

Raju @ Nirpendra Singh
v.
The State of Madhya Pradesh
(Criminal Appeal No. 1172 of 2014)
27 February 2025
[**Vikram Nath* and Sanjay Karol, JJ.**]

Issue for Consideration

Prosecutrix, a minor village girl, was allegedly kidnapped on the pretext of securing her a job, and then gang raped by accused-appellants over a period of two months by holding her captive by threatening her life. Whether the trial court and the High Court erred in convicting appellants u/ss.366 and 376(2)(g) IPC.

Headnotes[†]

Penal Code, 1860 – ss.366 and 376(2)(g) – Village girl allegedly kidnapped and gang-raped by accused-appellants over a period of two months – Conviction of appellants by trial court and High Court – Propriety:

Held: Dental examination of prosecutrix and further evidence such as photocopies of school register, transfer certificate, statement of the Principal of school, proved that prosecutrix was aged less than seventeen years of age at the starting date of the continuing offence – Guardian of the prosecutrix, PW-13, had also stated the age of the prosecutrix to be less than 18 years of age in the missing person's report as well as in her deposition before the Trial Court – Once the age of the prosecutrix at the time of the incident is established to be that of minority, the question of consent *per se* becomes irrelevant and the act shall qualify as statutory rape nevertheless – Subjection to sexual intercourse under fear of accused persons can in no way be understood to mean as consent on part of the prosecutrix – Further, the reliance of the appellants on the medical report which suggested that the prosecutrix was accustomed to sexual intercourse shall not further their contention of the sexual act to be consensual in nature – The

* Author

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expression as “being accustomed to sexual intercourse” is nothing but an archaic notion of sexual purity which intends to morally shame the victim and downplay the role of consent, or the lack thereof, in an offence of rape – Moreover, the lack of injuries on the body of the prosecutrix shall also not be an important factor in the facts of the case since the offence continued for a period of two months and the medical investigation was conducted much after the first incidence of rape was committed – The issue of delay shall also be inconsequential to the case since firstly, the normal rule of delay does not apply to rape cases and further, the prosecutrix was held captive by the appellants for a period of two months and had no means to register the FIR earlier – Further, the statement of the prosecutrix made in the chief-examination regarding sexual assaults committed by the accused persons remained totally unimpeached even after being subjected to a lengthy cross-examination – No mitigating circumstances in the instant case so as to reduce the punishment as lesser than the minimum statutory sentence prescribed in the IPC. [Paras 19-24]

Rape – Gang-rape – Once age of the victim at the time of the incident is established to be that of minority, the question of consent *per se* becomes irrelevant – Penal Code, 1860 – s.376(2)(g). [Para 20]

Rape – Gang-rape – Subjection to sexual intercourse under fear of accused persons is not consent on part of the victim – Penal Code, 1860 – s.376(2)(g). [Para 20]

Case Law Cited

Bharwada Bhoginbhai Hiribhai v. State of Gujarat [1983] 3 SCR 280 : AIR 1983 SC 753 – referred to.

List of Acts

Penal Code, 1860.

List of Keywords

Gang Rape; Kidnapping from lawful guardianship; Prosecutrix; Rape with minor; Delay in FIR; Effect of delay in rape cases; Accustomed to sexual intercourse; Offence against women.

Raju @ Nirpendra Singh v. The State of Madhya Pradesh**Case Arising From**

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 1172 of 2014

From the Judgment and Order dated 15.05.2013 of the High Court of M.P. at Jabalpur of CRA No. 1850 of 2010

With

Criminal Appeal No(s). 1173 and 2575 of 2014

Appearances for Parties*Advs. for the Appellant:*

Sidharath Dave, Siddhartha Dave, Sr. Advs., B.P.S. Parihar, B. K. Satija, Shree Pal Singh, Anupam Mishra, Jenis V Francis, Harikumar V., Ms. Jemtiben. Ao., Nayan Dham, Rohan Trivedi.

