REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1410 OF 2013

Ravindra … **Appellant**

:Versus:

State of Madhya Pradesh … **Respondent**

J U D G M E N T

Pinaki Chandra Ghose, J.

1. This appeal by special leave arises from the judgment and order dated 12.3.2013 passed by the High Court of Madhya Pradesh, Bench at Indore, in Criminal Appeal No.1275 of 1997 whereby the High Court has upheld the sentence awarded to the appellant by the Additional Sessions Judge, Khargone, in S.T. No. 288/94. The Trial Court

convicted the appellant under Section 376(1) of the Indian Penal Code ("IPC", for short) and sentenced him to 10 years rigorous imprisonment with a fine of Rs. 2000/-, and in default of payment of fine, 6 months simple imprisonment.

2. The factual matix of the case is that on 24.8.94, the complainant Narmadabai had gone to the field of the accused Ravindra for doing labour work. When she was plucking Moong Beans at about 12 O' clock, accused Ravindra came near her, caught her hand, pushed her down and committed sexual intercourse without her consent. Complainant cried but nobody was nearby. The Petticoat of the complainant was stained with semen of the accused. After committing rape the accused fled away from the spot. The prosecutrix (PW1) came home and she narrated the incident to her parents. Her mother called her maternal uncles, Shankar Singh (PW4) and Pahadsingh (PW5) and father of the prosecutrix. On

the same day, an FIR was lodged by the prosecutrix (PW1) at Police Station Bhikagaon. The complainant and the accused were medically examined by Smt. Vandana Sarkanungo (PW3) and gave a report. On 1.09.1994 accused was arrested vide arrest memo. The clothes of the prosecutrix and the accused were sent to the FSL. After completion of the investigation, charge sheet was filed before the Judicial Magistrate, First Class, Bhikagaon, against the accused under Section 376 IPC which was registered as Criminal Case No.590/94.

3. The findings of the lower Court, as stated in the impugned judgment were that at the time of occurrence the prosecutrix (PW-1) was above 16 years of age. PW1 in her statement very categorically made allegation against the present appellant that when she was alone in the agricultural field of the appellant/accused, he came and forcefully caught hold of both her hands,

and thereafter removed her clothes and committed rape. Dr. Smt. Vandana Sarkanungo (PW3) did not find any injury on the internal and external part of the prosecutrix (PW1) and opined that prosecutrix was habitual to sexual intercourse. In respect of the false implication on the appellant, it has come on record in the statement of Nand Kishore (PW2), who is father of the prosecutrix, that a sum of Rs.500/- was taken on loan by him from the appellant. But PW1 and PW2 have not deposed that due to the aforesaid reason there was previous enmity between them. The finding on this aspect of the High Court in the impugned judgment was that if there was any enmity, the appellant/accused could not have come to the house of the prosecutrix for inviting her to work in his agricultural field. The appellant/accused was examined by the doctor who found him capable of performing sexual intercourse. Semen was found in

the undergarments of the prosecutrix, from the exhibit.

4. After considering the evidence adduced by the parties, the High Court was of the view that it is well settled that the woman who is a victim of sexual assault is not an accomplice to the crime. Her evidence cannot be tested with suspicion as that of an accomplice. As a matter of fact her evidence is similar to the evidence of an injured complainant or witness. The testimony of the prosecutrix, if found reliable by itself may be sufficient to convict the culprit and no corroboration of her evidence is necessary. Secondly, in prosecution of rape, the law does not require corroboration. The evidence of the prosecutrix may sustain a conviction. It is only by way of abundant caution that Court may look for some corroboration so as to satisfy its conscience and rule out any false accusations. Thus, the High

Court was of the view that the Trial Court had not committed any error in convicting the appellant under Section 376 of IPC. The statement of the prosecutrix was reliable. Prompt FIR was lodged by her and no further corroboration of her statement was required.

