



2026:CGHC:14066-DB

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

[Arising out of a common judgment dated 24.11.2021, passed in Special Sessions Case No.03/2018 (State of Chhattisgarh v. Karan Singh Rajput and others) by the Special Judge (SC/ST Act) Mungeli (CG)]

Criminal Appeal No. 1057 of 2021

Karan Singh Rajput, S/o- Moujiram Rajput, aged about 38 years, R/o Village-Dhodhapur, Police Station-Pathariya, Tahsil- Pathariya, District- Mungeli (Chhattisgarh)

--- **Appellant**

Versus

State of Chhattisgarh, through Station House Officer, Police Station-Pathariya, Tahsil- Pathariya, District- Mungeli (Chhattisgarh)

--- **Respondent**

For Appellant : Mr. Jameel Akhtar Lohani, Advocate
For Respondent : Mr. Amit Buxy, Dy. Government Advocate
For Complainant : Mr. Hemant Kesharwani, Advocate
Amicus Curiae : Mr. Sharad Mishra, Advocate

WITH

Criminal Appeal No. 1418 of 2021

DBB

--- **Appellant**

Versus

1 - State of Chhattisgarh, through- the Station House Officer, Police Station, Pathariya, District- Mungeli (Chhattisgarh)

2 - Karan Singh Rajput, S/o Maujiram Rajput, aged about 38 years, R/o Dhondhapur, P.S. Pathariya, District- Mungeli (Chhattisgarh)

--- **Respondents**



For Appellant : Mr. Hemant Kesharwani, Advocate
For Respondent No.1 : Mr. Amit Buxy, Dy Government Advocate
For Respondent No.2 : Mr. Jameel Akhtar Lohani, Advocate

Division Bench
Hon'ble Shri Justice Sanjay K. Agrawal and
Hon'ble Smt. Justice Rajni Dubey

Judgment on Board
(24.03.2026)

Sanjay K. Agrawal, J

(1) Regard being had to the similitude of the questions of fact and law involved and being arising out of a common impugned judgment dated 24.11.2021, on the joint request of learned counsel for the parties, both these appeals are clubbed together, heard together and being disposed of by this common judgment.

(2) CRA-1057-2021 has been filed under Section 374(2) of CrPC at the instance of the accused-appellant, namely, Karan Singh Rajput (A-1), is questioning the legality, validity and correctness of the impugned judgment of conviction and order of sentence dated 24.11.2021, passed in Special Sessions Case No.03/2018 (State of Chhattisgarh v. Karan Singh Rajput and others) by the Special Judge, constituted under the provisions of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short the "Act of 1989") Mungeli (CG), whereby he has been convicted and sentenced as under:

Conviction	Sentence
U/s. 376 of IPC	Rigorous imprisonment for 10 years with



	fine of Rs.2,000/- and, in default of payment of fine, additional rigorous imprisonment for 01 month.
U/s. 294 of IPC	Rigorous imprisonment for 01 month.
U/s. 323 of IPC	Rigorous imprisonment for 03 months.
U/s. 342 of IPC	Rigorous imprisonment for 03 months.
U/s. 506 of IPC	Rigorous imprisonment for 06 months.
U/s. 3(2)(v) of the Act of 1989	Imprisonment for life with fine of Rs.2,000/- and, in default of payment of fine, additional rigorous imprisonment for 01 month.
U/s. 3(1)(r) of the Act of 1989	Rigorous imprisonment for 04 years with fine of Rs.1,000/- and, in default of payment of fine, additional rigorous imprisonment for 15 days.
U/s. 3(1)(s) of the Act of 1989	Rigorous imprisonment for 04 years with fine of Rs.1,000/- and, in default of payment of fine, additional rigorous imprisonment for 15 days.

[All the sentences are directed to run concurrently]

(3) Whereas, CRA-1418-2021 has been filed under Section 374(2) of CrPC at the instance of the victim (PW-02), challenging the same impugned judgment dated 24.11.2021 on the ground that since its a case where ingredients for offence under Section 376D of IPC is clearly made out, the conviction of accused-appellant, namely, Karan Singh (A-1) be converted to 376D of IPC instead of 376 of IPC and he be sentenced for at least 20 years RI instead of 10 years RI.