Advs. for the Respondent:

V.V.V. Pattabhiram, D.A.G. Ms. Mrinal Gopal Elker, Mukesh Kumar Verma, Aditya Chaudhary.

Judgment / Order of the Supreme Court**Order****Vikram Nath, J.**

1. The instant appeals have been preferred by the accused-appellants against the common judgment dated 15.05.2013 passed by the High Court of Madhya Pradesh in Criminal Appeal No. 1850 of 2010 and other connected matters wherein the High Court had dismissed the appellants' appeals and affirmed the conviction and sentences for the offences under Section 366 and 376(2)(g) of the Indian Penal Code, 1860.¹
2. The appeals arise from a common set of facts and interlinked offences which have been briefly stated below. The prosecution case is that the prosecutrix, who at the relevant point of time was an unmarried girl aged about 17 years, and was residing with her paternal aunt named Premwati since childhood in village Chowka

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Sonvarsha. Indrapal (Accused No. 2, i.e. "A2") was the Sarpanch of Gram Panchayat Dhoraha whereas Sheshmani (Accused No. 1, i.e. "A1") was the husband of Sarpanch of Gram Panchayat Chowka Sonvarsh. Houses belonging to A1 Sheshmani and Premwati were located in the same neighbourhood.

3. It was alleged that around 4th/5th June, 2005, A1 Sheshmani assured the prosecutrix, who by then had studied upto Class X, of securing her employment in near future. Nearly 25 days later, A2 Indrapal and Surendra (Accused No. 5, i.e. "A5") and two unknown persons who were introduced as brothers-in-law of A5 Surendra came to the house of the prosecutrix and she was told that A5 Surendra is a resident of Sidhi and posted at Bhopal, and will be able to secure a job for the prosecutrix.
4. Thereafter, on 06.07.2005 at around 12 noon, A1 Sheshmani visited the house of Premwati and asked the prosecutrix to accompany him to Rewa where she has been called in by A2 Indrapal and A5 Surendra for the purpose of providing employment. When the prosecutrix wished to seek permission from Premwati, A1 Sheshmani insisted on not informing Premwati who was asleep at that time. As such, A1 Sheshmani took the prosecutrix to a house located near LPG godown in Rewa where A2 Indrapal and Raju (Accused No. 3, i.e. "A3") were already present. After a while, A5 Surendra also came there and all the three accused persons, i.e. A2, A3 and A5 committed rape upon the prosecutrix. Thereafter, she was made to stay at that house till 10.07.2005 where she was repeatedly subjected to gang rape at the hands of the appellants.
5. Subsequently, on 10.07.2005, the prosecutrix was taken by A2 Indrapal and A3 Raju to Sidhi where Suresh (Accused No. 4, i.e. "A4") was telephoned, post which he also came there and took the prosecutrix to Prince Hotel where she was again subjected to rape. Thereafter, the prosecutrix was taken to the house of one Kalli @ Kalawati with whom she was made to reside till 14.07.2005.
6. Then on 15.07.2005, the prosecutrix was brought back to the house occupied by A2 Indrapal at Rewa where he and A3 Raju again committed gang rape on her. On the same day, they took her to Malhar wherfrom they boarded a train. There was a woman in the same train who was previously known to A2 Indrapal and

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A3 Raju and the prosecutrix was handed over to the said woman for being taken to A5 Surendra's place at Bhopal. However, the woman took the prosecutrix to an unknown destination near Delhi where she was made to reside with the said woman in a house till 10.09.2005. In the intervening period, A2 Indrapal and A3 Raju frequently visited that house and subjected the prosecutrix to rape repeatedly.

