

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Date of Decision: 05th February, 2010

+ **CRL.APPEAL No.364/2005**

AMITAppellant

Through: Mr.Ajay Verma, Advocate

Versus

STATERespondent

Through: Mr.M.N.Dudeja, Advocate

CRL.APPEAL No.561/2009

RAHUL @ BUDH PRAKASHAppellant

Through: Mr.Deepak Sharma, Advocate

Versus

STATERespondent

Through: Mr.M.N.Dudeja, Advocate

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR. JUSTICE SURESH KAIT

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

PRADEEP NANDRAJOG, J. (Oral)

1. Appellant Rahul and Amit have been convicted for the offences punishable under Section 376 (2) (g) IPC; Section

324/34 IPC; Sections 392/397/34 IPC and Section 506/34 IPC. Appellant Rahul is also convicted for the offence punishable under Section 27 of the Arms Act.

2. Co-accused Mohan Lal who was charged for the offence punishable under Section 411 IPC and Ashok Kumar who was charged for the offence punishable under Section 212 IPC have been acquitted.

3. Pertaining to co-accused Mohan Lal, notwithstanding the fact that a mobile phone belonging to the victim was recovered from his conscious possession, benefit has been given to him of not having knowledge that the mobile phone was stolen property. Qua Ashok Kumar from whose house Rahul was arrested and a pant belonging to Rahul was recovered, has been given the benefit of not knowing that Rahul was an offender at law.

4. The trial of two juvenile co-accused named Suraj and Neeraj was referred to the Juvenile Justice Board as the two were minor. The two juveniles pleaded guilty and appropriate orders have been passed against them by the Juvenile Justice Board.

5. In the instant appeals we are concerned with the fate of Rahul and Amit.

6. Rahul has been convicted as the main offender in view of the testimony of the prosecutrix Kumari 'P' as also the

fact that spermatozoa was detected in her vaginal swab by Dr.P.C.Dixit PW-11 as per his report Ex.PW-11/A and that DNA fingerprints of the blood sample of Rahul matched the DNA fingerprints from the source of Ex.C i.e. the sanitary pad used by Kumari 'P' soon after she was sexually assaulted. Though of a weak incriminating nature, a knife Ex.P-1 got recovered by Rahul pursuant to his disclosure statement has been opined to be the weapon of offence with which an incised injury was caused on the left hand (palm) of Kumari 'P'.

7. Qua appellant Amit the sole incriminating evidence is the testimony of Kumari 'P' as per whom the appellant was a co-partner with Rahul in the commission of the crime.

8. Vide order on sentence dated 17.1.2005 the appellants have been sentenced to undergo imprisonment for life and pay fine in sum of Rs.10,000/- and in default of payment of fine to undergo simple imprisonment for 1 year pertaining to the offence punishable under Section 376 (2)(g) IPC and to undergo RI for a period of 7 years and pay fine in sum of Rs.5,000/-, in default to undergo simple imprisonment for 6 months for the offence punishable under Section 392/397/34 IPC. For the offence punishable under Section 506/34 IPC they have been punished to undergo RI for a period of 2 years and pay fine in sum of Rs.2,000/- and in default to undergo SI for 2 months. Same is the punishment inflicted for

the offence punishable under Section 324/34 IPC. For the offence punishable under Section 27 of the Arms Act, Rahul has been sentenced to undergo RI for 7 years and pay a fine in sum of Rs.1,000/-, in default to undergo 1 month simple imprisonment. All the sentences have been directed to run concurrently. We understand the same to mean that except for the sentence of life imprisonment, other sentences shall run concurrently.

9. Case sent for trial and sought to be proved by the prosecution was that Kumari 'P' a student of 4th year at the Maulana Azad Medical College had collected the admit card for the ensuing exams which were to be held on 18.11.2002 and around afternoon time on 15.11.2002 was walking towards Shaheed Bhagat Singh Bus Terminal to take a public transport to go to her house and on the way had reached Khooni Darwaja. Rahul and Amit accosted her. Having a knife in his hand, Rahul commanded her to keep silent and enter inside the structure called Khooni Darwaja. Out of fear Kumari 'P' obeyed their command as her initial hesitation was met with a threat by Rahul placing the knife on her neck. As she entered inside Khooni Darwaja 2 juvenile co-accused Neeraj and Suraj were found by her inside Khooni Darwaja. At the asking of Rahul, Neeraj and Suraj searched her bag and took out her mobile phone and Rs.100/- inside a purse kept by her in her

bag. The stolen property i.e. the mobile phone, and the purse containing Rs.100/- was handed over to Amit and thereafter she was compelled to climb up the stair inside Khooni Darwaja and at the landing of the stairs at the top she was molested and raped by Rahul. While subjecting her to rape, Rahul continued to threaten her with the knife. She was inflicted a wound with the knife on her left hand. After satisfying his lust, Rahul wiped semen from her private parts using his shirt and thereafter Rahul and the two juveniles left.

