Reportable

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO(s). 376 OF 2010

SWAROOP SINGH **Appellant (s)**

VERSUS

STATE OF M.P. **Respondent(s)**

O R D E R

This appeal is directed against the judgment of High Court of Madhya Pradesh at Jabalpur dated 16.7.2008 in Criminal Appeal No.301/1994.

2. According to the prosecution on 28.9.19992 at 12.30 p.m., the prosecutrix P.W.2 was proceeding to the field for cutting grass. On the way, the appellant who was roasting Maize/Bhutta in the field of PyareLal, blocked P.W.2 and asked her to go alongwith him into the field of sugarcane. When P.W.2 refused, the appellant caught hold of her by hand and forcibly took her to the sugarcane field, throw her down, gagged her mouth with the saree of P.W.2 and forcibly had intercourse with her by threatening her life at knife point. According to her by virtue of the said act of the appellant, white liquid started oozing out from her private parts, that she went to the boundary wall (Mound) where a well is situated and where Ram Singh Dada (P.W.4) was cutting

grass. P.W.2 informed Ram Singh Dada as to what happened, who in turn passed on the information to her Kakaji Hari Prasad. Thereafter, her Kakaji Hari Prasad took P.W. 2 to home, where she narrated the whole incident. She stated to have informed her sister Chain Bai as well as her Kaki and Shanta Bai. She thereafter reported the matter to the Vilkis Ganj Police Station and after registering the report reached back home. She identified the report as Exhibit P2.

3. Subsequent to the registration of the case, the Police inspected the spot, seized the broken bangles and prepared a rough sketch. She was examined by the doctor who seized her peticoat and X-ray was also taken. The appellant was proceeded against in Criminal Case No.84/1992 for the offence punishable under Sections 376 and 506 Part II, IPC. The appellant having denied comission of the offence, witnesses were examined and in his statement under Section 313 Cr.P.C., the appellant pleaded total ignorance and that he was falsely implicated.

4. On the side of the prosecution P.W. 1 to 10 were examined. P.W.1 Dr. Manju Saxena, who examined the prosecutrix in her evidence stated that on internal examination of P.W.2, hymen was found to be torn in irregular manner and that two finger could easily be inserted in the vagina. She also stated that there was no flow of fresh blood. Two slides of vagina slabs

prepared and sealed and were handed over to the police for forwarding the same for chemical examination alongwith the Peticoat of the prosecutrix on which spots were present.

5. In the course of cross examination, P.W.2 deposed that when the appellant threw her on the ground she did not sustain any injury; that she was not assaulted by way of fist blow, though the appellant threatened her not to raise any alarm by showing a knife. She further deposed that when white fluid was oozing out from her private parts, blood was also found and that she washed the stains with water when she reached the well from the place of occurrence and before she met Ram Singh. She also deposed that she had swelling in her private parts and was suffering from pain for 2-3 days. A suggestion put to her as to why she did not object when the appellant pulled her hand to go, she categorically denied the said suggestion.

6. The trial court after detailed analysis of the evidence placed before it held that there was no reason to disbelieve the version of the prosecutrix, that since the appellant had sexual intercourse with the prosecutrix against her consent, the same would fell within the offence of rape under Section 376 IPC and such a gruesome offence was committed under the threat of knife point, the offence of criminal intimidation was also made out falling under Section 506 Part II, IPC.

7. The trial Court after convicting the appellant for the aforesaid offences imposed punishment for 7 years rigorous imprisonment alongwith fine of Rs.2000/, in default, sentence of 2 years rigorous imprisonment for the offence under Section 376(1) IPC and imprisonment of 2 years with fine of Rs.2,000/-, in default six months rigorous imprisonment for the offence under Section 506 Part II, IPC.

8. The trial court while reaching the above conclusion and while convicting the appellant has held that the version of the prosecutrix was fully supported by the other witnesses namely, Ram Singh (P.W.4), to whom she immediately informed, her Kakaji Hari Prasad (P.W.5), Bansi Lal (P.W.3) and Radhey Shyam (P.W.6). The trial court has found that those witnesses fully confirmed the version of the prosecutrix. The evidence of P.W.10 Dr. V.K. Chaudhary who examined the appellant on 17.9.1992 gave his opinion in Exhibit P6 that the appellant was capable of performing sexual intercourse.

