

Jagdish Pd. Sharma Vs. State

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Court : Delhi

Decided On : Feb-01-1995

Reported in : 1995CriLJ2501; 55(1994)DLT315

Judge : P.K. Bahri and; S.D. Pandit, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 354, 375, 376 and 511; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 161 and 313

Appeal No. : Criminal Appeal No. 136 of 1990

Appellant : Jagdish Pd. Sharma

Respondent : State

Advocate for Def. : P.S. Sharma, St. Council (Crl)

Advocate for Pet/Ap. : Sandeep Sethi, Adv

Judgement :

P.K. Bahri, J.

1. The appellant, Jagdish Prasad. s/o Sh. Babu Ram, aged about 31 years, permanent resident of Gulab Vatika, Loni Road, Ghaziabad has been convicted of an offence punishable under Section 376 of Indian Penal Code vide judgment dated August 24, 1990 of an Additional Sessions Judge, Shahdra and has been

sentenced to undergo rigorous imprisonment for life and a fine of Rs. 1,000/- and in default to further undergo rigorous imprisonment for one year vide order dated September 5, 1990 with further following directions :

'Till such time the Legislature does not prescribe forcible castration. I feel some beginning should/could be made by including convicts of such heinous crimes to opt for voluntary castration so that they could be of help and utility to their dear ones rather than keep on languishing in jail for life. It thereforee, hold and lay down that in case the accused undergoes voluntary surgical operation of castration, to be certified by the Medical Supdt. of the government hospital concerned, with the prior approval and consent of the Hon'ble High Court of Delhi, his remaining sentence would be deemed to have been waived.'

2. He has been held guilty of having committed rape on an infant child namely Mamta aged about 3 1/2 years on the 10th May 1987 at about 8.30 p.m. in the compound of house of one Ramji Lal situated in main Krishna Gali, Shahdra.

3. PW 1, Smt. Usha Rani and her husband PW 3 Shiv Chandran Gupta, along with their three minor daughters were, residing in House No. 600/12, Krishna Gali No. 11, Maujpur, Delhi. Their eldest daughter namely Mamta was aged about 3 1/2 years at the time of the occurrence. PW 2, Sh. Ram Kishan, is a D.T.C. driver by profession and is resident of House No. 660/12A, Maujpur, Delhi

4. PW 3, Sh. Shiv Charan Gupta, was earning his livelihood by selling golgappas on a hand-driven cart at the Maujpur Chowk.

5. Ramji Lal, PW 12, was residing in House No. 673/2B, Main Krishna Gali, Maujpur located at a distance of about 10 to 15 paces from the house of Shiv Charan. Ram Kishan's house is also stated to be located near the house of Ramji Lal.

6. The appellant was residing as a tenant in House No. 56, Main Krishna Gali, Maujpur, belonging to one Madan Lal for the last few year prior to the occurrence. The appellant is also stated to be a relative of PW 12, Ramji Lal.

7. It is the case of the prosecution that on May 10, 1987, which was a Sunday, Usha Rani, PW 1, along with her daughters and the family of Ramji Lal were witnessing the Sunday evening movie on the television at her house and her daughter Mamta had left the house for returning the empty soft drink bottle (goli wali bottle) to the nearby shopkeeper and as she had not returned for some time so Usha Rani went in search of her and her husband Shiv Charan Gupta had also returned with his cart from his work and both of them came to the main Krishna Gali and they heard shrieks of their daughter coming from the open court-yard of the house of Ramji Lal and was about 8.30 p.m. and they immediately rushed to the said place and they found the appellant lying over Mamta on a cot and witnessed the appellant committing rape on their young daughter. They raised the alarm which attracted PW 2, Ram Kishan to the spot. The appellant was overpowered and Shiv Charan went to call the police and he brought the police control room jeep from the Maujpur Chowk to the place of occurrence and in that jeep the appellant and PW 1 to PW 3 and the victim of the rape, Mamta, were taken to the Police Station Yamuna Vihar. The statement of Usha Rani was recorded which is EX. PW 1/A on the basis of which the case was registered as F.I.R. No. 196 at 10.05 p.m.

8. P.W. 13, S. I. Ram Dal had recorded the statement of Usha Rani and had been entrusted with investigating the case. He had taken into possession red colour underwear of Mamta which was stated to be having human semen stains which was produced before him after taking it off from the person of Mamta which was converted into a sealed parcel vide memo No. PW 1/B which memo is also dated May 10, 1987. Sub-Inspector along with other police officials and the witnesses had gone to the place of the occurrence and had taken into possession the cot from the compound of the house of Ramji Lal vide recovery memo Ex. PW 1/C dated May 10, 1987.