10. Since the defence has used it for the benefit of the appellants, it may be noted that as per Kumari 'P' after wearing her clothes she reached the bus stand at Firozshah Kotla where HC Bhikam Singh PW-4 and Const.Attar Singh, on beat duty, saw her very tense and perturbed. On being questioned by them whether all was fine she told them about her ordeal. At their request, she accompanied them to the place where the crime was committed. They did so hoping to apprehend the accused. Whereas Kumari 'P' stood on the ground of the stairs of Khooni Darwaja, the two police officers climbed up and when they returned, Kumari 'P' had left. No such information was reported by the two police officers at the police station and only on 16.11.2002 i.e. the next day HC Bhikam Singh recorded said fact in his statement Ex.PW-4/A made to SI Rajesh Shukla PW-30.

11. Reverting to what Kumari 'P' did after she returned to Khooni Darwaja with the two police officers and left the spot, she went to her college and therefrom to the hostel and since she was bleeding she put a sanitary pad and narrated her woes to her friends Kumari 'S' PW-5 and another friend Kumari 'S'. Her friends consoled her and took her to the casualty where she refused to be medically examined, stating that being a matter of her reputation she would like to consult her parents. She reached her house at 5:30 PM and informed her parents, who after confabulations decided to take recourse to law. They brought her to LNJP hospital at 9:30 PM where she was examined by Dr.Chinda Jassal PW-9 who prepared her MLC Ex.PW-9/A noting therein a small sharp cut on the left hand near palmer surface of thumb and bruises on the right side of her face. A small 1/2 x 1/2 cm tear was present on posterior fourchette and it was bleeding. Hymen was found to be torn and bleeding. He sealed the sanitary pad which the patient was wearing and prepared two slides of vaginal smear and sealed the same. Seal of hospital was put on the two parcels. Kumari 'P' and her parents changed their mind to pursue the matter and Kumari 'P' wrote on the MLC that she does not wish an FIR to be registered and thereafter she and her parents left.

12. Const.Shamsher PW-28 who was on duty at LNJP hospital informed the local police station at 12:45 in the night that a girl named 'P' daughter of 'Sh.P.R.S. R/o -----' who had been raped had come to the hospital and requested that an investigating officer be sent. Said information was noted vide DD No.17A, Ex.PW-30/A, by the duty constable at the police station at 12:45 in the night. The date recorded therein is 16.11.2002 for the obvious reason, past midnight the next day commences.

13. Since Kumari 'P' and her parents left LNJP hospital soon after the MLC was recorded by informing the doctor that they do not wish to pursue the matter it is apparent that when the investigating officer deputed reached the hospital he met nobody.

14. It is apparent that further events did not charter the normal course. No FIR was registered at the police station pertaining to the offence.

15. However, SI Rajesh Shukla PW-30 summoned HC Bhikam Singh PW-4 on 16.11.2002 and recorded the statement Ex.PW-4/A of HC Bhikam Singh who informed him the facts as told to him by Kumari 'P' and further events till Kumari 'P' vanished when he and Const.Attar Singh went up the stairs at Khooni Darwaja. Since the facts disclosed in the statement Ex.PW-4/A showed the commission of a cognizable offence as

also the name and the residence of the victim, SI Rajesh Shukla got an FIR registered the same day for the offence of rape.

16. No headway could be made over the next few days till 21.11.2002, for the reason Kumari 'P' and her parents continued to vacillate. As and when the investigating officer went to their house, the parents of Kumari 'P' told him that their daughter was not available.

17. But, SI Rajesh Shukla acted wisely, in that, on 16.11.2002 itself i.e. the next day of the crime being the day when he learnt about the crime, he went to LNJP Hospital and as recorded in the seizure memo Ex.PW-10/A took possession of two sealed parcels, one containing the slides of the vaginal swab of Kumari 'P' and the other her sanitary pad. He immediately deposited the parcels in the malkhana, with the seals intact.

