[A.F.R.]

Court No. - 49

Case :- CRIMINAL APPEAL No.-204 of 2021 (From Jail)
(Defective Appeal No.386 of 2005)

Appellant :- Vishnu
Respondent :- State of U.P.
Counsel for Appellant :- Shweta Singh Rana (appointed by State Legal Services Authority)
Counsel for Respondent :- Govt. Advocate

Hon'ble Dr. Kaushal Jayendra Thaker,J.
Hon'ble Gautam Chowdhary,J.

(Per Hon'ble Dr. Kaushal Jayendra Thaker, J.)

1. Since the date of occurrence of the incident, i.e. 16.9.2000, the accused is in jail i.e. since 20 years. Most unfortunate, aspect of this litigation is that the appeal was preferred through jail. The matter remained as a defective matter for a period of 16 years and, therefore, we normally do not mention defective appeal number but we have mentioned the same. This defective conviction appeal was taken up as listing application was filed by the learned counsel appointed by Legal Services Authority on 6.12.2012 with a special mention that accused is in jail since 20 years.

2. By way of this appeal, the appellant has challenged the Judgment and order 24.2.2003 passed by court of Sessions Judge, Lalitpur in Special Case No.43 of 2000, State Vs. Vishnu arising out of Special Case No. 43 of 2000, under Sections 376, 506 of IPC and 3(1)(xii) read with Section 3(2)(v) of Scheduled Casts and Scheduled Tribes (Prevention of Atrocities) Act, 1989, Police Station Mehroni, District Lalitpur whereby the accused-appellant was convicted under Section 376 IPC and sentenced to imprisonment for a period of ten years with fine of Rs.2,000/-, and in case of default of payment of fine, to undergo further rigorous imprisonment for six months; he was further convicted under Section 3(2)

(v) read with Section 3(1)(xii) of Scheduled Casts and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as 'S.C./S.T. Act, 1989') and sentenced to imprisonment for life with fine of Rs.2,000/- and in case of default of payment of fine, to undergo further rigorous imprisonment for six months; and he was further convicted under Section 506 IPC and sentenced to undergo rigorous imprisonment under Section 506 IPC. All the sentences were to run concurrently as per direction of the Trial Court.

3. The brief facts as per prosecution case are that on 16.9.2000 at about 2:00 p.m., the prosecutrix was going from her house in village Silawan, P.S. Mehroni to Haar (fields), when she reached near mango tree named 'black mango tree' situted on the road leading to Zaraia accused-Vishnu son of Rameshwar Tiwari who had hidden behind the bushes, caught hold of her with bad intention and behind the bushes, he committed rape with her by pressing her mouth and went away extending threat that if any report is lodged at the police station or this fact is divulged to anyone, he will kill her. She went back to the house and disclosed the whole incident to her family members who did not go to the police station due to threat and went to Lalitpur, and on 19.9.2000 she along with her father-in-law Gulkhai and husband Bragbhan hiding themselves went to the police station for reporting the said incident.

4. C.O. Narahat, Akhilesh Narain Singh tookup the investigation visited the spot, prepared site plan, recorded statements of the prosecutrix and witnesses and after completing investigation submitted charge sheet against the accused.

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6. The prosecution so as to bring home the charges examined six witnesses, who are as under:-

1	Prosecutrix	P.W.1
2.	Gulkhai (Father-in-law)	P.W.2
3.	Brijbhan(Husband)	P.W.3
4.	Dr. Sarojini Joshi	P.W. 4
5.	Dr. S.N.H. Rizvi	P.W. 5
6.	Akhilesh Narayan Singh	P.W. 6

7. In support of the ocular version of the witnesses, following documents were produced and contents were proved by leading evidence:

1	F.I.R.	Ext. Ka-7
2.	Written report	Ext. Ka-1
3.	M.L.P.C.	Ext. Ka-4
4.	Injury Report	Ext. Ka-2
5.	Supplementary report	Ext. Ka-3
6.	Charge Sheet (Mool)	Ext. Kha-6
7.	Site Plan with Index	Ext. Ka-5

8. Heard learned Amicus Curiae Miss Shweta Singh Rana for the appellant, Sri Rupak Chaubey**,** learned AGA for the State and also perused the record.

9. It is submitted by the counsel for the appellant that as far as commission of offence under Section 3(1)(xii) and 3(2)(v) of S.C./S.T. Act, 1989 is concerned, the learned Sessions Judge convicted the accused due to the fact that the victim was a person belonging to Scheduled Caste Community, though there were no allegations as regard the offence being committed due to the caste of the prosecutrix and there were no allegations of commission of offence which would attract the provision of Section 3(2)(v) read with Section 3(1)(xii) of SC/ST Act.