(4) The case of the prosecution, in short, is that in the intervening night of 27-28.12.2017, at Village Dhodhapur, which comes within the ambit of Police Station Pathariya, District Mungeli (CG), accused-appellant herein, namely, Karan (A-1) alongwith to other acquitted co-accused, namely, Kuleshwar Rajput (A-2) and Jitendra



Rajput (A-3), in furtherance of their common object, committed sexual intercourse with the victim (PW-02) one by one and, further, committed *marpeet* with her and, knowing fully well that victim (PW-02) belongs to Scheduled Castes community, abused her with filthily/obscene words in public place and also threatened her to kill and, thereby, committed the aforesaid offences.

(5) It is also the case of the prosecution that after the incident, when victim (PW-02) reported the matter to the police, FIR (Ex.P/4) was registered by the police and wheels of investigation started running, in which, spot map and panchnama were prepared vide Ex.P/02 and Ex.P/03. Victim's statements under Section 161 of CrPC was recorded vide Ex.P/09 & Ex.P/10. The victim was also subjected to medical examination, which was conducted by Dr. S. Praveen (not examined) and, accordingly, to MLC report (Ex.P/23) four injuries were found over the body of the victim. Slides of the victim (PW-02) were also prepared and handed over the police for analysis, which were seized vide Ex.P/19. Pieces of orange color bangles were also seized from the place of incident vide Ex.P/13. The seized articles were sent for chemical examination, and as per FSL report (Ex.C-1), stains of human sperm/semens were found on the slides of the victim (PW-02). Further, caste certificate of the victim (PW-02) (Ex.P/17) was also seized vide Ex.P/08. Further, victim's statement under Section 164 of CrPC was also recorded vide Ex.P/07. The accused persons were arrested vide Ex.P/21, Ex.P/26 & Ex.P/27 respectively.



After due investigation, all the accused persons were charge-sheeted for the offences 376, 376D, 294, 506, 323, 342, 34 of IPC as also under Section 3(2)(v), 3(2)(r) & 3(2)(s) of the Act of 1989 in the competent criminal Court having jurisdiction, which was thereafter committed to the Court of Sessions for hearing and trial in accordance with law, in which, the accused persons abjured their guilt and entered into defence by stating that they are innocent and have been falsely implicated.

(6) The prosecution in order to prove its case examined as many as 17 witnesses and exhibited 30 documents apart from FSL report (Ex.C-1), whereas the accused persons in support of their defence neither examined any witness nor exhibited any documents.

(7) The learned trial Court after appreciating the oral and documentary evidence available on record, though acquitted co-accused, namely, Kuleshwar Rajput (A-2) and Jitendra Rajput (A-3) for the aforesaid offences, but proceeded to convict the accused/appellant herein, namely, Karan Singh (A-1) for the offence punishable under Section 376, 294, 506, 323, 342 of IPC as also under Section 3(2)(v), 3(2)(r) & 3(2)(s) of the Act of 1989 and sentenced him as mentioned in Para-2 of this judgment, against which CRA-1057-2021 has been preferred by the appellant-accused questioning the impugned judgment of conviction and order of sentence and CRA-1418-2021 has been preferred by the victim (PW-02) seeking enhancement of the conviction and sentence awarded to



appellant- Karan (A-1).

(8) Before proceedings further, it is important to mention here that the victim (PW-02) has also preferred Acquittal Appeal No.229/2021 before this Court challenging the judgment of acquittal of co-accused- Kuleshwar Rajput (A-2) and Jitendra Rajput (A-3) for the aforesaid offences (S. 376 IPC), but the same stood dismissed vide order dated 21.04.2022 being meritless.

