REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 231 OF 2015
(@ SLP(Crl) No. 5273 of 2012)

State of M.P. ... Appellant

Versus

Madanlal ... Respondent

J U D G M E N T

Dipak Misra, J.

In this appeal, by special leave, the State of M.P. calls in question the legal acceptability of the judgment and order passed by the learned Single Judge of the High Court of M.P. in Criminal Appeal No. 808 of 2009 whereby he has set aside the conviction under Section 376(2)(f) read with Section 511 of the Indian Penal Code (IPC) and the sentence imposed on that score, that is, rigorous imprisonment of five years by the learned Sessions Judge, Guna in ST No. 134/2009 and convicted the respondent-accused herein under Section 354 of

the IPC and restricted the sentence to the period already undergone which is slightly more than one year.

2. The factual narration for disposal of the present appeal lies in a narrow compass. The respondent as accused was sent up for trial for the offence punishable under Section 376(2)(f) IPC before the learned Sessions Judge. The case of the prosecution before the Court below was that on 27.12.2008, the victim, aged about 7 years, PW1, was proceeding towards Haar from her home and on the way the accused, Madan Lal, met her and came to know that she was going in search of her mother who had gone to graze the goats. The accused told her that her mother had gone towards the river and accordingly took her near the river Parvati, removed her undergarment and made her sit on his lap, and at that time the prosecutrix shouted. As the prosecution story proceeds, he discharged on her private parts as well as on the stomach and washed the same. Upon hearing the cry of the prosecutrix, her mother, Ramnali Bai, PW2, reached the spot, and then accused took to his heels. The prosecutrix narrated the entire incident to her mother which led to lodging of an FIR by the mother of the prosecutrix. On the basis of the FIR lodged, criminal law was

set in motion, and thereafter the investigating agency examined number of witnesses, seized the clothes of the respondent-accused, sent certain articles for examination to the forensic laboratory and eventually after completing the examination, laid the chargesheet before the concerned court, which in turn, committed the matter to the Court of Session.

3. The accused abjured his guilt and pleaded false implication. The learned trial Judge, regard being had to the material brought on record, framed the charge under Section 376(2)(f) read with Section 511 of IPC. The prosecution, in order to bring home the charge leveled against the accused examined the prosecutrix, PW1, Ramnali Bai, PW2, Dr. Smt. Sharda Bhola, PW3, Head Constable Babu Singh, PW4, ASI B.R.S. Raghuwanshi, PW5, and Dr. Milind Bhagat, PW6, and also got marked nine documents as exhibits. The defence chose not to adduce any evidence.

4. The learned trial Judge on the basis of the material brought on record came to hold that the prosecution had been able to establish the charge against the accused and

accordingly found him guilty and sentenced him as has been stated hereinbefore.

5. The said judgment of conviction and order of sentence was in assail before the High Court; and it was contended by the learned counsel for the appellant therein that the trial court had failed to appreciate the evidence in proper perspective and had not considered the material contradictions in the testimony of prosecution witnesses and, therefore, the judgment of conviction and sentence, being vulnerable, deserved to be annulled. The learned Judge also noted the alternative submission which was to the effect that the parties had entered into a compromise and a petition seeking leave to compromise though was filed before the learned trial Judge, it did not find favour with him on the ground that the offence in question was non-compoundable and, therefore, regard being had to the said factum the sentence should be reduced to the period already undergone, which was slightly more than one year.

6. The High Court, as is manifest, has converted the offence to one under 354 IPC and confined the sentence to the period of custody already undergone.

7. We have heard Mr. C.D. Singh, learned counsel for the appellant-State and Ms. Asha Jain Madan, learned counsel who was engaged by the Court to represent the respondent. Be it stated, this Court had appointed a counsel to argue on behalf of the respondent, as despite service of notice, the respondent chose not to appear.

8. It is contended by the learned counsel for the State that the High Court has not kept in mind the jurisdiction of the appellate court and dislodged the conviction and converted the conviction to one under Section 354 IPC in an extremely laconic manner and, therefore, the judgment deserves to be dislodged. It is urged by him that it is the bounden duty of the appellate court to reappreciate the evidence in proper perspective and thereafter arrive at appropriate conclusion and that exercise having not been done, the impugned judgment does not commend acceptation. He has also seriously criticized the quantum of sentence imposed by the High Court.

