwat Singh, Adv.Mr. Himanshu Shekhar, AOR
Mr. Awanish Sinha, Adv.
Mr. Chandra Shekhar Yadav, Adv.
Mr. Prem Ranjan Kumar, Adv.
Mr. Janmesh Kumar, Adv.Mr. Awanish Sinha, AOR
Mr. Chandra Shekhar Yadav, Adv.
Mr. Prem Ranjan Kumar, Adv.

Mr. Nikhil Jain, AOR

For Respondent(s) Mr. D.N. Ray, Adv.
Ms. Pinki Behera, Adv.
Ms. Jesal Wahi, Adv.
Ms. Hemantika Wahi, AOR

UPON hearing the counsel the Court made the following
O R D E R

The appeals are disposed of in terms of the
signed order.

Pending application(s), if any, shall stand
disposed of.

(NEETU KHAJURIA)
COURT MASTER

(ANITA RANI AHUJA)
COURT MASTER

(Signed order is placed on the file.)