

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

Reserved on: 13.07.2023
Pronounced on: 23.08.2023

CRA No. 20/2014
c/w
Conf No. 9/2014

Nikhil Sharma

.....Appellant(s)/Petitioner(s)

Through: Mr. Sunil Sethi, Sr. Advocate with
Mr. Mohsin Bhatt, Advocate

Vs

State of J&K and others

..... Respondent(s)

Through: Mr. Pawan Dev Singh, Dy.AG.

**Coram: HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE
HON'BLE MS. JUSTICE MOKSHA KHAJURIA KAZMI, JUDGE**

JUDGMENT

Per-Oswal J.

01. This appeal arises out of the judgment of conviction dated 10.03.2014 and the order of sentence dated 15.03.2014, whereby the Court of learned 3rd Additional Sessions Judge, (Fast Track Court), Jammu (hereinafter to be referred as "the trial court") has convicted the appellant for commission of offences under Sections 363 and 376 RPC and sentenced him to undergo rigorous imprisonment for life and fine of Rs. 50,000/- under Section 376 RPC. The appellant has been further sentenced to undergo imprisonment for seven years and fine of Rs. 5,000/- for commission of offence under Section 363 RPC. In default of payment of fine, the appellant has been directed to undergo simple imprisonment for six months in case of conviction under Section 376 RPC and in default of payment of fine in case of conviction under Section 363

RPC, the appellant has been directed to undergo simple imprisonment for two months.

02. The judgment has been impugned by the appellant on the ground that the prosecutrix was mentally unsound, which is clearly established from her statement during cross-examination, as such, her statement could not have relied upon by the learned trial court. It is also stated that the statements of other witnesses examined by the prosecution clearly establish that the appellant has been falsely implicated because of the quarrel between the appellant and brother of the prosecutrix. It is also contended by the appellant that the statement of Dr. Poonam Mahajan has ruled out the presence of spermatozoa in the vaginal smears, which clearly demonstrates that the appellant has been falsely implicated. In nutshell, the appellant has assailed the judgment of the trial court on the ground that the learned trial court has not appreciated the evidence in its right perspective and has ignored the material infirmities in the prosecution case.

03. Mr. Sunil Sethi, learned senior counsel for the appellant vehemently argued that a bare perusal of the statement of the prosecutrix would reveal that she was of unsound mind and in view of her incoherent statement, the same could not have been relied upon by the learned trial court for convicting the appellant. He further submitted that there are material contradictions between the statement of father of the prosecutrix and statement of PW Nek Ram. It was also argued by Mr. Sethi that the medical evidence does not establish the commission of offence of rape upon the prosecutrix by the appellant.

04. *Per contra*, Mr. Pawan Dev Singh, learned Dy. AG submitted that the prosecutrix had clearly deposed about the commission of rape by the appellant and other witnesses including the father of prosecutrix have also supported the version of the prosecutrix. He further submitted that the prosecutrix was a minor girl and it was not that at all the time she was mentally unstable. The manner, in which she made her statement in chief-examination clearly establishes the guilt of the appellant and the learned trial court has rightly relied upon the testimony of the prosecutrix.

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

06. The prosecution case as projected in the charge sheet is that on 25.05.2008, at around 2200 hours, the father of the prosecutrix submitted a written complaint with the SHO, Police Station, Akhnoor, wherein he stated that his daughter i.e. the prosecutrix, aged 12 years at around 03.00 pm had gone towards the house of her maternal grandfather but she did not return back till the evening. He searched for her and during search when he reached the thoroughfare, he found that the appellant had taken his daughter below the culvert and was committing rape on her. On seeing him, he ran away from the spot. The occurrence took place at 07.00 pm. The condition of the prosecutrix was not good. He initially took her to home and thereafter, he approached the Police Station along with his daughter. On receipt of this application, FIR bearing No. 120/2008 for commission of offence under section 376 RPC was registered against the appellant. Thereafter, the investigation was commenced and after completion of the investigation, charge sheet was laid against the appellant for commission of offences under Section 363 & 376 RPC before the Court of Judicial Magistrate 1st Class, Akhnoor and the same was committed to