10. Learned counsel for appellant has relied on the following decisions of the Apex Court rendered in the case of **Sadashiv Ramrao Hadbe Vs.**

State of Maharashtra, 2006(10)SCC 92 and the judgment of High Court of Andhra Pradesh in the case of **Manne Siddaiah @ Siddiramulu Vs. State of Andhra Pradesh, 2000(2) Alld(Cri)** so as to contend and submit that in fact no case is made out so as to convict the accused under Section 376 IPC leave apart the offence under Sections 506 IPC and Section 3(1)(xii) and read with Section 3(2)(v) of S.C./S.T. Act, 1989 and the prosecutrix has roped in the accused with ulterior motive i.e. land dispute between her family members and the accused.

11. It is submitted by learned counsel for the State that prosecutrix belongs to Scheduled Caste community and the judgment of learned Trial Judge cannot be found fault with just because there is silence on the part of the prosecutrix. It is submitted that the incident occurred because of the caste of the prosecutrix. It is further submitted that any incident on person belonging to a particular caste would be an offence. It is further submitted by learned counsel for the State that the accused ravished the prosecutrix as she was belonging to lower strata of life.

12. Learned counsel for the appellant has relied on the judgment of **Sadashiv Ramrao Hadbe Vs. State of Maharashtra (supra)** and has submitted that she presses for clean acquittal of the accused and not for a fixed term incarceration though the appellant has been in jail for more than 20 years. In support of her submission, she presses into service the judgment in the case of **Manne Siddaiah @ Siddiramulu (supra)** rendered by Andhra Pradesh High Court, though it is a judgment of Single Bench, i.e. by Justice B. Sudershan Reddy (as he then was). Learned counsel has relied on findings returned in paragraphs 14, 15 and 16 of the said judgment, which lay down as follows :-

> *"14. In nutshell the version given by P.W.5 is not supported by even P.Ws. 1 and 2. P.W.1 in his evidence in categorical terms states that he caught hold of the appellant herein as his wife informed him that the appellant has raped her. P.W.5 in her evidence does not state that she has informed P.W.1 about*

the rape at any time. These major inconsistencies and contradictions in the evidence of material witnesses - P.Ws. 1, 2 and 5 create a lot of suspicion and doubt about the prosecution case. Added to that, P.W.10 - the Civil Assistant Surgeon who examined P.W.5, in her evidence clearly states that she did not find any external injuries on the body of P.W.5. She has also not noticed any semen and spermatozoa in the vaginal slides.

15. In the aforesaid circumstances, it would not be safe to convict the appellant herein on mere suspicion. The inconsistencies and contradictions noticed above are fatal to the case of the prosecution and create any amount of doubt. Obviously, it is the appellant who is entitled for the benefit of doubt.

16. In the aforesaid circumstances, I find it difficult to sustain the conviction of the appellant herein for the offence Under Section 3(1) (xii) and Section 3(2) (v) of the Act read with Section 376 of the Code. The conviction as well as the sentence of the appellant herein is set aside."

13. Learned counsel for appellant presses into service the judgment in the case of **Sadashiv Ramrao Hadbe Vs. State of Maharashtra** (supra) more particularly observations in paras 9, 10, 11 of the said judgment, which are verbatim reproduced as follows :-

"9. It is true that in a rape case the accused could be convicted on the sole testimony of the prosecutrix, if it is capable of inspiring of confidence in the mind of the court. If the version given by the prosecutrix is unsupported by any medical evidence or the whole surrounding circumstances are highly improbable and belie the case set up by the prosecutrix, the court shall not act on the solitary evidence of the prosecutrix. The courts shall be extremely careful in accepting the sole testimony of the prosecutrix when the entire case is improbable and unlikely to happen.

10. In the present case there were so many persons in the clinic and it is highly improbable the appellant would have made a sexual assault on the patient who came for

examination when large number of persons were present in the near vicinity. It is also highly improbable that the prosecutrix could not make any noise or get out of the room without being assaulted by the doctor as she was an able bodied person of 20 years of age with ordinary physique. The absence of injuries on the body improbablise the prosecution version.

11. The counsel who appeared for the State submitted that the presence of semen stains on the undergarments of the appellant and also semen stains found on her petticot and her sari would probablise the prosecution version and could have been a sexual intercourse of the prosecutrix.