9. The Investigating Officer is stated to have taken into possession of 'pyjama' from the person of the appellant which had on it blood and human semen stains, after converting the same into sealed parcel vide memo Ex. PW 2/B dated 11th May 1987. He had prepared the site plan EX. PW 13/B on the pointing out by the witnesses which is also dated 10th May 1987. The place of occurrence, the house

of Ramji Lal, has one room at back of the plot and there is open court-yard in front of that room where the said cot was lying on which the appellant was found lying over Mamta and committing rape on her. This court-yard abuts on the main Krishna Gali, there being no wall between the lane and the said open compound of Ramji Lal. There was no electricity available in the house of Ramji Lal and the house of Ramji Lal was locked at the time of the occurrence because family of Ramji Lal was witnessing the Sunday evening movie on television at the house of the complainant.

10. The Investigating Officer had taken Mamta to J.P.N. Hospital, New Delhi at 2.15 p.m. on 11th May 1987. PW 11, Dr. Rama Lakshmi, examined Mamta and she had recorded history as given by Mamta's mother that family was watching television at about 8 p.m. on 10th May 1987 and Mamta was sent to nearby shop to give back some medicine when allegedly she was lifted by Jagdish Prasad and he assaulted Mamta and he was apprehended at the spot by mother and father of the girl and Ram Kishan. On examination, she found Mamta to be a small child aged about 3 1/2 years, conscious having pulse rate of 78 per minute, she was not anaemic and she found some dried blood stains on the right ear lobe and small laceration on inside of the right ear and a bite mark on the right arm in the deltoid region 3 cm x 3 cm bruised and tender. She also found nails marks on manubrium sterni. She also, on local examination of private part of the child, found 1 cm. tear on the Hymen and extending to perineum at 6 O' clock position. She also found minimal fresh bleeding. An underwear was found on person of Mamta which was having blood stains. She opined that evidence of rape was present and required that the said underwear be preserved but she did not herself put the underwear in any sealed cover and handed over the same to any police constable or the Investigating Officer. She prepared the M.L.C. Ex. PW 11/A.

11. PW 10, Dr. H. M. Sidharth of the said hospital had taken the sample blood of Mamta and after sealing it had handed over the same to the Investigating Officer along with the seal specimen. This underwear was stated to have been taken into possession, after duly sealing it by the Investigating Officer, from Usha Rani vide recovery memo Ex. PW 1/C dated 11th May 1987. This underwear was of grey colour.

12. The appellant was got examined from PW 9 Dr. K. N. Sharma at 11.45 a.m. on 11th May 1987. The appellant was brought there by Constable Baljeet Singh. He prepared the detailed report, Ex. PW 9/A. He had opined that there was nothing to suggest that the appellant did not have the sexual potency. On personal examination of the accused, he found presence of no defect on penis and the general development of organ was found to be normal. No evidence of any injury on the penis or over hyperplastic over carona in a ring form could be seen. He found presence of smegma over hyperplastic region only while rest of the glands & fore skin was free of smegma. He found evidence of suspected seminal stains on the underwear (kachha) worn by the appellant at that time which he had handed over to the police. At that time, the appellant was wearing a shirt, trousers (pant) and a vest. Nothing was found wrong on those clothes.

13. The blood sample of the appellant was also obtained which was got sealed and taken into possession vide memo Ex. PW 6/B. The underwear which was suspected to be stained with human semen was handed over to Constable Baljeet Singh, who apparently had accompanied the appellant at the time of his medical examination, and was converted into a sealed parcel vide memo Ex. P.W. 6/C. The recovery memos which were prepared on May 10, 1987 have been signed by Ram Kishan, Shiv Charan and Constable Satender Kumar as witnesses but surprisingly, the seal, after use, has not been handed over to any independent witness but had been kept with Constable Satender Kumar. Even the seal used for converting other sealed parcels, as per memos prepared on 11th May 1987, had not been handed over to any independent witness but had been handed over to Constable Satender Kumar.