the Court of Sessions Judge, Jammu vide order dated 17.08.2008. Finally, the case was transferred to the learned trial court. The charges for commission of offences under Sections 376 & 363 RPC were framed against the appellant vide order dated 07.10.2008. Out of the 11 witnesses cited by the prosecution, 6 witnesses were examined. The appellant also examined one witness in his defence. The learned trial court vide judgment dated 10.03.2014 convicted the appellant for commission of offence under Sections 363 & 376 RPC and vide order dated 15.03.2014 sentenced him to undergo imprisonment along with payment of fine as mentioned above.

07. The main contention raised by the appellant is that the statement of the prosecutrix demonstrates that she was of unsound mind and learned trial Court has erred in relying upon her statement. It was also submitted that there are material contradictions between the statements of two witnesses and the medical evidence does not establish the commission of offence of rape by the appellant.

08. The statement of the prosecutrix depicts that the learned trial court had put her some questions before declaring her mentally fit. A perusal of the statement of the prosecutrix would reveal that during initial questions by the learned trial court, she stated that false statement should be made in the Court and she did not understand the difference between the truth and falsehood. The learned trial court observed that in view of the reply submitted by the prosecutrix, oath cannot be administered to the prosecutrix, but nonetheless the statement of the prosecutrix was recorded without oath after declaring her fit for making statement. During her testimony, she stated that the appellant had undressed her below the culvert and did wrong act with her. The appellant had

laid her on the ground and caught her tightly after laying over her. He was under the influence of liquor. She received bruises on her thigh. She was coming all alone from the house of her maternal uncle, who resided near her house. The appellant also gave her toffees, which were thrown by her. Her parents also came on spot, the appellant then ran away. The appellant had taken off his pant. Her father had taken her home and blood oozed out from her private part. She was examined by the Doctor. Report was registered against the appellant in the Police Station. She was ten years of age at the time of incident. During cross-examination, she did not disclose the name of her school as well as the name of her grandfather. She admitted that she was not mentally fit. She also did not know the name of her maternal uncle. She stated that each toffee given by the appellant weighed one Kg. The private parts of male and female are similar. The colour of blood is yellow and her father was a doctor. The clothes were handed over to the Police. She does not know the meaning of sexual intercourse and the case is false.

09. PW-2 (Father of the prosecutrix) stated that on 25th of May, 2008, the prosecutrix, who was 10 years of age and mentally unsound, had gone to the house of her maternal grand-parents. He enquired from his in-laws and he was told that she had already left for home. He searched for her and when he reached near the main road, he heard the cries from below the culvert. He went on spot and saw the accused was raping the prosecutrix after removing her salwar (trouser). The appellant had also removed his pant. When the appellant saw him, he fled from the spot after taking pant with him. He brought his daughter to home and his wife found the blood coming from the private part of the prosecutrix, who was crying. Thereafter, report was lodged in the Police