18. On 21.11.2002 Kumari 'P' and her parents finally decided that Kumari 'P' should suffer the shame, if any, but the accused should be prosecuted. On said date her statement was recorded by SI Rajesh Shukla wherein she disclosed the details of what happened to her on 15.11.2002. She further disclosed that the boy who raped her had the name 'Rahul' tattooed on his right forearm.

19. On 21.11.2002 itself the photographs in the dossiers of known criminals maintained at the police station, being 8 in number, all of whom were known as Rahul, were shown to Kumari 'P' and she identified appellant Rahul as her tormentor.

20. From the afore-noted vacillating conduct of Kumari 'P', learned counsel for the appellants have been quick to spring an argument that what credibility would be there in the version of Kumari 'P'. Counsel urge that if it is to be argued that on account of perceived sense of shame and indignation Kumari 'P' did not lodge an FIR, it defies logic as to why soon after the offence she confided everything in strangers i.e. HC Bhikam Singh and Const. Attar Singh. Learned counsel seek to cement and strengthen their argument by drawing attention to the fact that as deposed to by HC Bhikam Singh, Kumari 'P' accompanied them to the place where the crime was committed, hoping that the accused or anyone of them may be noticed and hence apprehended and her tormentors brought to justice. Counsel urge that it is obvious that Kumari 'P' was avoiding to meet the police so that she could gain time to think about a false story.

21. The argument sounds very attractive but is no more than a fairy tale. A victim of rape is overcome by various emotions as a result of not only her body being defiled but

even the soul being defiled. Fear, Shame, Helplessness, Dejection and Anguish would be the negative feelings simultaneously stirring in the mind. All these negative feelings would pull the victim inwards and tend to make her a recluse. Simultaneously Anger, Hatred, Desire for Retribution and Desire for Punishing the accused would push her towards positive acts qua the accused. All these negative and positive feelings would be competing in the mind at the same time. At one moment one feeling may outweigh the others and if the same is a negative feeling drawing the victim inwards, her actions would be to suffer the shame and the humiliation in quiet. The very next moment the feeling of hatred or retribution may surface and this would lead the victim towards positive steps to report the crime so that the accused is brought to justice. It is apparent that the conduct of a rape victim would be an inchoate mix of apparently irreconcilable opposites. But if viewed in the aforesaid perspective, nothing is inchoate and nothing is irreconcilably opposite.

22. Knowing the address of appellant Rahul, through the dossier maintained, appellant Rahul was tracked and was arrested on 22.11.2002 from the house of Ashok wherefrom a pant belonging to Rahul was seized. Rahul was interrogated and his disclosure statement Ex.PW-22/A was recorded in which he not only confessed to the crime but disclosed the

names of appellant Amit as also the two juveniles who were with him on the day of the incident. Thereafter, appellant Amit and the two juvenile co-accused were apprehended and Suraj made the disclosure statement informing that the mobile phone belonging to Kumari 'P' had been handed over by him to Mohan Lal. The mobile phone was recovered from the possession of Mohan Lal. Rahul informed in his disclosure statement that the knife used by him to threaten Kumari 'P' had been concealed by him near a garbage collection centre at Kotla. On 23.11.2002 he led the investigating officer to the garbage collection centre and after digging the soil near the same recovered and handed over the knife Ex.P-1, sketch whereof shows that the knife is no ordinary knife. It is a knife used by butchers to cut meat.

23. Immediately after he was apprehended, Rahul was got medically examined at LNJP Hospital where Dr.Sanjay Kumar PW-5 examined him on 22.11.2002 and prepared his MLC Ex.PW-8/A noting two old dried abrasions with scab injuries, one each on the left and the right knee. A linear scratch with dried scab on the right cheek. It was noted that a tattoo mark of the name Rahul was tattooed in English in the right forearm of Rahul. He opined that Rahul was capable of performing sexual intercourse and that the injuries on the

body of Rahul were 5 to 7 days old. He took the blood sample of Rahul which he handed over to the investigating officer.

24. The sanitary pad of the prosecutrix was sent for forensic examination and Mr.A.K.Srivastava PW-6 detected semen on the sanitary pad as per his report Ex.PW-6/A. Her vaginal swab slides were sent for forensic examination and Dr.P.C.Dixit PW-11 detected spermatozoa in the slides as per his report Ex.PW-11/A.

