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Cr.A.No.1132 of 2012

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 29<sup>th</sup> OF APRIL, 2022

CRIMINAL APPEAL No. 1132 of 2012

**Between:-**

PAPPU S/O DHANNUTAR YADAV, AGED ABOUT 22 YEARS,  
OCCUPATION: LOOM MACHINE OPERATOR SANTI DHAM  
COLONY,PITHAMPUR (MADHYA PRADESH)

.....APPELLANT

(*BY SMT. SHARMILA SHARMA, ADVOCATE*)

AND

THE STATE OF MADHYA PRADESH GOVT. THRU.POLICE STATION-  
PITHAMPUR (MADHYA PRADESH)

.....RESPONDENT

(*BY SHRI SUDHANSHU VYAS, PANEL LAWYER*)

.....  
*This Criminal Appeal coming on for judgment this day,  
JUSTICE SUBODH ABHYANKAR passed the following:*

**JUDGMENT**

The appellant has preferred the present Appeal under Section 374 of Cr.P.C., being aggrieved by judgment dated 06.8.2012 passed by the Additional Sessions Judge, Dhar in S.T. No.144/2012, whereby the appellant has been convicted for offence punishable

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under Sections 376(2)(F) of the I.P.C. and sentenced him to undergo life imprisonment with fine of Rs.25,000/- and in default of payment of fine, one year additional rigorous imprisonment.

**02.** In brief, the facts giving rise to the present appeal are that, on 25.12.2011, the First Information Report was lodged by the mother of the victim under Section 376(2)(f) of the IPC alleging rape of her minor daughter (hereinafter referred to as “S”) aged three years by the appellant Pappu s/o Dhannutar Yadav on 20.12.2011. It was stated in the FIR that the complainant resides in Shanti Dhaam colony in the house of one Rajkumari and the appellant also resides in the adjacent house where at around 4.00 o'clock on 20.12.2011, when the complainant and the mother of the appellant Sunita were sitting in the courtyard, whereas the appellant Pappu Yadav was sleeping in the front room of his house on the ground. As the Complainant's daughter S was also sleeping in her lap, hence appellant's mother told her to put S in her house only and thus, the complainant put her daughter besides the appellant who was also sleeping in the room. She has also stated that at that time her daughter was not wearing the underwear.. After around an hour when the complainant went back to take back her daughter, she found that her daughter was almost unconscious and when she took her up in her arms, her arms got smeared with blood as S was bleeding profusely from her private parts. The complainant did not lodge the FIR immediately out of fear of her husband and also advised not to do so by the mother of the appellant. However, as the

incident was eating her out, the complainant could not bear it any more and informed about the incident to her husband and brothers and finally lodged the report on 25.12.2011. After the report was lodged, the appellant was arrested on 27.12.2011 and the victim "S" was also got examined by the doctor in which it was found that "S" was sexually assaulted. After completion of the investigation, the charge sheet was filed and the evidence was led in the trial court. The learned Judge of the trial court, after recording the evidence, has convicted the appellant, and sentenced him to undergo life imprisonment with fine clause. Being aggrieved, the present appeal has been preferred by the appellant.

**03.** Counsel appearing for the appellant has submitted that the appellant has been falsely implicated in the case as the learned Judge of the trial court has not appreciated the evidence on record in its proper perspective. It is further submitted that although the M.L.C. of the victim is positive which is also in respect of the articles seized from the possession of the victim girl however, the underwear of the victim has also been seized despite the fact that even according to the FIR lodged by "C"- the mother of the victim, she has clearly stated that at the time when she put her daughter to sleep near the appellant when he was also sleeping, her daughter had not worn any underwear. Thus, it is submitted that this fact in itself is sufficient to draw an adverse inference against the prosecution story. It is further submitted that the FIR itself has been lodged after a period of five days and if the victim was so bleeding heavily, it

was not possible for the complainant to hide it for fear of her husband. It is also submitted that it was not possible that a person who commit rape on a girl like that and she would not scream, whereas even according to story of the prosecution, the mother of the victim was sitting just outside the house and according to the complainant P.w./1 this distance was only 20 feet. This witness in para 14 of her statement has also admitted that the police has not seized any underwear of the victim. Thus, it is submitted that when the F.S.L. report also contains underwear of the victim which also has the semen marks and human spermatozoa, it cannot be relied upon hence, the appellant be acquitted. In the alternative, it is also submitted that the appellant is lodged in jail since last around 10 years and considering the aforesaid quality of evidence available against him, his sentence may be reduced to 10 years which is the minimum sentence under Section 376(2)(f) of the IPC and which period the appellant has already undergone.