Station. He was accompanied by Nek Ram and his daughter. The statement of the prosecutrix was recorded by the Police. He identified his signatures. He proved the FIR (EXTP-2). The prosecutrix was examined by the Doctor. The Police had seized the wearing apparel, which included salwar, shirt and one pant, which was blood stained. He proved the seizure memo EXTP-2/1. The pant of the accused was also seized. He proved seizure memo EXTP-2/2. He also proved the supurdnama of two rings (EXTP-2/3 and EXTP-2/4). He also proved the written report lodged by him EXTP-2/5. He also proved his statement recorded before the Magistrate. During cross-examination, he stated that occurrence took place on 25.05.2008 and not on 26.05.2008. He alone proceeded from home to search for the prosecutrix. The culvert was at a distance of 600 yards from his house and the house of his in-laws was also situated at the same distance from the culvert. He went to the house of his in-laws for searching the prosecutrix and at that time his three brothers-in-law were not at home. He went to the house of Nek Ram to enquire about the prosecutrix, who told him that she had already left. Thereafter, he searched her daughter in other houses and then went towards the road. It was about 10.00 p.m. The seized clothes were not shown to him in the Court. They reached the Police Station at 10.00 p.m. His daughter sometimes talks in a proper manner and sometimes in incoherent manner, as she is mentally unstable. He has not mentioned in respect of the toffees either in his complaint or in his statement recorded under Section 161 Cr. P.C. Nek Ram and Raj Kumar accompanied him to the Police Station. It is not mentioned in his statement recorded under Section 164-A Cr.P.C. that the appellant was raping his daughter after removing his pant and salwar. It is mentioned in his statement that the accused

ran away after lifting his pant. The appellant was arrested in the intervening night of 25th /26th at about 10.00 to 11.00 p.m. He denied the suggestion of the learned counsel for the appellant/accused that prior to the incident his son was beaten up by the appellant while playing cricket.

10. PW-3 Nek Ram (Maternal Uncle of the prosecutrix) stated that the prosecutrix, who is 10 years of age and mentally unstable is his niece. On 25.05.2008, she had come to his house and went back to her home in the evening. Bikru Ram came to his house and enquired from him about the whereabouts of his daughter. He replied that she had already left for home. At 07.00 p.m or 07.15 p.m. Father of the prosecutrix again came to his house and told him about the occurrence committed by the appellant with the prosecutrix. Thereafter, he along with Bikru Ram and prosecutrix went to the Police Station. Medical examination of the prosecutrix was conducted on the same day at about 1.30. a.m on 26.05.2008. The clothes of the prosecutrix were seized by the Police, which were blood stained. Ring used for sealing the packet was kept on supurdnama of father of prosecutrix. The Police also seized the pant of the appellant and the ring used for sealing the pant was kept on supurdanama of father of prosecutrix. During cross-examination, he stated that on 25.05.2008 at about 8.00/9.00 p.m. he was present in his house. The appellant was known to him prior to occurrence, who resided at distance of two kilometers from his house. The prosecutrix used to visit his house frequently. Sometimes, she used to come all alone from her home, which is situated at a distance of 400/500 meters. He has no personal knowledge of the occurrence but came to know the same from father of prosecutrix. There is no enmity between the appellant and son of father of prosecutrix. He did not go outside to search for the prosecutrix.

11. PW-4 (mother of the prosecutrix) stated that the age of her daughter was 10 years. The appellant was known to her. In the year 2008, in the summer season, the prosecutrix had gone to the house of her maternal grandmother at 3.00 p.m. but she did not return. When she asked her husband to search for the prosecutrix, he went out and at about 7.30 pm, he came back along with the prosecutrix in his lap, who was crying with pain due to which she opened the salwar of the prosecutrix and found that blood was oozing out from her private part. On enquiry, the prosecutrix told her that the appellant had committed wrong act with her after taking her below the culvert. He was caught by her husband. Thereafter, they went to the Police Station. Next day, the appellant was arrested and he confessed his crime. The prosecutrix was examined by the Doctor and the Police also seized the clothes of the prosecutrix and the appellant. She admitted the contents of seizure memo EXTP-2/1 and EXTP-2/2 and also of supurdnama EXTP- 2/4. These documents bore her signatures. During cross-examination, she stated that her husband is suffering from AIDS. Nek Ram is her real brother and her parental house is situated from a distance of one kilometer from her house. After seeing the condition of her daughter, she went along with her husband and prosecutrix to her parental house at 7.30 p.m. where Nek Ram met her. She narrated him about the incident. Her mother and sister-in-law also became aware about the incident. Her husband went in search of the prosecutrix at 6.00 p.m. Her husband had not given any written report in her presence. The Police had enquired about the incident from the prosecutrix and thereafter, statement of the prosecutrix was recorded in the Court in her presence.