(9) Mr. Jameel Akhtar Lohani, learned counsel for the appellant- Karan Singh (A-1) in CRA-1057-2021 would submit that the learned trial Court is absolutely unjustified in convicting the appellant for the aforesaid offences. He also submits that though victim (PW-02) has been medically examined and her MLC report is Ex.P/19, but the doctor who has medically examined the victim, namely, S. Praveen has not been examined to prove the MLC report (Ex.P/19) for the reasons best known to the prosecution and, in absence of which, the same cannot be relied upon. Furthermore, as per FSL report (Ex.C-1), though stains of human sperm were found on the slide of the victim (PW-02), but in absence of DNA profiling or semen matching with the semen of the appellant, the same is fatal to the case of the prosecution in light of decision of the Supreme Court in **Krishan Kumar Malik v. State of Haryana**¹. Even otherwise, the officer i.e. Tehsildar, Pathariya who has issued caste certificate (Ex.P/17) has also been examined, instead thereof, Deputy Collector,

1 (2011) 7 SCC 130



namely, Raj kumar Tamboli (PW-08) has been examined, but he was not posted as Tehsildar Pathariya at the relevant point of time when caste certificate (Ex.P/17) was issued and he has also stated that he didn't know the person/officer who issued caste certificate (Ex.P/17). As such, for the aforesaid reasons, the conviction of appellant- Karan Singh (A-1) is bad in law and he deserves to be acquitted of the aforesaid charges and his appeal is liable to be allowed.

(10) *Per-contra*, learned State counsel would submit that the prosecution has been able to prove the offence beyond reasonable doubt by leading evidence of clinching nature. It is further submitted on behalf of the respondent-State that in view of statements of prosecution witnesses coupled with other evidence available on record, the trial Court has rightly convicted the appellant- Karan Singh (A-1) for the offence under Section 376, 294, 506, 323, 342 of IPC as also under Section 3(2)(v), 3(2)(r) & 3(2)(s) of the Act of 1989 and, therefore, the his appeal is liable to be dismissed.

(11) Mr. Hemant Kesharwani, learned counsel appearing for the victim (PW-02) also supported the arguments putforth by learned counsel for the State and prays for dismissal of CRA-1057-2021 filed by appellant- Karan (A-1). Further, learned counsel in CRA-1418-2021 submits that since its a case where ingredients for offence under Section 376D of IPC is clearly made out, the conviction of accused-appellant, namely, Karan Singh (A-1) be converted to 376D



of IPC instead of 376 of IPC and he be sentenced for at least 20 years RI instead of 10 years RI.

(12) Mr. Sharad Mishra, learned *Amicus Curiae* also submits that in the present case though the accused persons have been charge-sheeted for offence under Section 376D of IPC, but the learned trial Court did not framed the said charge against the accused persons and on the basis of the statement of the victim (PW-02), where she specifically stated that it is appellant- Karan (A-1) who has only committed sexual intercourse with her and other two accused persons, namely, Kuleshwar Rajput (A-2) and Jitendra Rajput (A-3) were only caught hold of her, has acquitted the two accused- Kuleshwar Rajput (A-2) and Jitendra Rajput (A-3) and, against which, the acquittal appeal filed by the victim (PW-02) before this Court being ACQA-229-2021 has also been dismissed vide order dt. 21.04.2022 on merits and, as such, the judgment of acquittal of two accused persons have attained finality in absence of any further challenge, offence under Section 376D of IPC is not made out in the present case and the conviction of appellant- Karan (A-1) for offence under Section 376 of IPC, as awarded to him by the learned trial Court, cannot be altered to one under Section 376D of IPC and its respective sentence for 10 years RI cannot be enhanced to 20 years RI.

(13) We have heard learned counsel for the parties, considered their rival submissions made herein-above and went through the records



with utmost circumspection.

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(14) In the present case, admittedly, charge under Section 376D of IPC was framed against accused-appellant- Karan Singh (A-1) and two acquitted co-accused, namely, Kuleshwar Rajput (A-2) and Jitendra Rajput (A-3), however, Kuleshwar Rajput (A-2) and Jitendra Rajput (A-3) have been acquitted by the learned trial Court vide impugned judgment dt. 24.08.2018. In order to convict appellant- Karan (A-1) the learned trial Court has relied upon the statement of victim (PW-02) as well as forensic and medical evidence. So far as medical evidence is concerned, it is the case of the prosecution that after the incident the victim (PW-02) was medically examined and her MLC report is Ex.P/23, but the doctor, namely, S. Praveen has not been examined to prove the said MLC report for the reasons best known to the prosecution. Similarly, though as per FSL report (Ex.C-1) stains of human sperm were found on the slide of the victim (PW-02), but in light of the decision of the Supreme Court in **Krishan Kumar Malik** (supra) wherein it has been held that it has become necessary for the prosecution to go in for DNA test in such type of cases, facilitating the prosecution to prove its case against the accused. It has also been held that the prosecution has to resort the procedure of getting the DNA test or analysis and matching of semen of the appellant with that found on the undergarments of the prosecutrix to make it a foolproof case, but