9. Ms. Asha Jain Madan, learned counsel appearing for the respondent, per contra, would contend that the learned Single Judge, regard being had to the evidence on record, has come to hold that the prosecution had failed to prove the offence under

Section 376(2)(f) read with Section 511 IPC, and hence, the impugned judgment is absolutely impeccable. She would contend with immense vehemence that when the prosecutrix was a seven year old girl and the ingredients of the offence had not been established the conversion of the offence to one under Section 354 IPC by the High Court cannot be found fault with. It is urged by her that once the view of the High Court is found defensible, the imposition of sentence under Section 354 IPC cannot be regarded as perverse.

10. To appreciate the rivalised submissions advanced at the Bar, we have anxiously perused the judgment of the learned trial Judge as well as that of the High Court. As we notice, the trial court has scanned the evidence and arrived at the conclusion that the prosecution had been able to bring home the charge on the base of credible evidence. The High Court, as is demonstrable, has noted the submissions of the learned counsel for the appellant therein to the effect that the trial court had failed to appreciate the evidence in proper perspective, and had totally ignored the material contradictions in the testimony of the prosecution witnesses, and thereafter abruptly referred to the decisions in ***Ashok @ Pappu v. State***

of M.P.[1], ***Phulki @ Santosh @ Makhan v. State of M.P.***[2] and ***Jeevan v. State of M.P.***[3] and the factual matrix in the said cases, and concluded thus:-

> "Keeping in view the aforesaid position of law and the statement of prosecutrix who was aged 7 years only at the time of incident and the medical evidence on record, this Court is of the opinion that the learned Court below committed error in convicting the appellant under Section 376 of IPC. After going through the evidence, it can be said that at the most appellant can be held guilty of the offence punishable under Section 354 of IPC. In view of this, the appeal filed by the appellant is allowed in part and the conviction of appellant under Section 376 is set aside and appellant is convicted under Section 354 of IPC. So far as sentence is concerned, keeping in view the aforesaid position of law and also the fact that appellant is in jail since last more than one year the purpose would be served in case the jail sentence is reduced to the period already undergone. Thus, the same is reduced to the period already undergone. Respondent/State is directed to release the appellant forthwith, if not required in any other case."

11. In the instant appeal, as a reminder, though repetitive, first we shall dwell upon, in a painful manner, how some of the appellate Judges, contrary to the precedents and against the normative mandate of law, assuming a presumptuous role have paved the path of unbelievable laconicity to deal with criminal

[1] 2005 Cr.L.J. (M.P.) 471
[2] 2006 Cr.L.J. (M.P.) 157
[3] 2008 Cr.L.J. (M.P.) 1498

appeals which, if we permit ourselves to say, ruptures the sense of justice and punctures the criminal justice dispensation system.

12. In this regard, reference to certain authorities of this Court would be apposite. In ***Amar Singh v. Balwinder Singh and Others***[4] while dealing with the role of the appellate Court, a two-Judge Bench has observed thus:-

> "The learned Sessions Judge after placing reliance on the testimony of the eyewitnesses and the medical evidence on record was of the opinion that the case of the prosecution was fully established. Surprisingly, the High Court did not at all consider the testimony of the eyewitnesses and completely ignored the same. Section 384 CrPC empowers the appellate court to dismiss the appeal summarily if it considers that there is no sufficient ground for interference. Section 385 CrPC lays down the procedure for hearing appeal not dismissed summarily and sub-section (2) thereof casts an obligation to send for the records of the case and to hear the parties. Section 386 CrPC lays down that after perusing such record and hearing the appellant or his pleader and the Public Prosecutor, the appellate court may, in an appeal from conviction, reverse the finding and sentence and acquit or discharge the accused or order him to be retried by a court of competent jurisdiction. It is, therefore, mandatory for the appellate court to peruse the record which will necessarily mean the statement of the witnesses. In a case based upon direct eyewitness account, the testimony of the eyewitnesses is of paramount importance and if the appellate court reverses the finding recorded by the trial court and acquits the accused without