12. PW-5 I.A. Malik, Scientific Officer, FSL, Jammu stated that he had received two sealed packets through SPO Amar Singh forwarded by SDPO, Akhnour in connection with the case FIR No. 120/2008 under Sections 376/511 RPC of Police Station, Akhnour. The contents of the packet were subjected to chemical and microscopic examination for the detection of semen/human spermatozoa. The opinion was given by him in his report No. 617/FSL dated 30.06.2009. The report bears his seal and signatures. Its contents are correct and the same is exhibited as EXT-P-I.A. During cross-examination, he deposed that he had not received the semen sample of the accused for its comparison with the semen to be detected from the exhibit No. M-46/09 due to which he could not tell that the semen which were detected from exhibit M-46/09 were of accused or of somebody else. Before conducting the test, he was not told whether the semen stains were of human or of animal. No semen found on exhibit No. M-45/09 and M-47/09 after conducting the examination.

13. PW-6 Dr. Poonam Mahajan, Medical Officer, stated that she had examined the prosecutrix. On examination, prosecutrix was conscious, cooperative but not responding fully to verbal commands. No marks of violence externally on any part of body, old abrasion marks on the medial side of both legs were found. No fresh marks of violence were found on her body, however, local examination shows both labia majora, vulva hypermic, (congested and red) with the evidence of dried blood stains around are of vaginal opening which was wet. Vagina admits little finger with difficulty and there was no evidence of fresh bleeding. Two smears taken from posterior fornix and sent for histopathological examination. The H/P examination report

does not show the presence of spermatozoa in both the smears. In her opinion, there was no definite evidence of sexual intercourse but marks of violence around vaginal orifice might indicate assault. The medical examination report bears her signature, contents whereof were correct. In cross-examination, she stated that she has given her opinion that there was no definite evidence of sexual intercourse. The marks of violence around vaginal orifice could be possible by cycling or otherwise than sexual intercourse. It is true that no spermatozoa were present in both smears of the prosecutrix and she had conducted the examination of the prosecutrix within a period of seven hours of alleged incident. The witness asked the prosecutrix regarding the incident but she could not reply as she was mentally retarded.

14. PW Ranjeet Singh, Head Constable was the Investigating Officer. He stated that during the course of the investigation, the victim was taken to hospital in the intervening night of 25th/26th May 2008, where she was medically examined because her mother told them that blood was oozing out from the private part of the prosecutrix. He went to the place of occurrence at 4.00 a.m in the morning. He proved the site plan EXTP-10. The clothes of the prosecutrix were seized from her house and the same were sealed on spot. The appellant was arrested on 26.05.2008 and his pant was also seized. Both the seized articles were sent to the FSL, Jammu for examination. After completion of the investigation, he proved the offences under Sections 363 & 376 RPC against the appellant. During cross-examination, he stated that the appellant was arrested on 26.05.2008 at 1.00 p.m. He felt stains of semen and blood over pant of prosecutrix, due to that reason he mentioned the same over the seizure memo. The pant was produced by the appellant in the Police Station on

26.05.2008. The place of occurrence was below culvert. Father of prosecutrix has wrongly stated in his statement under section 164-A Cr. P.C. that occurrence took place on 26.05.2008.

15. DW Deepak Sharma stated that he knows the appellant, who resides in his vicinity. The appellant has been falsely implicated in the case because quarrel took place between son of father of prosecutrix and the appellant while playing cricket.