**04.** On the other hand, Counsel appearing for the State has opposed the prayer and it is submitted that no case for interference is made out as the learned Judge of the trial court had rightly appreciated the evidence on record.

**05.** Heard the counsel for the parties and also perused the record.

**06.** From the record, it is apparent that the victim "S", a three year old girl was subjected to sexual assault which is apparent from the deposition of P.w./8 Dr.Asha Pawaiya, who has stated that she

examined the victim on 25.12.2011, at Bhoj District Hospital, Dhar where she was posted as Gynaecologist and according to her, the victim had no visible external injury however, on internal examination, it was found that her hymen was ruptured and it was also swollen and she was also complaining of pain. The Doctor has also stated that she seized the underwear which the victim had worn at the time of the incident and also prepared the slides of the victim. The Doctor has also denied that such an injury can be caused by falling on the ground or that the victim herself can cause such an injury to her private part. She had given her opinion vide Ex.P/16 that the victim's hymen was ruptured wherein she has also mentioned that internal pain by the victim is suggestive of penetration and in her cross examination, she has stated that vide Ex.P/16, the opinion which she has given means that an attempt of rape was made on the victim.

**07.** The aforesaid physical evidence is supported by the testimony of the P.w./1 "C", mother of the victim, who has also reiterated her earlier version that she put her daughter by the side of the appellant who was sleeping on the ground and when she went back to take her after half an hour, she found that the appellant had kept his face covered with bedding but when she took her daughter in her arms, her hands had blood on them as her daughter was bleeding from her private parts profusely. She took her daughter to the appellant's mother Sunita, but she asked her to keep quite and also brought Boroplus and put it on the private part of S. She also

gave a tablet to the victim saying it to be a painkiller. Sunita also told her not to say the incident to anybody otherwise she would face serious consequences of the same. However, after suffering the the trauma that her daughter was undergoing, after around 4-5 days, “C” informed about the incident to her sister-in-law Geeta and thereafter her brother and husband also came to know about it and the FIR. She has admitted that the frock and banyan which the victim had worn at the time of the incident had blood on them but she had washed them and thereafter as demanded by the police she had also handed over the said cloths to them. She has admitted that they had cordial relations with the family of the appellant. A suggestion has also been given to her that she had borrowed Rs.500/-from the father of the appellant to which she has stated she had taken only Rs.50/- from him and has also denied that she had also demanded Rs. 5,000/- from the present appellant and on his refusal, she has threatened him of falsely implicating in some case. She has also admitted that the appellant's mother had put Boroplus on the victim is not mentioned in the FIR and her the police statement Ex.D/1. She has denied that the victim had suffered such an injury on her private part while she was playing in the house. Barring some minor omissions and contradictions, this witness has stood her ground.

**08.** P.w./2- “B” happens to be the father of the victim and has stated that his wife initially did not inform him about the incident. However, since around 4-5 days his daughter was not keeping well

hence he asked his wife and then only it was informed to him that the appellant has committed rape on "S".

**09.** P.w./3-Pushpendra, an independent witness, resides in front of the house of the complainant and has stated that when he came to know about the appellant's crime he also talked to his father but the appellant told him that they should leave the locality or face serious consequences. He had also accompanied the complainant party to the police station at the time when the FIR was lodged.

**10.** P.w./7 Keshav Rao Patil, the Investigating Officer, who has seized the bedding on which the appellant was sleeping had seen some semen marks on it, however, in the F.S.L. report the aforesaid bedding does not find mention.

**11.** On perusal of the record, we find that it is true that the victim was also not wearing the underwear at the time of the incident. In such circumstances, it is rather intriguing as to why in the F.S.L. report the underwear of the victim is found to have the semen marks and the human spermatozoa. However, the other articles seized from her including her slides are found to be contained semen marks and human spermatozoa and P.w./8 Dr. Asha Pawaiya in her cross-examination has also admitted that the human spermatozoa can survive more than 32 hours in the private part of the human being. There is no question put to her that if the cloths of a raped victim are washed in that case no human spermatozoa can be found.

**12.** Be that as it may, we are otherwise satisfied with the

testimony of the P.w./8 Dr. Asha Pawaiya regarding the sexual assault made on the victim “S” and has no reason to disbelieve the deposition of P.w./1, the mother of the victim and her dilemma in going to the police station straight away. This Court has also no reason to disbelieve the story of the mother of the victim and it is not possible that only for a sum of Rs.50/- or Rs.5000/- a false narration will be made specially when the victim S's internal injuries also supports the factum of rape on the victim. In such circumstances, we do not have any hesitation to come to a conclusion that the victim “S” was raped by the present appellant who was only three years old at the time of the incident.