12. It is true that the petticot and the underwear allegedly worn by the appellant had some semen but that by itself is not sufficient to treat that the appellant had sexual intercourse with the prosecutrix. That would only cause some suspicion on the conduct of the appellant but not sufficient to prove that the case, as alleged by the prosecution."

14. Learned counsel for the appellant has also relied on the latest decision of Apex Court in the case of **Hitesh Verma Vs. State of Uttarakhand & another, 2020(10)SCC 710,** pertaining to Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and has contended that the incidence reported is prior to 2016, amendment more particularly relates to the year 2000, where no offence of S.C./S.T. Act, 1989 has been committed on the lady on the basis of her caste belonging to a particular caste. The learned Trial Judge has misread the provisions of law, just because the prosecutrix is belonging to scheduled caste community, the offence would not be made out.

15. We are unable to convince ourselves with the submission made by learned AGA for State that she has been a victim of atrocity as well rape and, therefore, the accused should not be leniently dealt with.

16. We have been taken through the evidence and the deposition mainly of prosecution witnesses and judgment of Trial Court. We have read the same and are discussing the same.

17. PW-1, in her ocular version, has conveyed that she dictated the FIR while she did not go inside the police station but she was sitting out side the Police Station whereas, in her cross examination she accepted that it was her father-in-law who dictated the report to the police station officer she deposed that prosecutrix belongs to the community known as Dhobi community which is enumerated as scheduled castes the matter of fact which was known to the accused. The prosecutrix in her oral testimony has narrated the version of forcible sex on her and that the accused had gauged her for a period of ten minutes, she did not convey this to anybody because of threats given by the accused. In her cross examination, she conveyed that her father-in-law had dictated the report. If the police did not mention in the FIR that the accused had done the illegal act she could not possibly know why the same is not reflected in the report. The report was given by her father-in-law. She had one daughter who was two years of age, according to her, her marriage had taken place when she was 13 years of age and she was running 17 years of age at the time of deposition. She denied the fact that fields of accused was in the way to her fields and they used to visit the place of each other but accepted that she knew the accused by name.

18. According to the prosecutrix, it was rainy season when incident occurred, she was thrashed in the bushes and according to her the accused had committed bad act with her for ten minutes. She did not convey the incident to her husband immediately who was in the fields but on next day, she conveyed the same to her father-in-law.

19. PW-2 is the father-in-law of the prosecutrix. It was he who was the person whom the prosecutrix had conveyed about the incident. In his cross examination, he stated that marriage of the prosecutrix with his son had taken place for about 10-12 years ago. According to him his field was very far from that of the accused and there was no property dispute between PW-2 and the father of the accused. He has admitted that he has received a sum of Rs.25000/- from Government.

20. PW-3 is the husband who has deposed on oath that his wife was going to the field to give lunch to his father and when she reached at the place of incident, accused was present there and he thrashed her in the bushes and did all bad work.

21. PW-4 and 5 are the medical Officer. PW-6 who is the Officer who had conducted the investigation.

22. We now decide to sift the evidence threadbare of the prosecution story, the evidence laid and discussed before the trial court and appreciated as by the learned Trial Judge.

23. Provision of Section **3(1)(xii)** of the Scheduled Castes and Scheduled Tribes Act, 1989 read as follows : -

> "(xii) being in a position to dominate the will of a woman belonging to a Scheduled Caste or a Scheduled Tribe and uses that position to exploit her sexually to which she would not have otherwise agreed;"

24. Provision of Section **3(2)(v)** of the Scheduled Castes and Scheduled Tribes Act, 1989 read as follows : -

> *(v) commits any offence under the Indian Penal Code (45 of 1860) punishable with imprisonment for a term of ten years or more against a person or property on the ground that such person is a member of a Scheduled Caste or a Scheduled Tribe or such property belongs to such member, shall be punishable with imprisonment for life and with fine;*

25. Provision of Section 376 I.P.C. read as follows :

> "376. Punishment for rape.—
> (1) Whoever, except in the cases provided for by sub-section (2), commits rape shall be punished with imprisonment of either description for a term which shall not be less than seven years but which may be for life or for a term which may extend to ten years and shall also be liable to fine unless the women raped is his own wife and is not under twelve years of age, in which cases, he shall be punished with imprisonment of either description for a term which may extend to two years or with fine or with both: Provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment

for a term of less than seven years.