16. The prosecution in order to bring home the guilt of the appellant has relied upon the statement of prosecutrix, her parents, maternal uncle and also the medical evidence as well as forensic evidence. So far as the statement of the prosecutrix is concerned, her statement is required to be appreciated by taking into consideration that she is of unsound mind. The courts cannot expect a person of unsound manner to depose in a manner like that of a normal person. Reply submitted by the prosecutrix that she does not understand difference between truth and falsehood, the colour of the blood was yellow, that her father was a Doctor reveals that she was not of a sound mind. In **Chaman Lal v. State of H.P.**¹, the Hon'ble Apex Court observed as under:

“18.-----The High Court has also come to the conclusion that the victim was not in a position to understand the good and bad aspect of the sexual assault. Merely because the victim was in a position to do some household works cannot discard the medical evidence that the victim had mild mental retardation and she was not in a position to understand the good and bad aspect of sexual assault. It appears that the accused had taken disadvantage of the mental illness of the victim. --

(emphasis added)

17. So far as the present case is concerned, the statement of the prosecutrix is relevant only to the extent that the appellant laid her on ground

¹ (2020) 17 SCC 69

and thereafter himself laid on her and held her tightly. He did wrong act with her. Though she has not categorically stated that the appellant raped her but this court does not expect the narration of detailed occurrence from her as she is of unsound mind. Also this court finds that that the prosecutrix was not tutored particularly in view of replies made by her during cross-examination. It is settled law that even in absence of the statement of the prosecutrix, who because of any disability is not in position to depose in proper manner, the accused still can be convicted for commission of offence of rape. In '**State of Maharashtra v. Bandu**'², the Hon'ble Apex court reversed the acquittal of the accused, who had raped the deaf and dumb girl, but was not examined during trial. The Hon'ble Supreme court observed as under:

"The evidence of the mother of the victim clearly shows that it was the respondent-accused who took away the victim. The victim and the accused were seen together by PW-2, Gajanan Marutrao Sonule on the date of commission of offence. The victim immediately after the occurrence narrated the same to her mother as to what happened as reflected in the FIR and the version of the PW-1. Rape has been confirmed by medical evidence. Identity of accused is not in dispute. In these circumstances the trial court having convicted the respondent, the High Court was not justified in setting aside the conviction.

(emphasis added)

18. The other evidence on record also points towards the guilt of the appellant. PW-2, who is the material witness, has stated that when he went in search of her daughter and reached near the culvert, he heard the cries below the culvert and found that the appellant was raping the prosecutrix. It is true that he admitted that he did not make statement before the Magistrate in respect of the accused raping his daughter but the defence has not been able to dispute his presence on place of occurrence. The perusal of the statement of witness

² (2018) 11 SCC 163

recorded under section 164-A Cr. P.C. reveals that he had stated that the appellant did wrong act with his daughter. It was he, who took the prosecutrix to home and his wife found blood oozing out from the private part of the prosecutrix. It needs to be noted that it was PW-2 who lodged FIR regarding commission of offence of rape by the appellant. Not only the victim of the sexual assault but also her family bears the mental trauma, humiliation for none of their fault. The father is a guardian and protector of his minor children and he makes every effort to protect his minor children from the vagaries of life. No father would falsely implicate any innocent person on the allegation that he committed rape upon his minor daughter, who is mentally unsound, thereby putting the honour and dignity of his daughter as well as of his family at stake.

In “**State vs Ramdev Singh**”³, the supreme Court observed as under:

"Sexual violence apart from being a dehumanizing act is unlawful intrusion on the right of privacy and chastity of a female. **It is serious blow to her supreme honour and offends her self esteem and dignity - it degrades and humiliates the victim and where the victim is a helpless innocent child or a minor it leaves behind a traumatic experience, a rapist not only causes physical injuries but more indelibly leaves a scar on the most cherished possession of a woman i.e. dignity, honour, reputation and not the least her chastity.** The courts are, therefore, expected to deal with cases of sexual crime against woman with utmost sensitivity. Such case need to be dealt with sternly and severally. A socially sensitized judge is a better statutory armour in cases of crime against women than long clauses of penal provisions, containing complex exceptions and provisos."

