

IN THE HIGH COURT OF MADHYA PRADESH

AT INDORE

BEFORE

HON'BLE SHRI JUSTICE SUBODH ABHYANKAR

th
ON THE 11th OF JULY, 2024

CRIMINAL APPEAL No. 1124 of 2010

RAJU

Versus

THE STATE OF MADHYA PRADESH

Appearance:

Shri Shivendra Singh, learned counsel for the appellant.

Ms. Harshlata Soni, learned counsel for the respondent/State.

JUDGMENT

1. A PUD dated 25.7.2024 has been received from the Jail Superintendent, District jail, Shajapur that the appellant has already suffered the entire jail sentence of ten years and he has been released from the jail. This is a sorry state of affairs of the High court, for which there cannot be any excuses, because come what may, a criminal appeal has to be decided before the appellant completes his sentence.
2. Since this appeal never came up for hearing since last around ten years, I have decided to hear this appeal finally at this juncture only, without further ado.
3. The appellant has preferred the present appeal under Section

374 of Cr.P.C., being aggrieved by judgment dated 09.09.2010, passed by the Special Judge (under SC & ST Act), Rajgarh (Biaora) (M.P.) in S.T. No.6/2007, whereby he has been convicted for offences punishable under Sections 376(1) of the Indian Penal Code, 1860 and sentenced him to undergo rigorous imprisonment of 07 years with fine of Rs.1000/- with default clause.

4. In brief, the facts of the case are that on 01.12.2006, when prosecutrix, who is a married lady aged around 21 years, was alone at her home, at that time, at around 3 or 3:30 o'clock in the noon, appellant came to her house and tried to give Rs.100/-, and asked her for sexual favour, to which the prosecutrix protested but, the appellant got into the house, and after closing the door, stuffed a hand kerchief in her mouth and committed rape on her and fled from the spot.

5. A report was lodged by the complainant/prosecutrix on the same day i.e., on 01.12.2006 only at crime No.182/2006, although the FIR has not been proved. The prosecutrix, who was also seven months' pregnant, was taken to the hospital for her examination and during the course of the investigation, the appellant was arrested, and the charge sheet was filed. The learned Judge of the trial court, after recording of the evidence, has acquitted the appellant from the offence under Section 3(2)(5) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act,1989, however, has convicted him as aforesaid u/s. 376(1) of IPC.

6. Counsel for the appellant has submitted that the appellant has been wrongly convicted by the learned Judge of the trial Court as there is absolutely no evidence on record to connect him with the offence except the oral testimony of the prosecutrix. There is neither First Information Report proved in the case, nor the MLC of the present appellant which could have demonstrated that the appellant was capable of committing such an offence. It is also submitted that the prosecutrix has also stated in her examination-in-chief that her blouse was also torn by the appellant but, the same has not been seized, and she has also stated that she was seven months pregnant, and because of this act of the appellant, she suffered miscarriage resulting in the death of her unborn daughter. However, there is nothing on record to suggest that the prosecutrix has ever suffered any miscarriage, although as per p.w.3/Dr. Manisha Mittal, the prosecutrix was seven months pregnant at the time of her medical examination.

7. Counsel for the appellant has further submitted that the defence of the appellant is that his mother had given Rs.20,000/- to the husband of the prosecutrix and her father-in-law, and as they did not want to pay back the amount, the appellant has been falsely implicated in the case. It is also submitted that the prosecutrix was also examined by the p.w.3/Dr. Manisha Mittal, who has clearly opined that the prosecutrix had no injury marks either internal or external however, she has admitted that the prosecutrix was

carrying a seven months pregnancy and the doctor has also not found any scratch mark on her neck as has been claimed by the prosecutrix that she suffered scratch mark on her neck inflicted by the appellant.

8. Counsel for the respondent State has opposed the prayer and it is submitted that no case for interference is made out.

9. Heard the learned counsel for the parties and perused the record.

10. It is trite law that in a given case of rape, the sole testimony of the victim would be sufficient to hold the accused guilty without further corroboration, but the caveat is that her testimony should be of unimpeachable or sterling quality. Apparently, this principle cannot be applied as a thumb rule to blindly rely on the testimony of the victim/prosecutrix in all the cases of rape. Thus, the court would also be required to see the surrounding circumstances of the case and whether the testimony of prosecutrix inspires confidence.

11. In this regard, it would be relevant here to mentioned that in the present case, for the reasons best known to the prosecution, the FIR has not been proved. Thus, it is not known as to when exactly the incident took place or whether there was any delay in lodging the FIR, and what was the initial version of the prosecutrix in the FIR. It is also found that the MLC of the accused who was arrested on 05.12.2006, is also not proved on record. It is also found that although the slides of the prosecutrix were sent to the forensic

laboratory on 13.12.2006, but, till the date of the delivery of the judgment i.e.,09.09.2010, the prosecution has not cared to produce the F.S.L. report which could have reflected if the prosecutrix was raped, because the prosecutrix was a married woman however, considering the fact that she was already carrying seven months' pregnancy, any positive FSL report could have indicated towards the culpability of the appellant. It is also found that in the spot map Ex.P/3, the house of the prosecutrix is in close vicinity with other houses and separated with a common wall only on both the sides, and just on the opposite side, there are three other houses situated but in para 13 of her deposition the prosecutrix has admitted that she did not inform about the incident to anybody.

12. Although, the prosecutrix-Pw/5 has also stated in her examination-in-chief that her pregnancy was aborted due to the appellant's act, and her unborn daughter died but, there is nothing on record to substantiate the aforesaid allegations and even otherwise the appellant has not been tried for causing miscarriage. Thus, apparently the prosecution witnesses have tried to embellish the case by adding more seriousness to the offence. In para 12, the prosecutrix has also stated that her bangles were broken and she had suffered injuries on her private part and her neck, and her blouse was also torn but, apparently, no such articles have been seized during the period of the investigation, and there are no injuries suffered by her as proved by Pw/3 Dr. Manisha Mittal, which also

raises doubt about the veracity of the prosecution case.

13. It is also found that in his statement under Section 313 of the Cr.P.C., the appellant's defence is that he has been falsely implicated in the case on account of the monetary transactions between the parties, which has also been suggested to the prosecutrix in her cross examination, to which she has denied. Although, Pw/6 Girdhari, the husband of the prosecutrix, has admitted in para 7 of his cross examination that he had taken Rs.7000/- only from the father of the appellant to buy bullocks around five years ago.

14. Be that as it may, this Court is of the considered opinion that when there are so many discrepancies in the prosecution story, and they have, either deliberately or negligently, not produced the best evidence available with them, the conviction of the appellant cannot be based on the sole testimony of the prosecutrix.

15. In view of the same, this Court is of the considered opinion that the appellant ought to have been given the benefit of doubt. Accordingly, the present appeal stands *allowed*, the impugned judgement dated 09.09.2010, is hereby set aside and the appellant stands acquitted from all the charges/offences.

16. With the aforesaid observations, the Criminal Appeal stands *allowed*.

(SUBODH ABHYANKAR)
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