(2) Whoever,—

(a) being a police officer commits rape—

(i) within the limits of the police station to which he is appointed; or

(ii) in the premises of any station house whether or not situated in the police station to which he is appointed; or

(iii) on a woman in his custody or in the custody of a police officer subordinate to him; or

(b) being a public servant, takes advantage of his official position and commits rape on a woman in his custody as such public servant or in the custody of a public servant subordinate to him; or

(c) being on the management or on the staff of a jail, remand home or other place of custody established by or under any law for the time being in force or of a woman's or children's institution takes advantage of his official position and commits rape on any inmate of such jail, remand home, place or institution; or

(d) being on the management or on the staff of a hospital, takes advantage of his official position and commits rape on a woman in that hospital; or

(e) commits rape on a woman knowing her to be pregnant; or

(f) commits rape on a woman when she is under twelve years of age; or

(g) commits gang rape, shall be punished with rigorous imprisonment for a term which shall not be less than ten years but which may be for life and shall also be liable to fine: Provided that the Court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment of either description for a term of less than ten years. Explanation 1.—Where a woman is raped by one or more in a group of persons acting in furtherance of their common intention, each of the persons shall be deemed to have committed gang rape within the meaning of this sub-section. Explanation 2.—"Women's or children's institution" means an institution, whether called an orphanage or a home

for neglected woman or children or a widows' home or by any other name, which is established and maintained for the reception and care of woman or children. Explanation 3. —"Hospital" means the precincts of the hospital and includes the precincts of any institution for the reception and treatment of persons during convalescence or of persons requiring medical attention or rehabilitation."

26. In respect of the victim, the doctor in medical report has opined as under :-

"In the x-Ray of both wrist A.P., all eight carpal bones were found present. The lower epiphyses of both wrist joints have not fused. In the x-Ray of both elbow joints, all the bony epiphyses around both elbow joints had fused

In her supplementary report, lady doctor opined that no spermatozoa was seen by her. According to physical appearance, age of the prosecutrix was 15 to 16 years. No definite opinion about rape was given"

27. The evidence as discussed by learned Judge shows that the mere fact that no external marks of injury was found by itself would not throw the testimony of the prosecutrix over board as it has been found that the prosecutrix had washed out all the tainted cloths worn at the time of occurrence as she was an illiterate lady. The learned Judge brushed aside the fact that **report was lodged three days later**. We also do not give any credence to that fact and would like to go through the merits of the matter.

28. As far as the commission of offence under Section 376 IPC is concerned, the learned Judge has relied on the judgments of **(1) Rafiq Versus State of U.P., AIR 1981 SC page 559, (2) Nawab Khan Versus State, 1990 Cri.L.J. Page 1179 and the judgment in (3) Bharvada Bhogin Bhai Hirji Bhai Versus State of Gujarat, AIR 1983 SC page**

753. The accused has not sought benefit of Section 155(4) of Evidence Act.

29. We venture to discuss the evidence of the prosecutrix on which total reliance is placed and whether it inspires confidence or not so as to sustain the conviction of accused. There were concrete positive signs from the oral testimony of the prosecutrix as regards the commission of forcible sexual intercourse. In case of **Ganesan Versus State Represented by its Inspector of Police, Criminal Appeal No. 680 of 2020 (Arising from S.L.P. (Criminal) No.4976 of 2020)** decided on 14.10.2020 wherein the principles of accepting the evidence of the minor prosecutrix or the prosecutrix are enshrined the words may be that her testimony must be trustworthy and reliable then a conviction based on sole testimony of the victim can be based. In our case when we rely on the said decision, it is borne out that the testimony of the prosecutrix cannot be said to be that of a sterling witness and the medical evidence on evaluation belies the fact that any case is made out against the accused.

30. The evidence of Dr. Smt. Sarojini Joshi, Medical Officer, PW-4 C.H.C., Mehroni who medically examined the prosecutrix on 19.9.2000 at 8:45 p.m., found no external or internal injury on the person of the victim. On preabclomen examination, uterus size was 20 weeks and ballonement of uterus who was present. On internal examination, vagina of the victim was permitting insertion of two fingers. Internal uterine ballonement was present. The victim complained of pain during internal examination but no fresh injury was seen inside or outside the private part. Her vaginal smear was taken on the slide, sealed and sent for pathological investigation for examination. The doctor opined both in occular as well as her written report that the prosecutrix was having five months pregnancy **and no definite opinion about rape could be given**.

31. In the x-ray examination, both wrist A.P., all eight carpal bones were found present. Lower epiphyses of both writst joints were not fused.