they did not do so, thus they must face the consequences and observed in Para-43 & 44 as under:

“43. With regard to the matching of the semen, we find it from *Taylor's Principles and Practice of Medical Jurisprudence*, 2nd Edn. (1965) as under:-

"Spermatozoa may retain vitality (or free motion) in the body of a woman for a long period, and movement should always be looked for in wet specimens. The actual time that spermatozoa may remain alive after ejaculation cannot be precisely defined, but is usually a matter of hours. Seymour claimed to have seen movement in a fluid as much as 5 days old. The detection of dead spermatozoa in stains may be made at long periods after emission, when the fluid has been allowed to dry. Sharpe found identifiable spermatozoa often after 12 months and once after a period of 5 years. Non-motile spermatozoa were found in the vagina after a lapse of time which must have been 3 and could have been 4 months."

Had such a procedure been adopted by the prosecution, then it would have been a foolproof case for it and against the appellant.

44. Now, after the incorporation of Section 53 (A) in the Criminal Procedure Code, w.e.f. 23.06.2006, brought to our notice by learned counsel for the respondent State, it has become necessary for the prosecution to go in for DNA test in such type of CrI. A. @S.L.P. (CrI.) No.8021 of 2009 cases, facilitating the prosecution to prove its case against the accused. Prior to 2006, even without the aforesaid specific provision in the Cr.P.C. the prosecution could have still resorted to this procedure of getting the DNA test or analysis and matching of semen of the appellant with that found on the undergarments of the prosecutrix to make it a fool proof case, but they did not do so, thus they must face the consequences.”

(15) The principles of law laid down in Krishan Kumar Malik



(supra) has been followed with approval in Veerendra v. State of Madhya Pradesh² and Chotkau v. State of Uttar Pradesh³. However, in the present case, neither DNA test nor the process for matching the semen found on the vaginal slides of the victim to that of with the semen of the appellant- Karan (A1), has been conducted by the prosecution and, in absence of which, the evidence of FSL report is of no help to the prosecution and same cannot be relied upon to hold the appellant guilty for the offence of rape. Furthermore, to base the conviction of the appellant, learned trial Court has also taken into consideration the statement of the victim (PW-02) and, as such, the question is as to whether the testimony of victim (PW-02) is of sterling quality?

(16) The Supreme Court in the matter of State of MP v. Dayal Sahu⁴ has clearly held that non-examination of doctor and non-production of doctor's report would not be fatal to the case of the prosecution if statement of prosecutrix and other prosecution witness inspire confidence and held in Para-14 as under:

“14. A plethora of decisions by this Court as referred to above would show that once the statement of prosecutrix inspires confidence and accepted by the courts as such, conviction can be based only on the solitary evidence of the prosecutrix and no corroboration would be required unless there are compelling reasons which necessitate the courts for corroboration of her statement. Corroboration of testimony of the prosecutrix as a

2 (2022) 8 SCC 668

3 (2023) 6 SCC 742

4 (2005) 8 SCC 122



condition for judicial reliance is not a requirement of law but a guidance of prudence under the given facts and circumstances. It is also noticed that minor contradictions or insignificant discrepancies should not be a ground for throwing out an otherwise reliable prosecution case. Non-examination of doctor and non-production of doctor's report would not cause fatal to the prosecution case, if the statements of the prosecutrix and other prosecution witnesses inspire confidence. It is also noticed that the Court while acquitting the accused on benefit of doubt should be cautious to see that the doubt should be a reasonable doubt and it should not reverse the findings of the guilt on the basis of irrelevant circumstances or mere technicalities.”

