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CRA-906-2017

IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE G. S. AHLUWALIA

&

HON'BLE SMT. JUSTICE ANURADHA SHUKLA

1st of July, 2026

CRIMINAL APPEAL No. 906 of 2017

MUKESH JATAV

Versus

THE STATE OF MADHYA PRADESH

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Appearance:

Shri Ashok Jain - Advocate for the appellant.

Shri C.P. Singh - Public Prosecutor for the respondent /State.

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J U D G M E N T

Per. Justice Anuradha Shukla

1. In this appeal, appellant is assailing his conviction under Sections 366 of IPC, 376 (2) (i) & (m) of IPC and section 307 IPC, and sentence of 10 years rigorous imprisonment with fine of Rs. 5,000/-, life imprisonment with fine of Rs. 10,000/- and 10 years rigorous imprisonment with fine of Rs. 10,000/- respectively with default stipulations, under the impugned judgment dated 06/02/2017 passed in S.T. No. 530/2014 by 5th Additional Sessions Judge, Gwalior.

2. Admittedly, the age of victim was two years at the time of incident i.e. 13/07/2014 and appellant was an acquaintance of the father of the victim. From evidence, it is also not in dispute that appellant met with a road accident, was admitted in hospital and was later brought to primary



health centre, Barai where his medical examination was done in the crime under consideration.

3. Briefly stated, victim and her father were on the road in front of their house where motor cycle No. M.P. 07 / MU 3300 was also parked with key in its ignition. Appellant on the pretence of playing with victim suddenly grabbed the child in his arm, started the parked motor cycle and fled on it with the child. He was immediately chased by father of the victim and neighbour, but appellant, driving towards Gwalior, managed to elude. Appellant and victim both were searched, but when they were not found, the incident was reported by father of the victim to police station Mohna and crime No. 164/2014 was registered against appellant. Later, appellant was traced and interrogated. On his information, victim and other articles were recovered. Victim was medically examined and it was found that she was brutally raped and injured while left abandoned in bushes to die her own death. After investigation, charge sheet was filed and trial was held. Appellant was convicted and sentenced as discussed earlier.

4. Appeal has been argued on the ground that appellant has completed a custody of more than 12 years in the case which was the result of false implication on account of enmity. According to appellant, there was some financial dispute between him and father of the victim, for which, a false report was lodged. He did not commit any crime and was injured in a road accident. It is claimed that he was summoned from the house and was arrested on false grounds. It is further submitted that no DNA examination was done to fix the culpability of the appellant in the alleged crime and even the victim was not examined as witness for the purpose of



identification of predator. Claiming the conviction as bad in law, a request has been made to allow the appeal.

5. Opposing it, State has made a contention that in the light of named FIR, statement of witnesses, the age of victim and her medical report, with no angle of enmity proved by defence, the conviction and sentence deserve no interference.

6. Counsel for both the parties have been heard and record has been perused.

7. The age of victim in this case is not under challenge which was almost two years as on the date of incident. Her medical report marked as Ex. P/12 and proved by Dr. Achla Sahaya (PW/8) has also not been given any serious exception by defence. This report very clearly proves that victim was raped and had multiple bruises on her body. The unchallenged testimony on these facts, establishes that two years old victim was subjected to physical violence and rape.

8. The sequence of facts as narrated in FIR and also in the testimony of witnesses is that the victim and her father both were outside of their house, appellant arrived there, took the child in his arms and suddenly fled with the child on a motor cycle which was parked nearby with the key in its ignition. He was chased by father of the victim and also by neighbour Indresh, but they both could not capture him. The family members of the victim searched for her but when she was not traced, FIR Ex. P/1 was lodged in police station Mohna on the date of incident itself i.e. 13/07/2014. It reflects that the incident was of 6 Pm and matter was reported to the police at 8 Pm. Recovery memo of the girl child is Ex. P/10 which shows that the victim was recovered from village Nayagaon



on A.B. Road inside the road side bushes. The recovery date is 14/07/2014 and time is 1 Pm in the afternoon. On the same date, victim was medically examined under Ex. P/12 and was found to have been physically and sexually ravished.

9. The aforesaid facts have been proved through the testimony of father of the victim (PW/1), who saw the incident himself, mother of the victim (PW/2), to whom the incident was narrated by her husband, Pradeep (PW/3) and Indresh Batham (PW/6), who had seen the appellant taking away the victim child on the motor cycle which was parked nearby.