All the bony epiphyses around both elbow joints were fused. In the supplementary report, the docotr opined **that no spermatozoa was seen** by her and according to the physical appearance, age of the victim was appearing to be 15 to 16 years and no definite opinion about rape could be given.

32. We find one more fact that despite allegation that rape is committed as alleged by the prosecutrix, there are no injuries on the private part of the lady, who is a fully grown up lady and who was pregnant and is said to have been threshed. Further, there was a motive on the part of complainant that there was land dispute between the parties. In statement of prosecutrix in her cross examination on 23.5.2002, she stated that it was her husband and father-in-law, who had lodged the compliant. Thereafter, learned Judge closed the cross examination of PW-1 and recorded it further on 24.5.2002. The First Information Report is also belatedly lodged by three days is the submission of the counsel Amicus Curiae appointed by High Court.

33. As far as the medical evidence is concerned, there are three emerging facts. Firstly, no injury was found on the person of the victim. We are not mentioning that there must be any corroboration in the prosecution version and medical evidence. The judgment of the Apex Court rendered in the case of **Bharvada Bhogin Bhai Hirji Bhai Versus State of Gujarat, AIR 1983 SCC page 753**, which is a classical case reported way back in the year 1983, on which reliance is placed by the learned Session Judge would not be helpful to the prosecution. The medical evidence should show some semblance of forcible intercourse, even if we go as per the version of the prosecutrix that the accused had gagged her mouth for ten minutes and had thrashed her on ground, there would have been some injuries to the fully grown lady on the basis of the body.

34. In our finding, the medical evidence goes to show that doctor did

not find any sperm. The doctor categorically opined that no signs of forcible sexual intercourse were found. This was also based on the finding that there were no internal injuries on the lady who was grown up lady.

35. The factual data also goes to show that there are several contradictions in the examination-in-chief as well as cross examination of all three witnesses. In her examination-in-chief, she states that incident occurred at about 2:00 p.m. but nowhere in her ocular version or the FIR, she has mentioned that she was going to the fields with lunch for her father-in-law. This statement was made for the first time in the ocular version of the husband of the prosecutrix i.e. PW-3 and that it was father-in-law who narrated incident to the police authority**.** The father-in-law as PW-2 in his testimony states that he was told about the incident by her daughter-in-law (Bahu) on which he complained some villagers about the accused who denied about the incident, therefore, they decided to go to the police station on the next day but the police refused to lodge the report on the ground that no one was present in the police station, therefore, they went on third day of the incident to lodge the FIR. After this, again he contradicts his story in his own statement recorded on cross-examination on the next date stating that the incident was told by his daughter-in-law to his wife who told him about the same. There is further contradiction in the statements of this witness. In examination-in-chief he states that the parties called for Panchayat but there is nothing on record that who were the persons called for Panchayat. If the pregnant lady carries fifth month pregnancy is thrashed forcefully on the ground then there would have been some injury on her person but such injuries on her person are totally absent.

36. For maintaining the conviction under Section 376 Cr.P.C., medical evidence has to be in conformity with the oral testimony. We may rely on the judgment rendered in the case of **Bhaiyamiyan @ Jardar Khan and another Versus State of Madhya Pradesh, 2011 SCW3104.** The chain of incident goes to show that the prosecutrix was not raped as would be clear

from the provision of section 375 read with Section 376 of IPC.

37. The judgment relied on by the learned Amicus Curiae for the appellant will also not permit us to concur with the judgment impugned of the learned Trial Judge where perversity has crept in. Learned Trial Judge has not given any finding as to fact as to how commission of offence under Section 376 IPC was made out in the present case.

38. Section 3(2)(v) of Scheduled Casts and Scheduled Tribes (Prevention of Atrocities) Act, 1989 is concerned, the FIR and the evidence though suggests that any one or any act was done by the accused on the basis that the prosecutrix was a member of Scheduled Castes and Scheduled Tribes then the accused can be convicted for commission of offence under the said provision. The learned Trial Judge has materially erred as he has not discuss what is the evidence that the act was committed because of the caste of the prosecutrix. The sister-in-law of the prosecutrix had filed such cases, her husband and father-in-law had also filed complaints. We are unable to accept the submission of learned AGA that the accused knowing fully well that the prosecutrix belongd to lower strata of life and therefore had caused her such mental agony which would attract the provision of Section 3(2)(v) of the Atrocities Act. The reasoning of the learned Judge are against the record and are perverse as the learned Judge without any evidence on record on his own has felt that the heinous crime was committed because the accused had captured the will of the prosecutrix and because the police officer had investigated the matter as a attrocities case which would not be undertaken within the purview of Section 3(2)(v) of Atrocities Act and has recorded conviction under Section 3(2)(v) of Act which cannot be sustained. We are supported in our view by the judgment of Gujarat High Court in **Criminal Appeal No.74 of 2006 in the case of Pudav Bhai Anjana Patel Versus State of Gujarat decided on 8.9.2015 by Justice M.R. Shah and Justice Kaushal Jayendra Thaker (as he then was)**.