14. The case property was sent to C.F.S.L. from the Malkhana and the reports of the C.F.S.L. were received which are EX. PA and PB which disclosed that the alleged underwear of Mamta of red colour had human blood of 'AB' group whereas the grey colour underwear of Mamta was found to have human blood of 'A' group. The pyjama of the appellant was found to have human blood of 'A' group and underwear of the appellant was found to have human blood of 'AB' group. The sample blood of the appellant disclosed that it was of 'B' group and the sample blood of Mamta was found to be of 'A' group. All the three underwears and the

pyjama were found having human semen stains of 'B' group.

15. The Investigating Officer had recorded the statement of various witnesses and had thereafter put in the challan. The appellant, who was charged for the offence punishable under Section 376 of the Indian Penal Code on the basis of the evidence so collected, had pleaded not guilty and had averred that in fact he had been picked up from his factory at about 10.30 p.m. and falsely implicated in this case as he had a quarrel with the elder brother of Shiv Charan namely Ladli Prashad and that he was married having a daughter and a son.

16. The learned Additional Sessions Judge had brought home the offence to the appellant beyond any reasonable doubt in placing implicit faith in the testimony of the parents of the child and which stood, according to his assessment, corroborated from the C.F.S.L. reports pertaining to the finding of human semen and the blood on the clothes of the appellant and also on the underwears of the child.

17. The learned counsel for the appellant has strenuously argued that this case bristles with contradictory statements of the witnesses, deliberately delayed investigation which allowed ample time to enable the Investigating Officer to fabricate evidence to show that the appellant had in fact committed rape on the little child.

18. The learned counsel for the appellant has urged that learned Additional Sessions Judge was swayed with emotional feelings rather than logically appreciating the evidence appearing on the record and had glossed over the glaring material discrepancies appearing not only in the statements of the alleged eye witnesses but also ignored glaring possibility that in all probabilities the Investigating Officer had created false evidence of showing blood of the child on the alleged clothes of the appellant also showing presence of stains of human semen on the alleged underwears of the child and also alleged underwear and pyjama of the appellant. He laid much emphasis on the medical report of the appellant and to the testimony of the doctor who had prepared the said report to show that in fact the appellant had not committed any rape on that night on any child. He has urged that no blood had oozed out from the person of the appellant

as per medical report, so it becomes a mystery how the blood of 'AB' or 'B' group came on some of the clothes in question when admittedly the group of the blood of Mamta was 'A' and the group of blood of appellant was 'B'. He has drawn our attention to book of Medical Jurisprudence by Modi to show that 'AB' group is a separate group of human blood and the C.F.S.L. report does not show that 'A' & 'B' groups of blood were found on the clothes and at any rate there is not an iota of evidence supporting the prosecution case that the appellant had bled in any manner so that his blood of 'B' group could come on any of the clothes in question.

19. The learned counsel for the State has, on the other hand, contended that statements of the parents of the girl in question find support from the statement of independent witness Ram Kishan which prove that the appellant found an opportunity to commit rape on the little child with whom he was familiar by taking her to a lonely compound of house of Ramji Lal, whose family was away, and there was no electricity present in that compound to enable the appellant to indulge in his sexual lust.

20. Learned counsel for the State has argued that there was no earthly reason for the parents of the little girl to have falsely implicated the appellant for an offence which involves the honour of their little girl child, which would be a lifelong trauma, hanging like sword of Damocles on the future life of the said little girl. He has argued that lapse, if any, on the part of the Investigating Officer or uncalled for over enthusiasm shown by the Investigating Officer in perhaps playing some mischief with regard to the clothes in question should not cast any cloud on the straight forward and truthful statements of the parents of the girl.

21. He has argued that the parents of the girl had no motive whatsoever to falsely implicate the appellant for such a heinous offence and he also highlighted that the appellant had not given any suggestion to PW 1 or to PW 2, in cross-examination, as to reason of his alleged false implication but he came out with the suggestion to PW 3, father of the girl, that he owed some money to the appellant and as he was not returning the money, so he had falsely implicated the appellant but he points out that in his statement under section 313, the appellant had come out with a new story which had never been put to any of the prosecution witnesses that the

appellant had some enmity with Ladli Prashad, elder brother of girl's father and he had got appellant falsely implicated. He has also pointed out that the fact that the appellant and the girl in question were found in the compound of house of Ramji Lal was not controverted while cross-examining PW 1 to PW 3 by the appellant. So, keeping in view all these circumstances, and particularly the truthful statements of the parents of the girl, the Court should confirm the conviction of the appellant for the offence punishable under Section 376 of Indian Penal Code.