9. The sole contention of the appellant before the trial court was that even as per the evidence of Dr. Manju Saxena (P.W.1), who examined the prosecutrix, it was clear that the prosecutrix was approximately 17 to 18 years of age, that since she was having frequent sexual intercourse no definite opinion of rape could be given and therefore, it cannot be held that the

appellant had any forcible sexual intercourse against the wish of the prosecutrix in order to be convicted for the offence under Section 376 IPC read with Section 506 Part II, IPC.

10. The High Court having considered the judgment of the trial court in extenso found that there was no ground made out to interfere with the judgment and confirmed the conviction and sentence imposed on the appellant.

11. Heard Mr. Ranbir Singh Kundu, learned counsel appearing for the appellant and Ms. Vibha Dutta Makhija, learned counsel appearing for the State. We also perused the judgment of the trial court as well as that of the High Court. In the course of submission, learned counsel for the appellant submitted except the version of P.W.2 prosecutrix there was nothing stated before the trial court to prove that the appellant committed the offence rape on her, that even going by the medical evidence as the prosecutrix was having frequent intercourse though not married, it cannot be a case of rape falling under Section 376 IPC. The learned counsel therefore, submitted that the conviction and sentence imposed on the appellant by the trial court as affirmed by the appellate court is liable to be interfered with.

12. As against the above submission, Ms. Makhija, learned counsel for the State contended that it is a

case of offence of rape falling under Section 376 IPC, the question whether it was with the consent of the women alleged to have been raped has to be accepted based on her simple statement in the court and proceed on that basis. Learned counsel contended that when based on the evidence of P.W.2 prosecutrix, it was demonstrated before the court that the appellant had sexual intercourse with her against her consent, it was for the appellant to have proved beyond reasonable doubt that either there was no sexual intercourse or was there a consent existed in order to relieve the appellant of the offence alleged and found proved against him.

13. Therefore, the only question that remains for consideration in the case in hand is as to whether the sexual intercourse committed by the appellant on the prosecutrix P.W.2 was with her consent in order to hold that the appellant cannot be convicted under section 376 IPC. In that respect, when we examined the evidence let in, what is noted by us hereinbefore and as found by the trial court as well as by the High Court, the version of the prosecutrix P.W. 2 was unassailable. She was stated to be 17/18 years of age on the date of occurrence and she categorically stated that the appellant who was a known person, performed the act of forcible sexual intercourse against her wish at knife point. Except the mere denial of the offence alleged, there was no

evidence let in on behalf of the appellant to counter the allegation levelled against him by the prosecutrix. In such circumstances, the trial court on a detailed consideration of the evidence placed before it concluded that the case of the prosecutrix was cogent and convincing and also supported by the evidence of other witnesses in so far as the commission of offence of forcible sexual intercourse at knife point.

14. In this context it will be worthwhile to refer to the principles laid down by this Court as to the manner in which the evidence of a rape victim should be evaluated to ascertain the truth. The said decision is reported in State of Punjab Vs. Gurmit Singh 1996(2) SCC 384. Para 8 and 21 are relevant which reads as under:-

> **"8..... The courts must, while evaluating evidence, remain alive to the fact that in a case of rape, no self-respecting woman would come forward in a court just to make a humiliating statement against her honour such as is involved in the commission of rape on her. In cases involving sexual molestation, supposed considerations which have no material effect on the veracity of the prosecution case or even discrepancies in the statement of the prosecutrix should not, unless the discrepancies are such which are of fatal nature, be allowed to throw out an otherwise reliable prosecution case. The inherent bashfulness of the females and the tendency to conceal outrage of sexual aggression are factors which the Courts should not overlook. The testimony of the victim in such cases is vital and unless there are compelling reasons which necessitate looking for *corroboration* of her statement, the courts should find no difficulty to act on the testimony of a**