[Emphasis Supplied]

(17) Now, in light of the above quoted principle we will proceed to examine the statement of the victim (PW-02). The victim (PW-02) is a married and deserted woman aged about 29 years and she has clearly stated that on the date of offence, in the night, when she has gone to answer the call of nature, three accused persons came there and caught of hold her and committed sexual intercourse with her one by one. However, in para-18 on being asked she only stated that appellant- Karan (A-1) has committed sexual intercourse with her and remaining two accused- Kuleshwar Rajput (A-2) and Jitendra Rajput (A-3) did not commit sexual intercourse with her, indeed, they were only caught holding her hands, legs and mouth. The victim (PW-02) was subjected to lengthy cross-examination, but nothing could be extracted from her to hold that appellant- Karan (A-1) did not commit sexual intercourse with her on the date of offence. Even, FIR was also lodged by the victim promptly on the



next day at about 07 PM vide Ex.P/04 and her statements under Sections 161 of CrPC were also recorded on 28.12.2017 & 29.12.2017 vide Ex.P/9 & Ex.P/10 and pieces of bangles were also recovered from the spot on 29.12.2017 vide Ex.P/13 and further spot map was also prepared on 29.12.2017 vide Ex.P/05. Accordingly, in the considered opinion of this Court, though medical and forensic evidence could not be proved in accordance with law, but the statement of victim (PW-02) is of sterling quality and, therefore, it is held that the learned trial Court has rightly convicted the appellant for offences under Sections 376, 294, 506, 323, 342 of IPC.

(18) Now the next question for consideration would be whether the learned trial Court is justified in convicting the appellant- Karan Singh (A-1) for offences under Section 3(2)(v), 3(1)(r) & 3(1)(s) of the Act of 1989 ?

(19) In order to prove the aforesaid offences, the prosecution has relied upon the caste certificate (Ex.P/17). The said caste certificate has been issued on 28.01.2012 by Tehsildar, Pathariya and, in order to prove the said caste certificate (Ex.P/17) the prosecution has examined Deputy Collector- Rajkumar Tamboli (PW-08), whereby he stated that from September, 2012 to July, 2015 he was posted as Tehsildar, Pathariya and he specifically stated that he did not issue caste certificate (Ex.P/17) and even he did not know the officer who has issued caste certificate (Ex.P/17). As such, caste certificate (Ex.P/17) has not been proved by the prosecution beyond all



reasonable doubt and except this nothing has been brought on record to prove the said caste certificate of the victim or she belongs to Scheduled Caste community.

(20) Even otherwise, the Chhattisgarh Scheduled Castes, Scheduled Tribes and other Backward Classes (Regulation of Social Status Certification) Rules, 2013 (for short the “Rules of 2013”) came into effect on 02.09.2013 and according to Rule 09 the Competent Authority after receiving application under sub-rule (1) of Rule 13 and conducting an inquiry under Rule 8 and in case where himself is not an inquiry officer, after satisfying himself with the annexed documents and Report of the inquiry officer, within one month from the date of receipt of application, shall issue the social status certificate in prescribed form for SC, ST, OBC community. However, the State Government has issued circular dated 22.08.2013, which reads as under:

“5. सक्षम प्राधिकारी तथा अपीलीय प्राधिकारी:

5.1 अधिनियम, 2013 की धारा 2 के खण्ड (ख) के अंतर्गत इस विभाग की अधिसूचना दिनांक 22 अगस्त, 2013 के द्वारा सामाजिक प्रास्थिति प्रमाण-पत्र जारी करने हेतु सक्षम अधिकारियों को घोषित किया गया है।

5.2 शैक्षणिक कार्यों के लिए सरपंच एवं वार्ड पार्षदों को अस्थाई सामाजिक प्रास्थिति प्रमाण-पत्र जारी करने का अधिकार दिया गया है। शैक्षणिक कार्यों के अलावा अन्य कार्यों हेतु तहसीलदार, अतिरिक्त तहसीलदार तथा नायब तहसीलदारों को अस्थाई सामाजिक प्रास्थिति प्रमाण-पत्र जारी करने का अधिकार दिया गया है।