(emphasis added)

19. In State of **U.P. Vs. Choteylal**⁴, the supreme court observed as under:

"The important thing that the court has to bear in mind is that **what is lost by a rape victim is face. The victim loses value as a person. Ours is a conservative society and, therefore, a**

³ AIR 2004 SC 1290

⁴ AIR 2011 SC 697

woman and more so a young unmarried woman will not put her reputation in peril by alleging falsely about forcible sexual assault. In examining the evidence of the prosecutrix the courts must be alive to the condition prevalent in the Indian society and must not be swayed by beliefs in other countries. The courts must be sensitive and responsive to the plight of the female victim of sexual assault. Society's belief and value system need to be kept uppermost in mind as rape is the worst form of women's oppression. A forcible sexual assault brings in humiliation, feeling of disgust, tremendous embarrassment, sense of shame, trauma and lifelong emotional scar to a victim and it is, therefore, most unlikely of a woman, and more so by a young woman, roping in somebody falsely in the crime of rape. The stigma that attaches to the victim of rape in Indian society ordinarily rules out the leveling of false accusations. An Indian woman traditionally will not concoct an untruthful story and bring charges of rape for the purpose of blackmail, hatred, spite or revenge. This Court has repeatedly laid down the guidelines as to how the evidence of the prosecutrix in the crime of rape should be evaluated by the court."

(emphasis added)

20. The cross-examination of the witnesses by the defence depicts that a failed attempt was made by the defence to establish that because of past enmity, the appellant was falsely implicated in the commission of offence of rape by the father of the prosecutrix. The motive of false implication, which has been projected by the appellant that the son of PW-2 was beaten up by the appellant during cricket match, can hardly be a motive for falsely implicating a person and that too in the commission of heinous offence of rape. From the evidence on record it transpires that when the prosecutrix was taken to her home, her mother i.e. PW No. 4 herself saw the blood oozing from the private part of the prosecutrix. The FSL report establishes the presence of human spermatozoa on blue coloured shirt of the prosecutrix. Further the statement of Dr. Poonam Mahajan is also relevant, who though has stated that no fresh marks were found on her body, however, local examination showed that both labia majora (vulva) hyperaemic, (congested and red) with evidence of dried

blood stains on both labia medially introitus (area around vaginal opening) was wet. No doubt, the said witness has stated that there is no definite evidence of sexual intercourse but marks of violence around vaginal orifice (vulva) indicated assault and if her statement is read in conjunction with the statement of PW-2, PW-4, and PW-5 I. A. Malik, Scientific Officer, FSL, Jammu, it is clearly established that the appellant raped the prosecutrix. Further, the occurrence took place at 7.00 pm on 25.05.2008 at 10.00 pm and the FIR was lodged on 25th of May, 2008 and the promptitude with which the FIR was lodged, the medical evidence and also the report of FSL, it cannot be said that the appellant has been falsely implicated in the case. In FIR, it was mentioned by the PW-2 that the prosecutrix was raped by the appellant. The following facts are established by the prosecution:

- (a) That the appellant was seen with the prosecutrix below culvert and he was without pant and the prosecutrix was also without trouser. On seeing the PW-2, the appellant ran away.
- (b) The appellant had laid the prosecutrix on the ground and he himself laid on her.
- (c) The prosecutrix was examined by the PW- Dr. Poonam Mahajan just after few hours of rape and injuries were found on the private part of the prosecutrix.
- (d) The semen was found on the blue coloured shirt of the prosecutrix.

21. In **Collector of Customs v. D. Bhoormall**⁵, the Hon'ble Supreme court has remarked as under:

“30.----- in all human affairs absolute certainty is a myth, and — as Prof. Brett felicitously puts it — “all exactness is a fake”. El Dorado of absolute proof being unattainable, the law accepts for it probability as a working substitute in this work-a-day world. The law does not require the prosecution to prove the impossible. All that it requires is the establishment of such a degree of probability that a prudent man may, on its basis, believe in the existence of the fact in issue. Thus, legal proof is not necessarily perfect proof; often it is nothing more than a prudent man's estimate as to the probabilities of the case.”