victim of sexual assault alone to convict an accused where her testimony inspires confidence and is found to be reliable. Seeking corroboration of her statement before relying upon the same, as a rule, in such cases amounts to adding insult to injury. Why should the evidence of a girl of a woman who complains of rape or sexual molestation, be viewed with doubt, disbelief or suspicion? The Court while appreciating the evidence of a prosecutrix may look for some *assurance* of her statement to satisfy its judicial conscience, since she is a witness who is interested in the outcome of the charge levelled by her, but there is no requirement of law to insist upon corroboration of her statement to base conviction of an accused. The evidence of a victim of sexual assault stands almost at par with the evidence of an injured witness and to an extent is even more reliable. Just as a witness who has sustained some injury in the occurrence, which is not found to be self inflicted, is considered to be a good witness in the sense that he is least likely to shield the real culprit, the evidence of a victim of a sexual offence is entitled to great weight, absence of corroboration notwithstanding. Corroborative evidence is not an imperative component of judicial credence in every case of rape. Corroboration as a condition for judicial reliance on the testimony of the prosecutrix is not a requirement of law but a guidance of prudence under given circumstances. It must not be over-looked that a woman or a girl subjected to sexual assault is not an accomplice to the crime but is a victim of another persons's lust and it is improper and undesirable to test her evidence with a certain amount of suspicion, treating her as if she were an accomplice. Inferences have to be drawn from a given set of facts and circumstances with realistic diversity and not dead uniformity lest that type of rigidity in the shape of rule of law is introduced through a new form of testimonial tyranny making justice a casualty. Courts cannot cling to a fossil formula and insist upon corroboration even if, taken as a whole, the case spoken of by the victim of sex crime strikes the judicial mind as probable...."

"21. Of late, crime against women in general

and rape in particular is on the increase. It is an irony that while we are celebrating women's rights in all spheres, we show little or no concern for her honour. It is a sad reflection on the attitude of indifference of the society towards the violation of human dignity of the victims of sex crimes. We must remember that a rapist not only violates the victim's privacy and personal integrity, but inevitably causes serious psychological as well as physical harm in the process. Rape is not merely a physical assault - it is often destructive of the whole personality of the victim. A murderer destroys the physical body of his victim, a rapist degrades the very soul of the helpless female. The Courts, therefore, shoulder a great responsibility while trying an accused on charges of rape. They must deal with such cases with utmost sensitivity. The Courts should examine the broader probabilities of a case and not get swayed by minor contradictions or insignificant discrepancies in the statement of the prosecutrix, which are not of a fatal nature, to throw out an otherwise reliable prosecution case. If evidence of the prosecutrix inspires confidence, it must be relied upon without seeking corroboration of her statement in material particulars. If for some reason the Court finds it difficult to place implicit reliance on her testimony, it may look for evidence which may lend *assurance* to her testimony, short of corroboration required in the case of an accomplice. The testimony of the prosecutrix must be appreciated in the background of the entire case and the trial court must be alive to its responsibility and be sensitive while dealing with cases involving sexual molestations."

15. Having heard learned counsel for the parties and having perused the judgment of the trial court as well as of the High Court, we are convinced that the judgment of the trial court does not call for interference. From what has been let in by way of evidence by the court below, the prosecutrix P.W.2 has

spoken that she knew the appellant, that she was forcibly taken to the sugarcane bush at knife point and was subjected to sexual intercourse against her consent. She revealed the gruesome act committed by the appellant immediately after the occurrence to Ram Singh PW 5. When she was examined by the doctor, nothing could be traced about the presence of sperm or blood since admittedly before going to the Police Station, she washed herself in the well which was nearby the place of occurrence to which place she immediately went where she also reported the incident to Mr.Ram Singh Dada who was examined as P.W.5.

16. The doctor who examined the prosecutrix stated clearly that the hymen of the prosecutrix was torn and ruptured.

17. Except simply denying the offence alleged in the statement under section 313 Cr.P.C., the appellant did not let in any evidence to contradict the version of the prosecutrix. No motive was either alleged or proved as against the prosecutrix or any of the witnesses to disbelieve the version of the prosecution witnesses or to hold that the Appellant was falsely implicated. Broken bangles were also recovered from the place of occurrence at the instance of the prosecutrix. No previous grudge of the prosecutrix as

against him in order to falsely implicating the appellant was also suggested.

18. A careful reading of the judgment of the trial court discloses that the reasons adduced by it were cogent and convincing and there was no reason to disbelieve the same. The conclusion of the High Court is also equally well reasoned and we do not find any fault in the same in order to interfere with the same. We find no good ground to interfere with the well considered conclusion of the trial court as well as that of the High court. In the light of our above conclusion, we do not find any merit in this appeal and the same is dismissed.

.....J.
(Dr. B.S. CHAUHAN)

.....J.
(FAKKIR MOHAMED IBRAHIM KALIFULLA)

NEW DELHI;
April 10, 2013.