State Of Madhya Pradesh vs Sunder Lal on 13 March, 1992

Equivalent citations: AIR1992SC1413, 1992CRILJ2519, 1992(1)CRIMES1240(SC), JT1992(3)SC14, 1992(1)SCALE698, (1992)2SCC578, AIR 1992 SUPREME COURT 1413, 1992 (2) SCC 578, 1992 AIR SCW 1475, 1992 ALLAPPCAS (CRI) 189, 1992 CRILR(SC MAH GUJ) 407, 1992 CRIAPPR(SC) 219, 1992 SCC(CRI) 393, (1992) 3 JT 14 (SC), (1992) 1 CRICJ 567, (1992) 2 CURCRIR 6, (1992) 1 ALLCRILR 729, (1992) 1 CRIMES 1240

Author: B.P. Jeevan Reddy

Bench: Kuldip Singh, B.P. Jeevan Reddy

ORDER

B.P. Jeevan Reddy, J.

1. This appeal is preferred by the State of Madhya Pradesh against the judgment of a Division Bench of Madhya Pradesh High Court allowing the appeal filed by the respondent-accused. The respondent-accused was convicted by the learned Second Additional Sessions Judge, Chhindwara under Sections 366 and 376 IPC and sentenced to three years and five years rigorous imprisonment respectively.

2. On 4.12.1979, the parents of PW-2 (Prosecutrix) had left for Chhindwara. PW-2 and other minor children were left in the house alongwith servant Baban (PW-4). The house of PW-2 is situated in their fields. During the night, the accused is alleged to have come there armed with rifle and forcibly took away the prosecutrix from her hut to some distance where he committed the offence of rape on her. The cries of alarm raised by her attracted the servant Baban and other persons working in their fields. The information was laid by PW-4 at the Police Station, Chhindwara on the same night at 1.30 A.M. The Police Station is at a distance of five kilometers from the village. After completing the investigation, the respondent was proceeded against. The learned Trial Judge accepted the testimony of PWs-2 and 4 and convicted the respondent as stated above. On appeal, however, the High Court was of the opinion that there is no cogent evidence regarding the identity of the accused. In the context of the fact that PWs- 2 and 4 had not seen the respondent earlier, the High Court was of the opinion that a test- identification-parade was necessary, which was not conducted.

3. We have perused the judgments of both the courts and also have evidence of PWs- 2 and 4. We are of the opinion that the High Court was in error in disbelieving the testimony of PW-2 with

respect to the identity of the accused. The girl was 13 years' old and she could not have forgotten the fact of the man who committed such ghastly crime upon her. It is not the case of the defence that there was no light. On the contrary, the prosecution evidence is that accused himself made PW-4 prepare lamps, and light them, before taking away PW-2. It is not a case where PW-2 had a mere fleeting glimpse of the accused. We are, therefore, of the opinion that the identity of the accused has been amply established by the evidence of PWs- 2 and 4. Accordingly, we set aside the judgment of the High Court and restore that of the learned Trial Judge.

4. It is brought to our notice by the learned Counsel for the respondent-accused that the accused had undergone two years' imprisonment prior to his conviction and that during the pendency of this appeal, again he was kept imprisoned for about three years' under the orders of this Court. It is submitted that the respondent has practically served the entire five years' sentence. Be that as it may, in all the circumstances of the case, we reduce the sentence under both the above counts to the period of imprisonment already undergone.

The Criminal Appeal is allowed in the above terms.