22. Thus, this Court has no hesitation to hold that it was the appellant who raped the unsound girl below the culvert, while she was returning from her maternal grandfather's home at 7.00 p.m.

23. The evidence led by the defence is not of such nature and character that raises any doubt about the truthfulness of the prosecution case. As such, this Court does not find that the evidence has not been properly appreciated by the learned trial court and the material infirmities in the prosecution have been ignored by the learned trial court. Rather, we find that the prosecution has proved its case beyond reasonable doubt. After re-appreciating the evidence, this Court too has reached to the same conclusion as that of the learned trial court.

24. Now we would examine the propriety of the quantum of the sentence, imposed upon the appellant. Before we do so, it would be apt to take note of the various pronouncements of the Hon'ble Supreme Court on the issue of quantum of sentence. In **Deo Narain Mandal vs. State of UP**⁶, the Supreme Court held that sentence should not be either excessively harsh or

⁵ (1974) 2 SCC 544

⁶ (2004) 7 SCC 257

ridiculously low. While determining the quantum of sentence, the court should bear in mind the principle of proportionality. Sentence should be based on facts of a given case. Gravity of offence, manner of commission of crime, age and sex of accused should be taken into account. Discretion of Court in awarding sentence cannot be exercised arbitrarily or whimsically. In **Anil Vs. State of Maharashtra**⁷, the Supreme Court held that the investigating agency and courts are duty bound to collect additional evidence regarding past criminal history etc. of the convicted accused before imposing sentence relating to possibility of reformation, rehabilitation and criminal past of the convict to impose appropriate sentence under Section 354(3) Cr. P.C. The State is obliged to furnish such material to court.

25. It is established that the appellant raped the prosecutrix, who was of unsound mind but at the same time, nothing has been brought on record by the prosecution in respect of the past criminal antecedents of the appellant. The appellant was 21 years of age at the time of occurrence i.e. 2008 and at present he must be of 36 years of age. The nominal roll placed on record by the Superintendent of Jail concerned in the month of May, 2023 reveals that the total period of incarceration of the appellant as on 12.05.2023 was 10 years 3 months and 12 days. It is evident that the appellant has spent substantial part of his youth in custody. The appellant is first time offender. Taking into consideration the abovementioned factors, this Court finds that the sentence of rigours imprisonment for life awarded to the appellant is on higher side. Section 376 (1) RPC, as it existed on the date of commission of offence,

⁷ 2014) 4 SCC 69

provides for imprisonment for a term not less than seven years but may extend to imprisonment for life.

26. Accordingly, while upholding the judgment of conviction dated 10.03.2014, we modify the order of sentence dated 15.03.2014 and sentence the appellant to imprisonment for a period he has already remained in custody. However, the fine imposed under sections 363 & 376 RPC shall remain the same. He is ordered to be released forthwith provided the appellant deposits the fine, failing which he shall suffer the imprisonment for a period of six months as prescribed by the learned trial court, for default in payment of fine.

27. Before parting, we find that the prosecutrix is required to be compensated in terms of Victim Compensation Scheme, 2019 notified by the Government of Jammu & Kashmir vide Notification dated 11.07.2019 on account of physical and mental trauma she had faced due to the act of the appellant. Accordingly, copy of this judgment be sent to the Secretary, State Legal Service Authority, Jammu, who shall pass appropriate orders for grant of compensation to the prosecutrix.

28. Record of the learned trial court be sent back along copy of this judgment.

29. Confirmation is answered accordingly.

(MOKSHA KHAJURIA KAZMI)
JUDGE

(RAJNESH OSWAL)
JUDGE

Jammu

23.08.2023

Karam Chand/Secy

Whether the order is speaking: Yes
Whether the order is reportable: Yes