13. So far as the sentence part of the appellant is concerned, the Supreme Court in the case of *Shyam Narian vs. State of Delhi* reported as *(2013) 7 SCC 77*, in similar circumstances, has affirmed the Life imprisonment awarded to the accused in case of a rape of 8 years old victim. The relevant paras of the judgment read as under:-

“25. Keeping in view the aforesaid enunciation of law, the obtaining factual matrix, the brutality reflected in the commission of crime, the response expected from the courts by the society and the rampant uninhibited exposure of the bestial nature of pervert minds, we are required to address whether the rigorous punishment for life imposed on the appellant is excessive or deserves to be modified. The learned counsel for the appellant would submit that the appellant has four children and if the sentence is maintained, not only his life but also the life of his children would be ruined. The other ground that is urged is the background of impecuniosity. In essence, leniency is sought on the base of aforesaid mitigating factors.



26. It is seemly to note that the legislature, while prescribing a minimum sentence for a term which shall not be less than ten years, has also provided that the sentence may be extended up to life. The legislature, in its wisdom, has left it to the discretion of the court. Almost for the last three decades, this Court has been expressing its agony and distress pertaining to the increased rate of crimes against women. The eight year old girl, who was supposed to spend time in cheerfulness, was dealt with animal passion and her dignity and purity of physical frame was shattered. The plight of the child and the shock suffered by her can be well visualised. The torment on the child has the potentiality to corrode the poise and equanimity of any civilised society. The age-old wise saying that “child is a gift of the providence” enters into the realm of absurdity. The young girl, with efflux of time, would grow with a traumatic experience, an unforgettable shame. She shall always be haunted by the memory replete with heavy crush of disaster constantly echoing the chill air of the past forcing her to a state of nightmarish melancholia. She may not be able to assert the honour of a woman for no fault of hers.

27. 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 sullyng 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 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. Rape is a monstrous burial of her dignity in the darkness. It is a crime against the holy body of a woman and the soul of the society and such a crime is aggravated by the manner in which it has been committed. We have emphasised on the manner because, in the present case, the victim is an eight year old girl who possibly would be deprived of the dreams of “Spring of Life” and might be psychologically compelled to remain in the “Torment of Winter”. When she suffers, the collective at large also suffers. Such a singular crime creates an atmosphere of fear which is historically abhorred by the society. It demands just punishment from the court and to such a demand, the courts of law are bound to respond within legal parameters. It is a demand for justice and the award of punishment has to be in consonance with the legislative command and the discretion vested in the court.

28. The mitigating factors put forth by the learned counsel for the appellant are meant to invite mercy but we are disposed to think that the factual matrix cannot allow the rainbow of mercy to magistrate. Our judicial discretion impels us to maintain the sentence of rigorous imprisonment for life and, hence, we sustain the judgment of conviction and the order of sentence passed by the High Court.”

**(emphasis supplied)**

14. Testing the facts of the case at hand on the anvil of the aforesaid dictum of the Supreme Court, this Court finds that the victim in the preset case was a girl aged 3 years only, who was ravished by the appellant in whom the mother of the victim had shown full confidence when she left her daughter asleep along side him, assuming that her daughter would be in safe custody of the appellant, aged around 22 years but little did she know that appellant would not only break her faith but would also leave an

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indelible mark of devastation on the mind and body of the victim, in such circumstances, the rights and plight of the victim and her family members cannot be lost sight of, and thus, we find that the Life imprisonment awarded to the appellant is by no means severe or excessive. Accordingly, the present appeal being devoid of merits, stands **dismissed**.

**(Subodh Abhyankar )**  
**JUDGE**

**(Satyendra Kumar Singh)**  
**JUDGE**

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Cr.A.No.1132 of 2012

**IN THE HIGH COURT OF MADHYA PRADESH:**  
**AT INDORE**

**Criminal Appeal No. 1132/2012**

**( Pappu Yadav vs. State of Madhya Pradesh)**

**Indore, Dated: 08 /04/2022**

Smt. Sharmila Sharma, learned counsel for the appellant.

Shri Sudhanshu Vyas, learned Panel Lawyer for the respondent/State.

Arguments heard.

Reserved for judgment.

**(Subodh Abhayankar)**  
**Judge**

**(Satyendra Kumar Singh)**  
**Judge**

**Indore, Dated: 29/04/2022**

Judgment delivered, signed and dated.

**(Subodh Abhayankar)**  
**Judge**

**(Satyendra Kumar Singh)**  
**Judge**