[4] (2003) 2 SCC 518

> considering or examining the testimony of the eyewitnesses, it will be a clear infraction of Section 386 CrPC. In *Biswanath Ghosh* v. *State of W.B.*[5] it was held that where the High Court acquitted the accused in appeal against conviction without waiting for arrival of records from the Sessions Court and without perusing evidence adduced by the prosecution, there was a flagrant miscarriage of justice and the order of acquittal was liable to be set aside. It was further held that the fact that the Public Prosecutor conceded that there was no evidence, was not enough and the High Court had to satisfy itself upon perusal of the records that there was no reliable and credible evidence to warrant the conviction of the accused. In *State of U.P.* v. *Sahai*[6] it was observed that where the High Court has not cared to examine the details of the intrinsic merits of the evidence of the eyewitnesses and has rejected their evidence on general grounds, the order of acquittal passed by the High Court resulted in a gross and substantial miscarriage of justice so as to invoke extraordinary jurisdiction of the Supreme Court under Article 136 of the Constitution."

The said view was reiterated by a three-Judge Bench in the ***State of Madhya Pradesh v. Bhura Kunjda***[7]**.**

13. Recently, in ***K. Anbazhagan v. State of Karnataka and Others***[8], a three-Judge Bench addressing the manner of exercise of jurisdiction by the appellate court while deciding an appeal has ruled that:-

> "The appellate court has a duty to make a complete and comprehensive appreciation of all

[5] (1987) 2 SCC 55
[6] (1982) 1 SCC 352
[7] (2009) 17 SCC 346
[8] Criminal Appeal No. 637 of 2015

> vital features of the case. The evidence brought on record in entirety has to be scrutinized with care and caution. It is the duty of the Judge to see that justice is appropriately administered, for that is the paramount consideration of a Judge. The said responsibility cannot be abdicated or abandoned or ostracized, even remotely, solely because there might not have been proper assistance by the counsel appearing for the parties. The appellate court is required to weigh the materials, ascribe concrete reasons and the filament of reasoning must logically flow from the requisite analysis of the material on record. The approach cannot be cryptic. It cannot be perverse. The duty of the Judge is to consider the evidence objectively and dispassionately. The reasonings in appeal are to be well deliberated. They are to be resolutely expressed. An objective judgment of the evidence reflects the greatness of mind – sans passion and sans prejudice. The reflective attitude of the Judge must be demonstrable from the judgment itself. A judge must avoid all kind of weakness and vacillation. That is the sole test. That is the litmus test."

14. In the case at hand, the learned Single Judge has not at all referred to the evidence that has been adduced during the trial. We have, in fact, reproduced the entire analysis made by the learned Single Judge. Prior to that, as is manifest, he has referred to some authorities which are based on their own facts. The said pronouncements, in fact, lay down no proposition of law. As is noticeable, the learned Single Judge in his judgment has only stated that the prosecution has examined so many witnesses and filed nine documents. The

said approach, we are afraid to say, does not satisfy the requirement of exercise of the appellate jurisdiction. That being the obtaining situation, we are inclined to set aside the judgment of the High Court and remit the matter to it for appropriate adjudication.

15. Having stated the aforesaid, ordinarily we would have proceeded to record our formal conclusion, but, an extremely pertinent and pregnant one, another aspect in the context of this case warrants to be addressed. As it seems to us the learned Single Judge has been influenced by the compromise that has been entered into between the accused and the parents of the victim as the victim was a minor. The learned trial Judge had rejected the said application on the ground that the offence was not compoundable. In this context, it is profitable to reproduce a passage from ***Shimbhu and Another v. State of Haryana***[9] wherein, a three-Judge Bench has ruled thus:-

> "Further, a compromise entered into between the parties cannot be construed as a leading factor based on which lesser punishment can be awarded. Rape is a non-compoundable offence and it is an offence against the society and is not a matter to be left for the parties to compromise and settle. Since the Court cannot always be assured

[9] (2014) 13 SCC 318

> that the consent given by the victim in compromising the case is a genuine consent, there is every chance that she might have been pressurised by the convicts or the trauma undergone by her all the years might have compelled her to opt for a compromise. In fact, accepting this proposition will put an additional burden on the victim. The accused may use all his influence to pressurise her for a compromise. So, in the interest of justice and to avoid unnecessary pressure/harassment to the victim, it would not be safe in considering the compromise arrived at . between the parties in rape cases to be a ground for the Court to exercise the discretionary power under the proviso of Section 376(2) IPC."

