Bhaiyamiyan @ Jardar Khan & Anr vs State Of Madhya Pradesh on 3 May, 2011

Equivalent citations: AIR 2011 SUPREME COURT 2218, 2011 (6) SCC 394, 2011 AIR SCW 3104, AIR 2011 SC (CRIMINAL) 1405, 2011 CRILR(SC MAH GUJ) 543, 2011 (2) CALCRILR 774, 2011 (2) SCC(CRI) 983, 2011 (6) SCALE 326, 2011 CRILR(SC&MP) 543, (2011) 1 CRILR(RAJ) 543, 2011 CALCRILR 2 774, (2011) 104 ALLINDCAS 149 (SC), (2011) 4 MAD LJ(CRI) 518, (2011) 2 ORISSA LR 74, (2011) 4 CHANDCRIC 56, (2011) 49 OCR 820, (2011) 3 RECCRIR 690, (2011) 6 SCALE 326, (2011) 74 ALLCRIC 556, (2011) 3 ALLCRILR 238, 2011 (2) ALD(CRL) 283

Bench: Chandramauli Kr. Prasad, Harjit Singh Bedi

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 802 OF 2004

BHAIYAMIYAN @ JARDAR KHAN & ANR. .. APPELLANT(S)

vs.

STATE OF MADHYA PRADESH .. RESPONDENT(S)

O R D E R This appeal arises out of the following facts:

> At about 10.00 a.m. on the 30th August 1984 the prosecutrix (PW.1) had gone to relieve herself and as she was returning home, she was waylaid by the appellants who carried her to a nearby field and thereafter raped her and while leaving threatened her with dire consequences if she revealed what had happened to anyone. She however returned home and told her parents about the rape. Accompanied by her parents she then went to the police outpost at Pathriya to lodge a report but no police official was found present therein. A report was then lodged the next day at about 12.15 p.m. by PW.1 at Sironj Police Station about 22 k.m.

away from the place of incident though the police station of village Kasbatal was Unarasital only 7 k.m. away.. The prosecutrix was accordingly sent for her medical examination to the hospital at Vasoda. Information was also sent to police Station Unarasital along with the medical examination

report Ex.P.A. and the subsequent investigation was conducted by the police of police station Unarasital who seized the petticoat of the prosecutrix and sent it for examination.

On the completion of the investigation the accused were charged under Sec.376 (2)(g) of the IPC for having committed gang rape on PW.1. The Trial Court, vide its judgment dated the 6th January, 1992 observed that in the light of the fact that the FIR had been lodged after a delay of about 60 hours and that the statement of the prosecutrix was full of contradictions and as the statements of her father and mother (PW2 and PW.3) were based on the information given by her to them, no reliance could be placed on their evidence as well. The Court also found that in the light of the fact that the prosecutrix had declined to be medically examined at Sironj, where the First Information Report had been lodged, and had insisted that she be examined at Vasoda which was 55 k.ms. away, cast a doubt on the prosecution story. The court further observed that as per the medical evidence no injury had been found on her person though she had been raped by two persons and as such there was no evidence to suggest that rape had been committed. On a cumulative assessment of the prosecution evidence the Trial Court acquitted the accused.

An appeal was thereafter filed by the State before the High Court. The High Court has given a finding that the decision of the Trial Court was perverse and called for interference. The High Court has relied on the evidence of PW.1 and her parents as also on some part of the evidence of Dr. Mamta Sthapak-PW.7 who had medically examined the prosecutrix after about 24 hours. The High Court has accordingly allowed the appeal and sentenced the accused to 10 years R.I. with a fine of Rs.25,000/- under Section 376(2)(g) of the IPC, and in default of payment of fine, RI for two years.

The matter is before us in the above background. At the very outset we must remark that the High Court's interference in an appeal against acquittal is somewhat circumscribed and if the view taken by the Trial Court was possible on the evidence, the High Court should stay its hands and not interfere in the matter in the belief that if it had been in Trial Court, it might have taken a different view. In other words, if two views are possible and the Trial Court has taken one, the High Court should not interfere in the judgment of the Trial Court.

We have examined the evidence in the light of the above principle. We first see that the First Information Report had been lodged after about 60 hours of the incident. The prosecution case is that PW.1 accompanied by her parents had gone to police post Patharia attached to Police Station Unarasital immediately after the incident but had found no police official present therein and had then gone to police station Sironj and lodged a report at 12 noon the next day. We find that the explanation for this delay is somewhat difficult to believe. A police post may have a few police officials posted in it, but police station Unarasital was a full fledged police station which would invariably be manned. Moreover, even if no one was found in the police post on the first day, at that particular point of time the effort of the prosecutrix ought to have been to lodge a report later at Police Station Unarasital, but she chose to go to police Station Sironj and recorded her statement and the investigation was thereafter referred to police station Unarasital. We are also indeed surprised that the High Court has made light of the fact that the prosecutrix had declined to undergo her medical examination at Sironj and had insisted for her medical examination at Vasoda, 55 k.m. away. The prosecution has not been able to furnish any explanation as to why the prosecutrix had

insisted on being examined at Vasoda.

We have also examined the medical report. Dr. Mamta Sthapak-PW.7 found no injury on her genetalia and deposed that there was no evidence to show that she had been raped as the tear in her hymen was an old one. The prosecutrix also stated that at the time of her medical examination at Vasoda her vagina had been stitched. The doctor found no stitch on her person.

We are therefore of the opinion that on a cumulative assessment of the evidence, as given above, the finding of the Trial Court could have been given under the circumstances and the High Court's interference was, therefore, not called for. The appeal is accordingly allowed, the conviction of the appellants is set aside and they are acquitted.

The appellants are on bail; their bail bonds shall stand discharged.

.....J. (HARJIT SINGH BEDI) .....J. (CHANDRAMAULI KR. PRASAD) New Delhi, May 3, 2011.