

# SUPREME COURT OF INDIA

Sawailal & Ors.

Vs.

State of Rajasthan

Crl.A.No.876 of 2006

(P.P.Naolekar and Lokeshwar Singh Panta,JJ.)

31.01.2008

## ORDER

1. Seven persons were put to trial under Sections 376 (2)(g) and 342 of the Indian Penal Code (in short IPC). The Sessions Court convicted all the accused persons. Accused No.5 (Modiram alias Moda) and Accused No.6 (Varu alias Varda) were convicted for the offence under Section 376 (2)(g) IPC and sentenced to undergo R.I. for a period of 11 years with fine of Rs.200/- each. In case of default of payment of fine, they were sentenced to undergo R.I. for one year. Accused No.1 (Basantilal), Accused No.2 (Sawailal), Accused No.3 (Chunnilal), Accused No.4 (Nainsukh) and Accused No.7 (Kana) were convicted for the offence under Section 376 (2)(g) IPC and sentenced to undergo R.I. for a period of 10 years with fine of Rs.200/- each. In case of default of payment of fine, they were sentenced to undergo R.I. for one year. Being aggrieved by the order passed by the Sessions Judge, all the accused filed an appeal before the High Court. During the pendency of the appeal in the High Court, accused Basantilal, Chunnilal and Nainsukh died and the appeal of the said accused-appellants stood abated. The High Court by its judgment dated 15th April, 2005 affirmed the judgment passed by the Sessions Judge.

2. Being aggrieved by the judgment passed by the High Court, the accused- appellants, Sawailal, Kanihya Lal @ Kana, Modiram @ Moda and Barda have challenged the impugned judgment by filing this appeal by special leave. The incident took place on 26.4.1985. The FIR was lodged by PW.3 (Chaturbhuj), uncle of the prosecutrix (PW.5 Mst. Badami). The names of A-5 and A-6 (before the Sessions Court), and Basantilal (A-1, since deceased) were mentioned in the FIR lodged by PW.3. PW.5 (Mst. Badami) prosecutrix, identified all the accused persons in the Court and stated that all accused (A-1 to A-7) forcibly committed rape on her. The prosecutrix version is fully corroborated by the medical evidence placed on record. A-2, A-3, A-4 and A-7 were identified by PW.5 in identification parade conducted by the Magistrate in the jail on 25.5.1985 which was also corroborated by the dock identification of these accused persons. We have minutely scrutinized the evidence of PW.5 (Prosecutrix) and do not find any infirmity therein. Accordingly, we agree with the findings recorded by

the Sessions Court convicting the accused-appellants as well as those of the High Court upholding the same. The appeal is without any merit and is dismissed accordingly.