25. The blood sample of Rahul as also the vaginal smear slides and the sanitary pad were sent to CDFD Hyderabad where Sh.C.H.Venketeshwar Goud PW-14 isolated DNA from the three exhibits i.e. blood sample of Rahul (Ex.A), vaginal smear slides of Kumari 'P' (Ex.B) and the sanitary pad of the prosecutrix (Ex.C). He gave his report Ex.PW-14/A listing the result of examination as under:-

"RESULT OF EXAMINATION

Autosomal STR analysis

DNA fingerprint of source of exhibit C (sanitary pad of the prosecutrix) is the mixed profile, which is of the victim and source of exhibit A (Mr.Rahul @ Budh Prakash).

On comparison, the DNA fingerprint of the source of exhibit C (sanitary pad of the prosecutrix) is comaprable with the DNA fingerprint of the source of exhibit A (blood sample Mr.Rahul @ Budh Prakash). Therefore, source of exhibit A (Mr.Rahul @ Budh Prakash) cannot be excluded from being responsible for the biological fluid (semen) present on the source of exhibit C (sanitary pad of the prosecutrix).

Y-chromosome STR analysis

1. The biological fluid (semen) present on the source of exhibit C (sanitary pad of the prosecutrix) is of a male origin.
2. Y-STR profile of source of exhibit C (sanitary pad of the prosecutrix) is matching with the Y-STR profile of the source of exhibit A (Mr.Rahul @ Budh Prakash).
3. Y-STR profiles of sources of exhibits A and C (Mr.Rahul @ Budh Prakash and sanitary pad of the prosecutrix) are from one and the same source.

CONCLUSION

The above STR analysis (Autosomal STRs and Y-chromosome STRs) are sufficient to conclude that the biological fluid (semen) present on the source of exhibit C (sanitary pad of the prosecutrix) is of the source of exhibit A (Mr.Rahul @ Budh Prakash)."

26. It is no doubt true that there is delay in registration of the FIR and one would have expected HC Bhikam Singh to have immediately reported his conversation with Kumari 'P' at the police station so that an FIR could be registered on 15.11.2002 itself. But noting the fact that HC Bhikam Singh may not understand the nuances of law nothing much turns on delay in registration of the FIR for the reason nothing has been brought out on record to show that a witness or some evidence was planted in the meanwhile. What prejudice has been caused, if at all to the accused, has not been shown to us.

27. While deposing in Court Kumari 'P' stated that she was a medical student at MAMC and after collecting her admit card on 14.11.2002 for the ensuing exams commencing from 18.11.2002 she was proceeding on foot to Shahid Bhagat Singh Terminal to take a bus home and when she crossed Khuni Darwaza: *A boy around 21 years, medium built suddenly came in front of her with a knife in his hand and placed the knife on her stomach. Another boy was standing behind him. The boy who showed the knife to her abused her and said that I should quietly move inside.* (She pointed out accused Rahul as the one with the knife in his hand and appellant Amit as the other boy). *She refused to obey their command and resisted and attempted to shriek. Rahul put the knife at her neck and threatened to stab her if she yelled. Thereafter, both the boys pushed her inside Khuni Darwaza. Within the precincts of the open space of Khuni Darwaza, in the verandah, two boys aged 12 – 13 years were standing whose names she later on learnt were Neeraj and Suraj. In the verandah Rahul told Neeraj and Suraj to search me. Neeraj searched her bag and took out her mobile phone No.9810467122 and Suraj removed her purse containing Rs.100/- and at the asking of Rahul they handed over the mobile phone and the purse to Amit. Thereafter these persons told her to go upstairs. She asked them why. They said that they wanted to search her. She responded that*

they could search her there only. Rahul touched a black cord around his neck and swore in the name of a saint that except for searching her no harm would be caused to her. He said that somebody may notice them. She repeatedly refused and pleaded to be allowed to go and therefore she was forcibly compelled to go up. Neeraj caught her hand. Rahul walked behind with a knife in his hand with Suraj accompanying him.

28. Thereafter she deposed the facts as to how at the landing of the stairs upstairs she was first molested by Neeraj who pressed her breast and she started crying and how Rahul raped her by stripping her and continuously threatened her with the knife which he had in his hand and how she received an injury on her right hand. She deposed that after she was raped Rahul wiped semen from her private parts with his shirt and left. She deposed of walking in a dazed state to Firozshah Kotla where HC Bhikam Singh and Ct.Attar Singh met her. She deposed the facts noted by us in paras 10, 11, 12 and 13 above. She disclosed that when she was raped she read the name 'Rahul' tattooed on the right forearm of Rahul.