5. Learned counsel for the appellant submitted that the Trial Court and the High Court ignored the contradictions in the statements of the prosecutrix Smt. Narmadabai (PW1) and Nand Kishore (PW2) on the question, whether the prosecutrix was called in the field in the morning or in the afternoon or a day in advance. The High Court also committed an error in accepting the finding of the Trial Court without any evidence, that no injury was found on her body as rape was committed on the sand. Counsel submitted that except some sand on her clothes, no statement was given by the prosecutrix that the incident took place on plain soil, ruling out any

possibility of injury. In view of the medical examination of the prosecutrix, Dr. Vandana, who examined her, did not give any definite opinion about rape being committed on the prosecutrix and there were no injury on her private parts or other part of body though as per her statement the rape was committed in the field having standing crop, 5 feet high Jawar crop and 4 feet high Moong crop. The prosecutrix also stated that she grappled in the field for 15-20 minutes, but no signs of injury were found either on the prosecutrix or on the appellant. Appellant's statement is also contradicted by the medical evidence.

6. According to the learned counsel for the appellant, the High Court committed an error in placing reliance on *Sheikh Zakir vs. State of Bihar*, AIR 1983 SC 911, and holding that no corroboration is required for convicting the accused under Section 376, on account of a long

line of judicial decisions which held that where a case is tried by a judge alone, and is based on evidence of the prosecutrix without any corroboration, it will not be illegal on that sole ground. In case of a grown up and married woman it is safe to insist on such corroboration. Further, it was argued by the counsel for the appellant that the High Court made an error by placing reliance in the case of *State of U.P. v. Chhoteylal*, AIR 2011 SC 697, as it was not applicable to the present matter.

7. Counsel for the appellant further submitted that this was a case where there was a possibility of consent of the prosecutrix. The prosecutrix tried to show that she was less than 16 years, which is found to be false in the present case. The medical evidence shows that her hymen was old ruptured and it was in the healing stage. The medical examination report had given no definite

opinion regarding rape. The statement of Dr. Vandana (PW3) also supported that view as no injury either on the person of Narmadabai or on her private parts was found. Her hymen being old ruptured was in healing condition. There was no injury on any of them even though the incident took place in 5 feet Jawar crop and 4 feet Moong crop and they had grappled for 15-20 minutes.

8. In view of the admitted statements of PW1 and PW2 that before lodging the report, they made offer for compromise to the appellant's father and when the appellant's father did not agree for compromise, they lodged the FIR. Nand Kishore (PW2) has himself admitted that he received Rs.500/- from the appellant's father some 3-4 years ago but had not returned the same till that date. Thus, a false case has been fastened since a demand had been made for the return of the amount. PW4 and PW5, who are

the two maternal uncles of the prosecutrix, did not support her and they were declared hostile.

9. Further, the learned counsel, relying on the Trail Court judgment, contended that the Prosecutrix has failed to establish that her age was below 16 years and in view of the fact that there was no sign of rape or any injury, the present case, at the most, is a case of consent.

10. Learned counsel appearing for the State, on the other hand, has relied on the fact of presence of semen on the Petticoat of the prosecutrix. It is submitted that the Chemical Examiner report found that the sample of semen found on the garments was not sufficient to link the same with the accused.

11. Now, we shall examine whether this case falls under proviso to Section 376 IPC, to award a lesser

sentence for "adequate and special reason". In the present case, the incident took place 20 years ago and now with passage of time both victim and accused are married (not to each other) and they have entered into a compromise. Thus, an adequate and special reason for awarding a lesser sentence exists in terms of proviso to Section 376.

