

IN THE HIGH COURT OF MADHYA PRADESH

AT INDORE

BEFORE

HON'BLE SHRI JUSTICE SUBODH ABHYANKAR

&

HON'BLE SHRI JUSTICE SATYENDRA KUMAR SINGH

ON THE 18th OCTOBER, 2022

CRIMINAL APPEAL No. 555 of 2009

BETWEEN:-

**RAMU @ RAMSINGH S/O KISHANSINGH, AGED
ABOUT 25 YEARS, R/o:GRAM BILAUZA
TEH.DABRA,GWALIOR, AT PRESENT - AMBE NAGAR
ITI MAIDAN,INDORE (MADHYA PRADESH)**

.....APPELLANT

(BY MS. SHARMILA SHARMA, ADVOCATE)

AND

**STATE OF M.P. THRU.PS.HEERA NAGAR,INDORE
(MADHYA PRADESH)**

.....RESPONDENT

(BY SHRI SUDANSHU VYAS, G.A.)

This appeal coming on for JUDGEMENT this day,

JUSTICE SUBODH ABHYANKAR passed the following:

Reserved on	:	28/09/2022
Delivered on	:	18/10/2022

JUDGEMENT

1] This appeal has been preferred by the appellant Ramu @ Ramsingh under Section 374 of Cr.P.C. against the judgement dated 25/04/2009 passed in S.T. No.315/2007 by the Additional Sessions Judge, Indore (M.P.) whereby finding the appellant guilty, the learned Judge of the Trial Court has convicted the appellant as under:-

Conviction		Sentence		
Section	Act	Imprisonment	Fine	Imprisonment in lieu of fine
376(2)(F)	IPC	Life imprisonment	1000/-	One month SI

2] In brief, the facts giving rise to the present appeal are that Jaamsingh the brother of complainant PW/1 Gangaram R/o Village Umarmot, District Jhabua was residing at I.T.I. ground, Indore with his family in a hut and was engaged in labour. Nearby to his hut, the appellant had also erected a tent from which he used to sell different medicines, herbs etc. It is alleged that on 31/05/2007, after having lunch, complainant PW/1 Gamgaram went to the hut of his brother Jamsingh and in his hut, his wife Bablibai (PW/4), mother-in-law Kammabai (PW/2) and his daughter, the prosecutrix (PW/3) as also his son were present.

3] The case of the prosecution is that when the mother-in-law (PW/2) of the complainant went to answer the call of nature, the prosecutrix who was aged 4 years also went behind her; at that

time, the appellant Ramu @ Ramsingh called her in his tent on the pretext of given her a rupee, and thereafter, as the mother-in-law of the complainant Kammabai (PW/2) was also sitting nearby, she heard the cries of the prosecutrix, Kammabai also raised an alarm to save the prosecutrix, to which, complainant PW/1 Gamgaram came out and heard his daughter's cries from the tent of appellant and when he went into the tent of the appellant, he saw that his daughter was lying on the ground and was bleeding from her vagina whereas the appellant Ramu who was naked, was wearing his underwear and ran away from the spot soon after he saw the Gangaram entering into his tent. The prosecutrix informed the complainant that Ramu had called her to his tent to give one rupee and thereafter committed rape on her. The prosecutrix was taken to the hospital and was examined by PW/7 Dr. Ranjana Patidar who also saw that the prosecutrix was bleeding from her vagina and her hymen had third degree perineal tear and was also bleeding. A case was registered against the appellant under Section 342, 376 of IPC read with Section 3(1)12 of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. The investigation ensued and the charge sheet was filed. It was committed to the trial Court who after recording evidence has convicted the appellant as aforesaid. Hence this appeal.

4] Learned counsel for the appellant has submitted that the appellant has been falsely implicated in the case as there is no

cogent evidence available on record to connect the appellant with the offence as even the FSL report is not brought on record in support of the case of the prosecution. Even otherwise, it is submitted that it is not a case where the sentence of life imprisonment can be awarded to the appellant and considering the fact that he is lodged in jail since the date of his arrest i.e. 31/05/2007 and as such he has completed around 15 years of incarceration. Hence, it is submitted that his sentence may be reduced to the sentence already undergone by him.