16. The aforesaid view was expressed while dealing with the imposition of sentence. We would like to clearly state that in a case of rape or attempt of rape, the conception of compromise under no circumstances can really be thought of. These are crimes against the body of a woman which is her own temple. These are offences which suffocate the breath of life and sully the reputation. And reputation, needless to emphasise, is the richest jewel one can conceive of in life. No one would allow it to be extinguished. When a human frame is defiled, the "purest treasure", is lost. Dignity of a woman is a part of her non-perishable and immortal self and no one should ever think of painting it in clay. There cannot be a compromise or settlement as it would be against her honour which matters

the most. It is sacrosanct. Sometimes solace is given that the perpetrator of the crime has acceded to enter into wedlock with her which is nothing but putting pressure in an adroit manner; and we say with emphasis that the Courts are to remain absolutely away from this subterfuge to adopt a soft approach to the case, for any kind of liberal approach has to be put in the compartment of spectacular error. Or to put it differently, it would be in the realm of a sanctuary of error. We are compelled to say so as such an attitude reflects lack of sensibility towards the dignity, the elan vital, of a woman. Any kind of liberal approach or thought of mediation in this regard is thoroughly and completely sans legal permissibility. It has to be kept in mind, as has been held in ***Shyam Narain v. State (NCT of Delhi)***[10] that:-

> "Respect for reputation of women in the society shows the basic civility of a civilised society. No member of society can afford to conceive the idea that he can create a hollow in the honour of a woman. Such thinking is not only lamentable but also deplorable. It would not be an exaggeration to say that the thought of sullying the physical frame of a woman is the demolition of the accepted civilised norm i.e. "physical morality". In such a sphere, impetuosity has no room. The youthful excitement has no place. It should be paramount in everyone's mind that, on the one hand, society as a whole cannot preach from the

[10] (2013) 7 SCC 77

> pulpit about social, economic and political equality of the sexes and, on the other, some perverted members of the same society dehumanise the woman by attacking her body and ruining her .chastity. It is an assault on the individuality and inherent dignity of a woman with the mindset that she should be elegantly servile to men."

17. At this juncture, we are obliged to refer to two authorities, namely, ***Baldev Singh v. State of Punjab***[11] and ***Ravindra v. State of Madhya Pradesh***[12]. ***Baldev Singh*** (supra) was considered by the three-Judge Bench in ***Shimbhu*** (supra) and in that case it has been stated that:-

> **"18.1.** In *Baldev Singh v. State of Punjab*, though the courts below awarded a sentence of ten years, taking note of the facts that the occurrence .was 14 years old, the appellants therein had undergone about 3½ years of imprisonment, the prosecutrix and the appellants married (not to each other) and entered into a compromise, this Court, while considering peculiar circumstances, reduced the sentence to the period already undergone, but enhanced the fine from Rs. 1000 to Rs. 50,000. In the light of series of decisions, taking contrary view, we hold that the said decision in *Baldev Singh v. State of Punjab* cannot be cited as a precedent and it should be confined to that case."

[11] (2011) 13 SCC 705
[12] (2015) 4 SCC 491

18. Recently, in ***Ravindra*** (supra), a two-Judge Bench taking note of the fact that there was a compromise has opined thus:-

> "17. This Court has in Baldev Singh v. State of Punjab, invoked the proviso to Section 376(2) 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.
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> 18. In the 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) 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."

19. Placing reliance on ***Shimbhu*** (supra), we also say that the judgments in ***Baldev Singh*** (supra) and ***Ravindra*** (supra) have to be confined to the facts of the said cases and are not to be regarded as binding precedents.

20. We have already opined that matter has to be remitted to the High Court for a reappraisal of the evidence and for a fresh decision and, therefore, we have not referred to the evidence of any of the witnesses. The consequence of such

remand is that the order of the High Court stands lancinated and as the respondent was in custody at the time of the pronouncement of the judgment by the trial Court, he shall be taken into custody forthwith by the concerned Superintendent of Police and thereafter the appeal before the High Court be heard afresh. A copy of judgment be sent to the High Court of Madhya Pradesh, Bench at Gwalior.

21. The appeal stands allowed to the extent indicated hereinabove.

.....J.
[Dipak Misra]

.....J.
[Prafulla C. Pant]

NEW DELHI
JULY 1, 2015.