5.3 स्थाई सामाजिक प्रास्थिति प्रमाण-पत्र जारी करने का अधिकार कलेक्टर, अपर कलेक्टर, डिप्टी कलेक्टर, अनुविभागीय अधिकारी (राजस्व) को प्रदान किया गया है परंतु सामान्य तौर पर उक्त कार्य अनुविभागीय अधिकारी (राजस्व) के द्वारा ही किया जावेगा। जहां कार्य अधिक है वहां कलेक्टर किसी डिप्टी कलेक्टर को भी किसी विशेष क्षेत्र के लिए



सामाजिक प्रास्थिति प्रमाण—पत्र जारी करने के काम सौंप सकेंगे।

5.4 अधिनियम, 2013 की धारा 2 के खण्ड (क) के अंतर्गत सक्षम अधिकारियों के आदेशों से असंतुष्ट आवेदकों को अपील करने के प्रावधान के तहत अपीलीय अधिकारी घोषित किए गए हैं। इस विभाग की अधिसूचना दिनांक 22 अगस्त, 2013 के द्वारा ही तहसीलदार, अतिरिक्त तहसीलदार तथा नायब तहसीलदारों के आदेश के विरुद्ध अनुविभागीय अधिकारी (राजस्व), डिप्टी कलेक्टर तथा अनुविभागीय (राजस्व) के आदेश के विरुद्ध अपर dysDVj@dysDVj तथा अपर dysDVj@dysDVj के आदेश के विरुद्ध अपर आयुक्त qDr@laHkxh को अपीलीय अधिकारी घोषित किया गया है। ”

(21) As such by virtue of aforesaid circular, the competent authority, as mentioned in Rule 9 to issue caste certificate, is Sub-Divisional Officer (Revenue). In the present case, the date of offence is 27.12.2017 and caste certificate (Ex.P/17) has been issued to the victim (PW-02) on 28.01.2012 and, as per aforesaid circular dated 22.08.2013, the SDO (R) was the competent authority to issue the caste certificate to the victim (PW-02), but the Tehsildar has issued the same to the victim on 28.01.2012, who was not competent authority at the relevant point of time. Therefore, the caste certificate (Ex.P17) cannot be relied upon under the facts and circumstances of the present case that too when caste certificate (Ex.P/17) of the victim has not been proved by the examining witness. As such, it is not proved beyond reasonable doubt on the date of offence the victim (PW-02) belongs to Scheduled Caste Community and, in absence of which, the learned trial Court is unjustified in convicting the appellant- Karan (A-1) for offences under Sections 3(2)(v), 3(1)(r) & 3(1)(s) of the Act of 1989 and same



is liable to the set aside. We hereby hold accordingly.

(22) Consequently, the conviction and their respective sentences of appellant- Karan Singh Rajput (A-1) for offences under Section 376, 294, 506, 323, 342 of IPC, as awarded to him to by the learned trial Court, are hereby affirmed being well merited, whereas, the conviction and their respective sentences of appellant- Karan Singh Rajput (A-1) for offences under Section 3(2)(v), 3(1)(r) & 3(1)(s) of the Act of 1989 are hereby set aside and the appellant- Karan Singh (A-1) is acquitted of the said charges on the benefit of doubt.

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(23) The victim (PW-02) has preferred this appeal stating, *inter-alia*, that since three accused persons committed sexual intercourse with her on the date of offence, therefore, its a case where offence under Section 376D of IPC is made out and conviction of accused-appellant, namely, Karan Singh (A-1) be converted to 376D of IPC instead of 376 of IPC and he be sentenced for at least 20 years RI instead of 10 years RI. However, though in the present case all the accused persons have been charge-sheeted for offence under Section 376D of IPC, but the learned trial Court did not frame the charge under Section 376D of IPC against the accused persons, indeed, framed charge under Section 376 of IPC only and, further, on the basis of the statement of the victim (PW-02), where she specifically stated that it is appellant- Karan (A-1) who has only committed