39. Learned Judge comes to the conclusion that as the prosecutrix

belonged to community falling in the scheduled caste and the appellant falling in upper caste the provision of SC/ST Act are attracted in the present case.

40. While perusing the entire evidence beginning from FIR to the statements of PWs-1, 2 and 3 we do not find that commission of offence was there because of the fact that the prosecutrix belonged to a certain community.

41. The learned Judge further has not put any question in the statement recorded under Section 313 of the accused relating to rape or statement which is against him.

42. In view of the facts and evidence on record, we are convinced that the accused has been wrongly convicted, hence, the judgment and order impugned is reversed and the accused is acquitted. The accused appellant, if not warranted in any other case, be set free forthwith.

43. Appeal is allowed accordingly.

44. We are thankful to learned Amicus Curiae appointed by Legal Services Authority who shall be paid all her dues as are admissible. We are even thankful to learned AGA for the State who has ably assisted the Court.

45. We find that in the State of U.P. even after 14 years of incarceration does not even send the matter to the Magistrate for reevaluation the cases for remission as per mandate of Sections 432 and 433 of Cr.P.C. and as held by Apex Court in catena of decisions even if appeals are pending in the High Court. The accused in present case is in jail since 2000.

46. Sections 433 and 434 of the Cr.P.C. read as follows:-

> "Section 433. Power to commute sentence. The appropriate Government may, without the consent of the person sentenced, commute-
>
> (a) a sentence of death, for any other punishment provided by the Indian Penal Code;
>
> (b) a sentence of imprisonment for life, for imprisonment for a term not exceeding fourteen years or for fine;
>
> (c) a sentence of rigorous imprisonment, for simple imprisonment for any term to which that person might have been sentenced, or for fine;

(d) a sentence of simple imprisonment, for fine."

"Section 434. Concurrent power of Central Government in case of death sentences. The powers conferred by sections 432 and 433 upon the State Government may, in the case of sentences of death, also be exercised by the Central Government."

47. Section 433 and 434 of the Cr.P.C. enjoins a duty upon the State Government as well as Central Government to commute the sentences as mentioned in the said section. We are pained to mention that even after 14 years of incarceration, the State did not think of exercising its power for commutation of sentence of life imprisonment of the present accused and it appears that power of Governor provided under Article 161 of the Constitution of India are also not exercised though there are restriction to such power to commute sentence. The object of Sections 432 read with Section 433 of the Cr.P.C. is to remit the sentence awarded to the accused if it appears that the offence committed by him is not so grave. In our case, we do not see that why the accused is not entitled to remission. His case should have been considered but has not been considered. Remission/ commutation of sentence under Sections 433 and 434 of the Cr.P.C. is in the realm of power vested in the Government. The factual scenario in the present case would show that had the Government thought of taking up the case of the accused as per jail manual, it would have been found that the case of the appellant was not so grave that it could not have been considered for remission / commutation.

48. Most unfortunate, aspect of this litigation is that the appeal was preferred through jail. The matter remained as a defective matter for a period of 16 years and, therefore, we normally do not mention defective appeal number but we have mentioned the same. This defective conviction appeal was taken up as listing application was filed by the learned counsel appointed by Legal Services Authority on 6.12.2012 with a special mention that accused is in jail since 20 years.

49. Seeing this sorry State of Affairs, we request the Registrar (Listing)

through the Registrar General to place the matter before Hon'ble the Chief Justice that periodical listing of matters be taken up in the High Court so that those who are in jail for more than 10 or 14 years, where the appeals are pending, may at least get their appeal heard which are mainly jail appeals.

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52. A copy of this judgment be sent to the Law Secretary, State of U.P. who shall impress upon the District Magistrates of all the districts in the

State of U.P. to reevaluate the cases for remission after 14 years of incarceration as per mandate of Sections 432 and 433 of Cr.P.C. even if appeals are pending in the High Court.

Order Date:28.1.2021
Mukesh