29. It is settled law that where the testimony of a rape witness stands the scrutiny of credibility, there is no need to look for any corroboration. Thus, to cut the controversy short we need not note the testimony of the friends and the father of Kumari 'P' as also the doctor who examined her in the

night for the reason nothing has been shown to us in the cross-examination of Kumari 'P' which discredits her testimony.

30. Kumari 'P' has given graphic details of what happened on the unfortunate day. The MLC Ex.PW-9/A prepared by Dr.Chinda Jassal who examined her at LNJP Hospital at around 9:30 PM in the night clearly establishes that Kumari 'P' was raped. The injuries on the body of Rahul as noted in Ex.PW-8/A i.e. Rahul's MLC have not been explained by Rahul and the said injuries also suggest that Rahul had knelt on a hard surface and had pressed his knees. This would have happened if Rahul either exercised by shifting his weight on his knees or indulged in sexual intercourse with a girl lying below. The injury on the right cheek of Rahul has not been explained by him.

31. Nothing has been shown to us wherefrom it can be urged that the sanitary pad and the vaginal swab slides of Kumari 'P' which were sealed by Dr.Chinda Jassal and were taken possession of by SI Rajesh Shukla on 16.11.2002 were tampered with. As noted above Rahul was arrested on 22.11.2002 and the question of his semen being planted on the two exhibits is thus ruled out. The report Ex.PW-14/A of Shri C.H.Venketeshwar Goud seals the fate of Rahul as the same shows that the DNA finger print isolated from the blood

sample of Rahul matched the fingerprints isolated from the sanitary pad of Kumari 'P'.

32. We note that learned counsel for Rahul has urged that as deposed to by Kumari 'P' after she parted company with HC Bhikam Singh and Ct.Attar Singh whom she took to the place where the crime was committed she went to the hostel and the feeling of being polluted compelled her to wash her private parts; this coupled with the fact that she deposed that after raping her, Rahul wiped the semen from her private parts with his shirt would render it impossible that in the night at around 9:30 when the sanitary pad was taken into possession by Dr.Chinda Jassal and when he prepared two slides of vaginal smear, any semen would have remained.

33. The argument hardly impresses us for the reason the MLC Ex.PW-9/A of Kumari 'P' shows full penetration. It is apparent that semen seeped deep into the vaginal canal and after sometime when Kumari 'P' continued to remain in an erect posture, some semen seeped out and hence being detected in the slides of the vaginal smear and the sanitary pad. We note that the two experts who detected semen on the sanitary pad and the vaginal smear slides were not subjected to any cross-examination on the issue whether semen could be detected as claimed by them if the girl concerned had washed her private parts.

34. That she informed HC Bhikam Singh, a fact deposed to by HC Bhikam Singh and recorded in his statement Ex.PW-4/A that the boy who raped her had the name 'Rahul' tattooed on his right forearm lends credence to the testimony of Kumari 'P'.

35. Regarding appellant Rahul we need to note no further qua his involvement in the crime of criminally intimidating Kumari 'P', using a knife to rob her and thereafter raping her.

36. The only issue which we need to further decide qua Rahul is whether he was a minor when the offence was committed on 16.11.2002.

37. The record shows that the issue of Rahul being a minor was raised before the committal proceedings terminated. After Rahul was arrested, an application was filed before the learned Metropolitan Magistrate to determine the age of Rahul. Affidavit filed by his father when Rahul was admitted in the school and entries in the school record were produced in evidence. Rahul was subjected to an ossification test. Noting contradictory dates emanating from the school record and that the affidavit produced was executed three years prior to when Rahul was admitted in school, the learned Magistrate returned a finding vide order dated 18.1.2003 that said entries were doubtful as different dates of birth were

emerging therefrom. Learned Magistrate further noted that these entries were purportedly based on an affidavit filed by the father of Rahul which was deposed to three years prior to the date when Rahul was admitted in the school. Thus, Rahul's age was determined with reference to an ossification test conducted as per which Rahul was a major.

38. Order dated 18.1.2003 was not challenged and obtained finality. Committal orders were passed and the challan was sent to the Court of Sessions for trial.