sexual intercourse with her and other two accused persons, namely, Kuleshwar Rajput (A-2) and Jitendra Rajput (A-3) have only caught hold of her, the learned trial Court has even acquitted two accused- Kuleshwar Rajput (A-2) and Jitendra Rajput (A-3) for offence under Section 376 of IPC and, against which, the acquittal appeal filed by the victim (PW-02) before this Court being ACQA-229-2021 has also been dismissed vide order dt. 21.04.2022 on merits and, as such, the judgment of acquittal of two accused persons have attained finality in absence of any further challenge. Consequently, in absence of framing of charge under Section 376D of IPC by the learned trial Court, opportunity of defence has also not been granted to the accused person, therefore, the appellant- Karan Singh (A-1) cannot be convicted for offence under Section 376D of IPC that too when other two co-accused persons have already been acquitted by the learned trial Court for offence under Section 376 of IPC. As such, the conviction of appellant- Karan (A-1) for offence under Section 376 of IPC, as awarded to him by the learned trial Court, cannot be altered to one under Section 376D of IPC and its respective sentence for 10 years RI cannot be enhanced to 20 years RI.

(24) The Supreme Court in the matter of **Chintambaramma and another v. State of Karnataka**⁵ has held as under:

“16. We find that Charge 3 against the appellants was that Accused 4 and 5 have conspired with the appellants by receiving money. However, both the

5 (2019) 17 SCC 208



courts have found the charge of conspiracy as not proved. Whether, in these circumstances, the appellants could be convicted for an offence under Section 302 IPC even without there being charge to this effect?

17. The question as to whether omission to frame an alternative charge under Section 302 IPC is an illegality that cuts at the root of the conviction and makes it invalid or whether it is a curable irregularity, has been examined by this Court from time to time. One of the first judgments is *Willie (William) Slaney v. State of M.P.* [*Willie (William) Slaney v. State of M.P.*, AIR 1956 SC 116 : 1956 Cri LJ 291] wherein the Constitution Bench explained the concept of prejudice caused to the accused and failure of justice to vitiate trial in terms of present Section 464 of the Code. It was held as under : (AIR p. 121, para 6)

“6. Before we proceed to set out our answer and examine the provisions of the Code, we will pause to observe that the Code is a code of procedure and, like all procedural laws, is designed to further the ends of justice and not to frustrate them by the introduction of endless technicalities. The object of the Code is to ensure that an accused person gets a full and fair trial along certain well-established and well-understood lines that accord with our notions of natural justice.

If he does, if he is tried by a competent court, if he is told and clearly understands the nature of the offence for which he is being tried, if the case against him is fully and fairly explained to him and he is afforded a full and fair opportunity of defending himself, then, provided there is *substantial* compliance with the outward forms of the law, mere mistakes in procedure, mere inconsequential errors and omissions in the trial are regarded as venal by the Code and the trial is not vitiated unless the accused can show



substantial prejudice. That, broadly speaking, is the basic principle on which the Code is based.””

(25) Undisputedly, in the present case, charge for offence under Section 376D of IPC has not been framed by the learned trial Court, indeed, charge under Section 376 of IPC was framed against the appellant and, therefore, it would be impermissible to convict and award sentence to the accused- Karan for offence under Section 376D of IPC more particularly in view of the fact that other two accused persons, namely, Kuleshwar Rajput (A-2) and Jitendra Rajput (A-3) have been acquitted from the learned trial Court and their order of acquittal has further been affirmed by this Court and same has attained finality. Accordingly, I do not find any merit in the appeal preferred by the victim (PW-02) seeking enhancement of the sentence awarded to the accused- Karan (A-1).

(26) Consequently, **CRA-1057-2021** preferred by the accused- Kaan Singh Thakur (A-1) is **partly allowed** to the extent indicated herein above, whereas **CRA-1418-2021** filed by the victim (PW-02) is hereby **dismissed** being meritless.

(27) Let a certified copy of this judgment along with the original record be transmitted to the trial Court concerned and also a copy of this judgment be sent to the concerned Superintendent of Jail where the appellant- Karan Singh Thakur (A-1) is lodged and suffering jail sentence, forthwith for information and necessary action, if any.

sd/-
(Sanjay K. Agrawal)
Judge

sd/-
(Rajni Dubey)
Judge