10. Learned counsel for the appellant has argued that there was some enmity between father of the victim and the appellant on account of some financial dispute, but this plea has been rejected by the father of the victim and furthermore, this plea fails to explain why independent witnesses Pradeep and Indresh have corroborated the prosecution case as no enmity with these independent witnesses has been claimed by the appellant. Some ignorance has been disclosed by these two witnesses regarding documents signed by them, the place where they put their signatures, the contents of the documents, etc., but these facts relate to the alleged infirmity of investigation and have no bearing on the facts of the incident narrated by these two witnesses. Thus, defence has miserably failed to challenge their testimony on the facts of the incident.

11. Appellant has, though, taken the defence that there was some financial dispute between him and the father of the victim but what kind of dispute it was and what amount was involved are the facts which were never unveiled by appellant. No witness was examined in defence nor the



appellant himself had the courage to state the fact of this enmity on oath. Thus enmity was only of a colour of hypothesis in this case and was never established as a fact.

12. Appellant has raised the contention that in this rape case, no DNA report was proved by the prosecution and victim herself was not produced in evidence to prove the identity of predator. We are not oblivious to the fact that age of victim was hardly two years at the time of incident. The Hon'ble Apex Court as early as in 2004 in the case of **Sakshi vs. Union of India (2004) 5 SCC 518** has held that in holding trial of child sexual abuse or rape, screen or some other arrangement may be made, so that the victim or witnesses does not see the body or face of the accused. The question of dock identification by child victim is, therefore, cannot be successfully and more particularly, in the light of section 36 of Protection of Children from Sexual Offences, Act 2012, which provides as under :-

"36. Child not to see accused at the time of testifying.—(1) The Special Court shall ensure that the child is not exposed in anyway to the accused at the time of recording of the evidence, while at the same time ensuring that the accused is in a position to hear the statement of the child and communicate with his advocate.

(2) For the purposes of sub-section (1), the Special Court may record the statement of a child through video conferencing or by utilising single visibility mirrors or curtains or any other device."

13. Paradoxically, if dock identification through child victim was not



permissible under law, it is not explained what other factors were required to be proved through the testimony of such a young child, with having only limited words in her vocabulary. She was raped and it is not challenged in the case. Further, the fact of her kidnapping by appellant has been proved by her father and also by independent witnesses present at the time of crime. Thus, we find no lapse in the prosecution case, if it has failed to examine the child victim of the age of two years.

14. It is a case where appellant was seen by the father of the victim and other witnesses while he was kidnapping the child on 13/07/2014 at 6 Pm. A named FIR was lodged against him on the same date at 8 Pm and the child was recovered from the road side bushes on A.B. Road at quite a far distance from her house, on the information given by the appellant. Even, the undergarment of the victim child was recovered from bushes on the information given by the appellant. To prove these information and recoveries, investigating officer Hemlata Agrawal (PW/10) has testified before the Court. Cross examination of this witness undertaken at the behest of appellant does not reveal any significant contradiction or infirmity which would render the investigation as doubtful. Further no reason has been assigned by the defence to disbelieve her testimony.

15. Evidence discussed so far establishes that appellant kidnapped the girl child in the presence of her father and other witnesses and almost 19 hours after he fled on motorcycle with the kidnapped child, she was recovered from road side bushes on a far away place on the basis of information given by the appellant. She was badly injured and was also found to have been raped. Now, under section 106 of Evidence Act and for the theory of last seen, the burden is on the appellant to disclose the



circumstances under which he parted company with the kidnapped child and what was the physical state of child was at that time. Admittedly, appellant is silent on these relevant facts.

16. In **Teja vs. State of U.P. (1956) 1 SCC 481**, the Hon'ble Apex Court considered the evidence of last seen theory and recovery evidence. It observed that the appellant had failed to offer any satisfactory explanation as to what happened to the victim and his story of complete denial was found to be false with incriminating materials, belonging to the victim, were proved to have been recovered at the instance of the accused, therefore, the Apex Court affirmed the conviction.

17. In another case **Ravasaheb alias Ravasahebgouda and Others vs. State of Karnataka (2023) 5 SCC 391**, the Apex Court observed that explanation on the part of accused becomes necessary under section 106 of Evidence Act when the last seen theory is coupled with other factors such as recovery of items of deceased at the behest of accused, the proximity of time to the recovery, etc. and if in such a situation the accused does not do so or furnishes a wrong explanation or if motive is established, completing securely the conviction of accused and closing out the possibility of any other hypothesis, then a conviction can be based thereon.