12. Learned Counsel for the appellant has taken four primary grounds of defence. **First**, that there is no sign of injury on the body of the victim and no definite opinion of rape is given by the PW-3, though there had been grappling for 15-20 minutes between the victim and the accused. However, the victim has stated that she did not scratch the accused and that the accused caught hold of her hand and put her down and committed rape in the field. From this it can be inferred that rape was committed on the ground in the field. But it is highly improbable that their clothes would not tear

and there would not be any injury on the body of the victim. In *Dastagir Sab & Anr. v. State of Karnataka*, (2004) 3 SCC 106, it was held by this Court that presence of injury on the body of the victim is not a sine qua non to prove the charge of rape. In the said case, the facts showed that medical examination was conducted after a month of the alleged offence. The medical opinion was that abrasion or marks of violence would be visible for twenty four hours and thereafter the same may disappear. In the present case, the medical examination was done on the same day on which the alleged offence was committed, and going by the medical examination report and the statement of P.W.3, it is improbable that rape was committed.

13. The **second** ground taken by the defence is that there is absence of spermatozoa in the vaginal swab of the victim and the Chemical Examination report found that the sample of semen found on the

garments of the victim was insufficient to link the same with the accused. On the aspect of benefit of doubt, this Court has observed in *Hem Raj v. State of Haryana*, (2014) 2 SCC 395, that prosecution had brought on record FSL report which showed that human semen was detected on the *salwar* of the prosecutrix and on the underwear of the accused. However it was difficult to infer from this that the prosecutrix was raped by the accused. The appellant in that case was given benefit of doubt.

14. In the present case, the Chemical Examiner report found that the sample of semen was not sufficient to link the same to the accused, notwithstanding that absence of spermatozoa on the vaginal smear could not be allowed to tell against the version of the prosecutrix, as held in *Narayanamma v. State of Karnataka & Ors.,* (1994) 5 SCC 728.

15. The **third** ground of defence taken by the accused is that there is no corroboration and there is contradiction in the prosecution case on important aspects, though on the aspect of appreciation of evidence, being the testimony of the prosecutrix, this Court has held in *Narendra Kumar v. State (NCT of Delhi)*, (2012) 7 SCC 171, that minor contradictions or insignificant discrepancies in the evidence of the witnesses are not of a substantial character. However, in *Sadashiv Ramrao Hadbe v. State of Maharashtra & Anr.*, (2006) 10 SCC 92, where the sole testimony is unsupported by any medical evidence or the whole surrounding circumstances are highly improbable to belie the case set up by the prosecutrix, this Court held that Court shall not act on the solitary evidence of the prosecutrix. Thus, in light of the above the Court should not rely solely on the testimony of the prosecutrix. The statement in the present case requires corroboration as it has minor

contradictions and is not corroborated by other prosecution witnesses. The two maternal uncles (PW-4 and PW-5) of the prosecutrix did not support her and were declared hostile.

16. The **fourth** ground of defence taken by the appellant is that under proviso to Section 376(2) of IPC, the legislature has empowered the Court to award lesser sentence where "adequate and special reasons" exist. The incident in the present case had taken place 20 years ago. The victim (prosecutrix) and the accused have entered into a compromise stating therein that the prosecutrix does not want to proceed with the case against the accused and wants to close the case. Both of them are married (not to each other) and have settled in life. Learned counsel for the appellant contends that this is an "adequate and special reason" for awarding lesser sentence.

17. This Court has in the case of *Baldev Singh & Ors. v. State of Punjab*, (2011) 13 SCC 705, invoked the proviso to Section 376 (2) (g) of IPC on the consideration that the case was an old one. The facts of the above case also state that there was compromise entered into between the parties.

18. In light of the discussion in the foregoing paragraphs, we are of the opinion that the case of the appellant is a fit case for invoking the proviso to Section 376(2)(g) of IPC for awarding lesser sentence, as the incident is 20 years old and the fact that the parties are married and have entered into a compromise, are the adequate and special reasons. Therefore, although we uphold the conviction of the appellant but reduce the sentence to the period already undergone by the appellant. The appeal is disposed of accordingly.

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(M.Y. EQBAL)

.....J

(PINAKI CHANDRA GHOSE)

New Delhi;

February 26, 2015.