39. The plea of learned counsel for the appellant Rahul that he can raise the issue at any stage in view of the decision of the Supreme Court reported as 2009 (6) SCALE 695 *Hari Ram vs. State of Rajasthan* has to be rejected for the reason as held by the Division Bench of the Patna High Court in the decision reported as 2009 Cri.L.J. 858 *State of Bihar vs. Neeraj Kumar*, if the issue of being juvenile is raised at an earlier stage and an adverse finding not challenged, the same issue cannot be raised de-novo at the appellate stage.

40. Qua appellant Amit, the testimony of the prosecutrix establishes his participation with Rahul from the time Rahul criminally intimidated the prosecutrix with a knife in Rahul's hand and both compelled her to enter inside Khuni Darwaza and thereafter robbing her. The last participative act of Amit is when Rahul, the two accused juvenile and Amit

compelled the prosecutrix to go upstairs. It is relevant to note that as deposed by the prosecutrix, Rahul was telling her to go up because he feared that somebody may see them at the ground level. He wanted her to go up so that they can conduct a body search to see whether she was having any other valuable. Amit never went upstairs. Thus, Amit parted company before the prosecutrix was raped. There is another facet to the issue. The deposition of prosecutrix that when she was being compelled to go up and she refused and at that point of time Rahul touched a black cord around his neck and swore in the name of a saint that except for searching her no harm would be caused to her brings out that Rahul rightly gauged the mind of the prosecutrix and the fear in her mind, that if she went up she would be raped, and to allay the fear Rahul dramatized by touching the black cord around his neck. We do understand that people in India wear black cords called Taaviz around their neck which they obtain from holy men. Rahul was wearing a Taaviz. It is around this time, as per the deposition of the prosecutrix, Amit parted company, meaning thereby, that sensing trouble and commission of an offence to which Amit had never agreed to participate with Rahul, Amit walked away. In any case, this being probable cannot be ruled out.

41. Thus, it cannot be said with certainty that Amit shared any common intention with Rahul and in furtherance thereof facilitated the prosecutrix being raped by Rahul. The submission of learned counsel for the State that in all probability Amit stood guard at the ground floor level to facilitate Rahul to satisfy his lust has to be rejected for the reason there is no evidence that Amit stood guard when the prosecutrix was forcibly taken upstairs.

42. Thus, Amit cannot be convicted for the offence of gang rape.

43. A perusal of the testimony of the prosecutrix shows that the crime of robbery was committed by all the accused, but only Rahul used a knife. Thus, only Rahul can be convicted for the offence punishable under Section 397 IPC. Amit has committed the offence of robbery punishable under Section 392 IPC. Amit has also committed the offence punishable under Section 506 IPC.

44. A technical correction qua the offence of rape committed by Rahul has to be done. Acquitting him of the charge of gang rape we convict him for the offence of rape simplicitor i.e. the offence punishable under Section 376 IPC.

45. On the issue of sentence on Rahul, it is true that Rahul had barely crossed the age of majority and was around 19 years of age when he committed the offence. No doubt, his

age is a mitigating factor, but the brutal manner in which the prosecutrix was traumatized, how during rape the knife was continuously used to threaten her and the entire sequence of events as disclosed by her show the extreme trauma inflicted upon her by Rahul who not only acted as a beast but even acted savage. Thus, we see no scope to reduce the sentence imposed upon Rahul.

46. To summarize, Crl.Appeal No.561/2009 filed by Rahul is dismissed.

47. Crl.Appeal No.364/2005 filed by Amit is partially allowed. His conviction for the offence punishable under Section 376(2)(g) IPC is set aside. His conviction for the offence punishable under Section 324 IPC is also set aside for the reason as deposed to by the prosecutrix the simple hurt on her right hand was inflicted soon before she was raped upstairs and by that time Amit had left. His conviction for the offence punishable under Section 397 IPC is also set aside. Maintaining his conviction for the offence punishable under Section 392 IPC and Section 506 IPC we set aside his conviction for the other offences as also the sentences relatable thereto. Further noting that Amit has remained in jail since the time of his arrest i.e. 23.11.2002 i.e. around 7 years and 3 months we alter the sentence imposed upon Amit by

directing that he shall be sentenced to undergo imprisonment for the period already undergone without payment of any fine.

48. Copy of this order be sent to the Superintendent, Central Jail, Tihar for being made available to Rahul and to release Amit if he is not required in custody in any other case.

**(PRADEEP NANDRAJOG)
JUDGE**

**(SURESH KAIT)
JUDGE**

**FEBRUARY 05, 2010
mm / dkb**