22. The first question to be decided in this matter is as to whether the appellant had been found in compromising position with Mamta, child aged about 3 1/2 years, at that time and place on that day or not?

23. The parents of the child PW 1 Usha Rani and PW 3 Shiv Charan Gupta, have categorically deposed about as to how they went in search of their little daughter and on hearing her shrieks reached the compound of Ramji Lal and found the appellant lying over Mamta. Usha Rani has stated that Mamta's underwear had been taken off and appellant was also having his pyjama off and was having intercourse with Mamta. To the similar effect is the testimony of PW 3, father of the girl.

24. Ram Kishan, who is the independent witness, who also had come to the spot had corroborated the statement of PW 1 and PW 3 that when he reached the said compound of Ramji Lal, he found both, appellant and the girl present on the said cot with the underwear of the girl having been pulled down up to her thighs. He, however, had turned hostile as he did not narrate the facts in Court which he had given to the police in his statement under Section 161 Criminal Procedure Code and thus, he was confronted with the portions of the said statement, copy of which is Ex. PW 2/A, but he denied that he had stated to the police that the appellant was found committing rape on that little girl at that time and that pyjama of appellant was seized by the police in his presence. He had tried to help the appellant by deposing that in fact the appellant was wearing greenish trousers at the time when he was apprehended along with the girl. We do not attach any importance to this particular version of PW 2, Ram Kishan, because there is no reason for PW 1 and PW 3 to have falsely concocted the facts involving the

honour and future life of their own daughter by deposing that appellant and their daughter were found in compromising position on that particular cot at that time which appellant's position on that particular cot at that time with appellant's pyjama being taken off and girl's underwear being also pulled down.

25. At least PW 2, Ram Kishan, corroborate the statements of PW 1 and PW 3 that the appellant and little girl were found on that cot at that time and police was called and appellant and all the witnesses including the little girl had gone to the police station where PW 1 had lodged the F.I.R.

26. The version put up by the appellant, in cross-examination of PW 1, was that appellant had been falsely implicated as there was some quarrel between PW 3 and the appellant with regard to Rs. 8,000/- given on loan by appellant to PW 3 which suggestion was denied. The appellant, in his statement under Section 313, had come out with a new version that it was, in fact, PW 3 elder brother Ladli Prashad who had some quarrel with him and that is why this case has been brought against him on false accusation.

27. We do not believe that appellant had been falsely implicated in this case. So, we agree with the findings of the Additional Sessions Judge that in fact the appellant and the little girl Mamta were found in some compromising position at that time in the compound of Ramji Lal which was a deserted place. Obviously, the appellant who knew the little child had on that night, finding the girl alone, had lured her to that house of Ramji Lal which was at that time locked and there being no electricity present in that house, so he took that girl to the secluded place for having his lust satisfied.

28. The question which arises for consideration is as to whether the appellant has been rightly held to be guilty of offence under Section 375 punishable under Section 376 of Indian Penal Code. In other words, whether the appellant had committed rape on the said girl. Explanation to Section 375 makes it clear that the act of rape is complete as soon as there takes place penetration.

29. In Halsbury Laws of England Volume 9 Section 1237, it has been mentioned that there must be evidence of penetration of the private parts of the woman by the

private parts of the prisoner, but the slightest penetration is sufficient, and it is not necessary that the hymen should be ruptured. It is not necessary to prove actual emission, the carnal knowledge being deemed to be complete upon proof of penetration only. If penetration cannot be satisfactorily proved the prisoner may be convicted of an attempt to commit a rape or of an indecent assault.

30. Modi Medical Jurisprudence and Toxicology, 17th Edition page 355 has mentioned that in case of girls of less than 14 years the dispensibility of the vaginal orifice has to be taken in view. If penetration takes place in case of girls of such an age, then there can be expected to be widespread damage of the fourchette, hymen, labia majora, labia minora, vulva and vaginal canal.

31. In Taylor's Principles & Practice of Medical Jurisprudence Volume II 12th Edition page 60, it is mentioned that it is impossible to conceive the forcible intercourse should take place in childhood without bruising, effusion of blood, or a laceration of the private parts. The size of the male organ must necessarily cause some local injury in the attempt to enter the vagina of a child. If the violation has taken place within two or three days, appearance as presented by the parts may be as follows : (1) Reddening or frank inflammation with abrasion or tearing of the lining-membrane, introits or of the vagina. (2) Much-purulent discharge from the vagina of a yellowish or greenish-yellow colour, staining the clothing; the urethra may possibly share in the inflammation. (3) In recent cases blood may be oozing from the injured parts or clots of blood may be found in the vulva. (4) The hymen may be entirely destroyed, or may show lacerations.