5] On the other hand, learned counsel for the respondent/State has opposed the prayer and it is submitted that no illegality has been committed by the learned Judge of the Trial Court in appreciating the evidence and convicting the appellants as aforesaid and the appellant does not deserve any leniency in sentencing. Thus, it is submitted that the appeal be dismissed.

6] Heard learned counsel for the parties and perused the record.

7] From the record, it is apparent that the prosecutrix PW/3 aged 4 years brought to the Court for her deposition, but the Court has observed that she was not able to understand the questions which were put to her and was crying continuously, hence, she was allowed to go without her statement in the Court. However, the eyewitness account is also present in the case in the form of PW/1 Gangaram, the father of the prosecutrix who has clearly stated that when he approached the appellant's tent, he saw the prosecutrix

lying on the ground, she was all smeared in blood and got unconscious after some time. He had also seen that the appellant Ramu was naked and was trying to put on his pent and while he was trying to run away, his mother-in-law Kammabai had caught him and the appellant was straight away taken to the Heera Nagar police station, Inodre.

8] PW/2 Kammabai, the grand mother of the prosecutrix and the mother-in-law of the complainant has also reiterated her police statement in the court that she also went into the tent of the appellant where she saw that the prosecutrix was bleeding from her vagina and she had caught hold of the appellant at that place only. Thus, these two eyewitnesses have remained unshaken and nothing substantial could be extracted from their cross examination.

9] PW/7 Dr. Ranjana Patidar is the Doctor who had treated the prosecutrix when she was taken to the hospital wherein she was hospitalized from 31/05/2007 to 05/06/2007 i.e. for a period of 6 days. When she initially checked the prosecutrix, she saw that her both legs had dried blood on them and although she was not bleeding any more, however, she was required to be sedated for taking her vaginal slides which also had blood clots in it. Her thigh had half c.m. abrasion, her vagina was red and hymen was torn from both side and had third degree perineal tear 2x3 cm in length, 2x2 cm in width and was bleeding slightly. She had also repaired the tear suffered by the prosecutrix by an operation. She has given her opinion vide Exhibit P/10 that the injuries suffered by the

prosecutrix can be caused by rape. In her cross examination, she has also stated that such injuries cannot be caused if a person falls on a stubble of a tree. Thus, a perusal of the deposition of the Doctor PW/7 makes it undoubtedly clear that the prosecutrix was subjected to rape.

10] Although the seizure witnesses and the arrest witness PW/11 Suresh has not supported the case of the prosecution but this Court has no reason to doubt the veracity of the statement of the police officer PW/12 Guruprasad Parashar who has investigated the case and has arrested the appellant and has also seized the articles.

11] It is true that although the articles and the vaginal smear of the prosecutrix were sent to forensic laboratory but the FSL report is not available on record which again shows the gross negligence on the part of the police in prosecuting such heinous offences. However, mere absence of the FSL report does not and cannot deter the Courts to appreciate the evidence available on record in its proper perspective and as has already been observed by this Court, that there is not only eyewitness account available in the case but is also duly corroborated by the medical evidence as has been proved by PW/7 Dr. Ranjana Patidar, the guilt of the appellant is proved beyond reasonable doubt.

12] In such circumstances, this Court does not find any error in appreciation of evidence by the trial Court and considering the demonic act of the appellant who appears to have no respect for the dignity of a woman and has the propensity to commit sexual

offence even with a girl child aged 4 years, this Court does not find it to be a fit case where the sentence can be reduced to the sentence already undergone by him, however, considering the fact that he was kind enough to leave the prosecutrix alive, this court is of the opinion that the life imprisonment can be reduced to 20 years' rigorous imprisonment. Accordingly, the criminal appeal is **partly allowed** and the appellant be made to suffer the period of 20 years in accordance with law.

Sd/-

(SUBODH ABHYANKAR)
JUDGE

Sd/-

(SATYENDRA KUMAR SINGH)
JUDGE

krjoshi