18. The facts of the present case have not only proved the act of kidnapping a two years old girl child but also fleeing away from the scene despite the resistance offered by witness. Further, no information was given to the guardian regarding the whereabouts of the child. These circumstances clearly prove the motive of appellant to kidnap the young child for the purpose of ravish her sexually. Further, the act of leaving her



inside the road-side bushes in a ravished state proves that the sole intention was to facilitate the death of child by dumping her there in deeply wounded state and that too in the night hours, so that she may easily become the target of other predators. Thus, life of victim child was intentionally put on grave threat by the appellant.

19. Although it is argued that the DNA report has not been proved by prosecution, but no settled law could be cited to show that in every case of rape, the DNA report should compulsorily be proved. In a case, where facts of crime have been proved otherwise, the accused cannot claim acquittal only for the reason that DNA report was not proved. For this reference can be made to the decision of Apex Court in **Sunil vs State of M.P. (2017) 4 SCC 393**, wherein it was observed that despite non holding of DNA test, conviction may still be possible based on remaining evidence, provided it is clinching in nature. The other aspect of this argument can be that if DNA report was of such a nature as would have helped the defence, a request could have been made by appellant to the trial court to call for that report. However, order sheets of the case disclose that no such prayer was ever made by the appellant. Thus, at this belated stage, the innocence of appellant can not be pleaded on the basis of non-production of DNA report.

20. Facts of the case establish that appellant has committed the offence of kidnapping a two years child, has raped her and has also attempted her murder by dumping her in the road-side bushes in seriously wounded state, therefore, his conviction for the offence of section 366, 376 (2) (i) & (m) and 307 of IPC is upheld. Offence of section 376 (2)(i) &(m) of



IPC are two distinct offence but appellant has been awarded only one sentence of life imprisonment.

21. The offence of Sections 376 (2)(m) IPC provides punishment for committing rape with causing grievous bodily harm to or, maiming, disfiguring or endangering the life of the victim. Here, the appellant has already been awarded punishment for committing rape and also for attempting murder of the victim, therefore, it can be observed that if any separate order was not passed by the trial Court for the offence under Sections 376 (2)(m) IPC, no irregularities / illegalities can be ascribed to the impugned judgment. Further, the State has not challenged the judgment on the count of not passing separate sentence for this offence.

22. Learned trial Court passed the sentence of life imprisonment for the offence under Sections 376 (2) (i) IPC without giving further description about the length of this imprisonment, however, para 51 of the impugned judgment makes reference to the fact that life imprisonment under this provision implies imprisonment for the remainder part of natural life of the convict. Further, the reading the provision leaves no room of doubt on it. It can therefore be gathered that the trial Court while awarding life sentence under section 376 (2) (i) IPC was implying life sentence for the remaining term of natural life.

23. We are cognizant of the fact that aforesaid provision of Sections 376 (2) (i) IPC also admits minimum sentence of imprisonment for a definite term of life. Having considered the gamut of sentence prescribed for the offence and also the fact that no criminal antecedents of the appellant are proved, the sentence of life imprisonment till natural death of the appellant



awarded under Sections 376 (2) (i) IPC needs conversion to a limited period. Accordingly, we reduce the sentence awarded to the appellant for the offence under section 376 (2) (i) of IPC to a fix term sentence of 20 years of actual rigorous imprisonment with no remission. Under the other two heads of conviction, sentences awarded by the trial Court are proportionate to the gravity of crime, hence deserve no indulgence of this Court.

24. Accordingly, this appeal is **partly allowed** only with a modification in the sentence for the offence of Sections 376 (2) (i) of IPC. All the substantial sentences shall run concurrently.

25. Let the judgment of this Court be certified in compliance of section 388 of Cr.P.C. and concerned Court may be directed to make such order as is amenable and compliant to the judgment of this Court.

26. The copy of judgment be sent to the jail authorities for being provided to the appellant. Let record along with the copy of the judgment be sent to the trial Court for necessary information and compliance.

Certified copy as per rules.

(G. S. AHLUWALIA)
JUDGE

(ANURADHA SHUKLA)
JUDGE

Durgekar