32. Normally, in rape cases, if the gland of the male of the organ is covered by uniform layer of smegma, it would negative the possibility of recent complete penetration. If the accused is not circumcised, the existence of smegma round the corona gland is proof against penetration, since it is rubbed off during the act of sexual intercourse.

33. Keeping in view the aforesaid observations of the learned authors on medical jurisprudence, if we examine the medical legal reports of Mamta as well as of the appellant, we find that apart from the fact that Mamta had a small minimal tear in the hymen, there was no evidence of any other injury on her private parts. There

was no injury to labia majora and labia minora. There was not even swelling or redness of both of them and vulva. The appellant's medical examination disclosed that smegma was present over hyperplastic region and he had no injury on his person at all. It seems that the learned Additional Sessions Judge has held that because there was a tear in the hymen of Mamta, thus there had taken place some penetration in the private parts of the girl and thus, he held the appellant guilty of the said offence, particularly also he believed the statements of PW 1 and PW 3 that when they had reached the spot, they found the appellant having intercourse with the said little child.

34. It is evident that there had not taken place any full sexual intercourse with the child. The presence of smegma over hyperplastic region of the appellant's organ clearly overruled the inference that he had any complete sexual intercourse.

35. In the present case, surprisingly the Investigating Officer did not take any prompt steps to get the little girl and the appellant medically examined. He got them examined after many hours and it has come in the statement of PW 3 that throughout the night Mamta as well as the appellant and Mamta's mother were kept at the police station. It is not understandable as to for what purpose the Investigating Officer was keeping them at the police station when the F.I.R. had already been recorded showing that rape had been committed by the appellant on Mamta. It was absolutely incumbent upon the Investigating Officer to have taken the appellant as well as Mamta to the doctors at the hospital where they are available 24 hours for getting them medically examined. It is to be further noted here that in the F.I.R. it was not recorded that when PW 1 and PW 3 had reached the place of occurrence, they had found any bleeding from the private parts of Mamta. Even the Investigating Officer, who had recorded the statement of PW 1, has not mentioned anywhere that he had noticed any bleeding from the private parts of Mamta. The small tear in hymen does not necessary could have occurred because of penetration of appellant's organ in the private parts of Mamta. It is well-known that even little pressure on the private parts of such a small girl may bring about such small tear in the hymen.

36. Apart from this that no bleeding from the private parts of the little girl was mentioned in the Rukka, there have appeared very serious discrepancies in the case of the prosecution with regard to the clothes seized from the person of the appellant as well as from the person of Mamta. It was sought to be shown in the recovery memo with regard to the first underwear of Mamta that PW 1 had removed the said underwear of red colour from the person of Mamta and handed over the same to the police and the same was converted into sealed parcel but PW 1 had controverted this fact and had deposed that in fact, after the occurrence, she had brought Mamta to her house and had taken off the stained underwear of Mamta and kept it with her 'bhabhi' and had put on another underwear of grey colour on person of Mamta after washing the private parts of Mamta. The other underwear of Mamta of grey colour was present when Mamta was taken to the doctor on the following day after many hours for her medical examination and it appears that Constable had taken that underwear and handed over the same to the Investigating Officer who converted the same into a sealed parcel.

37. Ex. PB. the CFSL report indicates that group of blood of the girl was of 'A' group and the group of blood of the appellant was of 'B' group and on the red underwear of Mamta and on the white underwear of appellant, human blood of 'AB' group was found whereas on the pyjama of the appellant, human blood of 'A' group was found. Human semen was detected on all the four pieces of clothes mentioned above which was of 'B' group. As per Modi Medical Jurisprudence, 'AB' group is a separate human blood group. The CFSL report does not say that 'A' and 'B' group of blood was found. 'AB' group was not the blood of either the appellant or of Mamta. So, it is not explained how 'AB' group of human blood could be detected on the underwear of Mamta and the underwear of the appellant.

38. Apart from this, it is evident from the evidence led on the record, particularly the medical report of the appellant, that there was no injury present on the person of the appellant and so, no blood had oozed out from the body of the appellant so that the same could come on underwear of Mamta and his own underwear. If no blood has come out from the body of the appellant, the only inference is that some mischief has been played by the Investigating Officer in smearing the clothes with blood group 'AB' on underwear of Mamta and also appellant's underwear. This

possibility cannot be ruled out because admittedly, the Investigating Officer had not handed over the seal, with which he had converted all these clothes into sealed parcels, to any independent person but had kept it with his own subordinate constable.

39. Another serious lapse which appears in the prosecution case is that although the pyjama of the appellant is stated to have been taken into possession by the Investigating Officer at the police station but it is not explained that in case appellant was also wearing a stained underwear, why the same was not taken into possession by the Investigating Officer when he took the pyjama of appellant in possession.

40. Learned counsel for the State has contended that in all probability, PW 1 was not keen initially to get her daughter medically examined and thus, the Investigating Officer, was helpless in the matter and so delay occurred in getting Mamta as well as appellant medically examined.

41. We do not find any merit in this contention. PW 1 and PW 3 had brought Mamta as well as appellant in a police van soon after the occurrence at the police station and an F.I.R. was lodged and a case was registered. The Investigating Officer had no option but to take steps immediately for getting the appellant as well as Mamta examined from medical doctors. He should have taken them in the same position in which they were brought before him, before the doctor and it was for the doctors to have, after medically examining them, to seize the clothes if they had any blood or human semen and get them converted into sealed parcels with the seal of the doctor and then they could have been handed over to the Investigating Officer. Not only parents had immediately rushed to police and lodged complaint but mother of Mamta had also remained in the police station throughout the night as desired by the Investigating Officer and she has never said that she was not ready to go to doctor on that night.

42. The Investigating Officer has not acted fairly in investigating this case. We are surprised that the learned Additional Session Judge, after noticing all these lapses of the Investigating Officer, had commended the investigation and had lavished undeserved praise on the conduct of the investigation by the Investigating Officer.

To say the least, the investigation done by the Investigating Officer was shoddy and most probably was mischevious.

43. In view of the aforesaid discussion, we are of the view that in all probability, penetration of the vagina of Mamta had not taken place with the male organ of the appellant and thus it was not a case of rape, as understood by Section 375 of the Indian Penal Code.

44. Some of the cases have been cited by counsel for the parties which are mostly based on their own peculiar facts. It is seldom that the facts could be similar in two criminal cases.

45. In *Rahim Beg v. The State of U.P.*, : 1972 CriLJ1260 there were allegations of rape having been committed by a fully developed man on a girl of 10/12 years of age who was found to be virgin and her hymen was found to be intact. There was no injury on the male organ of the accused and it was held that same would point towards the innocence of the accused.

46. Reference was made to *Mohd. Mian v. State* : 37(1989)DLT35 , which is a judgment given by one of us (P. K. Bahri, J.) where in absence of any injuries on the private part of the girl, although there was small tear of hymen which was bleeding, this Court had converted the offence from 376 IPC to under Section 354 IPC.

47. However, in the present case, we have the statements of PW 1 and PW 3 that appellant was at least making efforts to commit rape on the little girl and fortuitous arrival of PW 1 and PW 3 on the spot probably frustrated his attempt to commit such a heinous crime. The presence of bite mark on the arm of the girl and some injuries on the ear lobe of the girl also indicate in the present case that the appellant was having a lust and wanted to ravish the girl. So, it is held that the appellant is guilty of an offence of an attempt to commit rape on the little girl Mamta.

48. Before we part part with this case, we may mention that learned Additional Sessions Judge was not right in proposing voluntary castration of appellant under

the orders of the High Court and for remission of his remaining sentence because this part of the order of the Additional Sessions Judge is totally illegal. The justice has to be administered according to the law as it prevails and not on the hypothesis as to what should be the law for curbing such heinous crimes. There is no provision in any law that if a particular accused of a rape case voluntarily undergoes castration, then the minimum sentence prescribed by the statute is to be remitted by any Court. The sentences have to be given as laid down by the Legislature. The Additional Sessions Judge ought to have restrained himself from proposing any such action which was not in consonance with law.

49. In view of the above discussion, we partly allow the appeal and convert the conviction of the appellant from Section 376 to Section 376 read with Section 511 of the Indian Penal Code.

50. The appellant has already undergone more than 7 1/2 years of rigorous imprisonment. We sentence him to the period already undergone. He be now released in case he is not required to be detained in any other case.

51. Appeal partly allowed.