7. It was only on 08.09.2005 that A2 Indrapal informed the prosecutrix about a report alleging his involvement in her kidnapping, post-which the woman deputed a boy to render assistance to the prosecutrix for boarding a train to Allahabad. The prosecutrix reached Allahabad on 11.09.2005 and from there, she straightaway proceeded to the Police Station at Laur, where upon an application made by Premwati, a case of missing person had already been registered. Further, in light of the statement of the prosecutrix, the SHO of P.S. Laur, district Rewa registered a case under Sections 363, 366 and 376(2)(g) of the IPC against the accused-appellants and others including the unknown woman.
8. Subsequently, the prosecutrix was sent to GMC, Rewa where she was examined by Dr. Rajshri Bajaj who prepared two slides from vaginal smear of the prosecutrix and observed that she was accustomed to sexual intercourse. The prosecutrix was also examined by a Dental Surgeon, Dr. R.J. Sharma, who by noticing the number and position of teeth erupted, ascertained the age of the prosecutrix as below 17 years.
9. After due investigation and charge-sheet being filed, which showed all the accused-appellants as absconding, the case was committed to the Court of Session for Trial.
10. The Trial Court, after duly examining the witnesses and appreciating the evidence on record, held that the accused Indrapal, Suresh and Surendra kidnapped the prosecutrix, who was below 18 years of age, from lawful guardianship of her paternal aunt Premwati for committing illicit intercourse with her and accused Indrapal, Suresh, Surendra and Raju committed gang rape on prosecutrix several times during the period from 06.07.2005 to 12.09.2005 against her will. The accused persons were convicted under the following sections and subjected to punishment as follows:

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Accused	Conviction	Punishment
A1 Sheshmani	366 IPC	Rigorous imprisonment of ten years along with fine of Rs. 2,000/-; in default, further rigorous imprisonment of one year
A2 Indrapal	363 IPC	Rigorous imprisonment of seven years along with fine of Rs. 1,000/-; in default, further rigorous imprisonment of six months
	366 IPC	Rigorous imprisonment of ten years along with fine of Rs. 2,000/-; in default, further rigorous imprisonment of one year
	376(2)(g) IPC	Rigorous imprisonment of ten years along with fine of Rs. 2,000/-; in default, further rigorous imprisonment of one year
A3 Raju	376(2)(g) IPC	Rigorous imprisonment of ten years along with fine of Rs. 2,000/-; in default, further rigorous imprisonment of one year
A4 Suresh	363 IPC	Rigorous imprisonment of seven years along with fine of Rs. 1,000/-; in default, further rigorous imprisonment of six months
	366 IPC	Rigorous imprisonment of ten years along with fine of Rs. 2,000/-; in default, further rigorous imprisonment of one year
	376(2)(g) IPC	Rigorous imprisonment of ten years along with fine of Rs. 2,000/-; in default, further rigorous imprisonment of one year
A5 Surendra	363 IPC	Rigorous imprisonment of seven years along with fine of Rs. 1,000/-; in default, further rigorous imprisonment of six months
	366 IPC	Rigorous imprisonment of ten years along with fine of Rs. 2,000/-; in default, further rigorous imprisonment of one year
	376(2)(g) IPC	Rigorous imprisonment of ten years along with fine of Rs. 2,000/-; in default, further rigorous imprisonment of one year

The sentence terms awarded to accused Suresh, Indrapal and Surendra were to run concurrently.

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11. All the five accused persons preferred appeals against the conviction before the High Court. The High Court re-examined the grounds of defence put forth by the accused persons as well as the contentions supporting the prosecution's case and held that the ingredients of the offences punishable under Sections 363, 366 and 376(2)(g) of the IPC were made out beyond all reasonable doubt. However, for want of charge, it was not possible to hold A3 Raju guilty of the offence of kidnapping. Further, double punishment awarded to A2 Indrapal, A4 Suresh and A5 Surendra for the offences punishable under Sections 363 and 366 was held to be in violation of Section 71 of the IPC and accordingly, separate sentences for the offence under Section 363 of the IPC awarded to A2 Indrapal, A4 Suresh and A5 Surendra was set aside. It was also observed that A1 Sheshmani ought to have been charged and convicted for the offence under Section 376(2) (g) of the IPC. Accordingly, the appeals were dismissed and the convictions and the consequent sentences for the offences under Sections 366 and 376(2)(g) of the IPC were affirmed.
12. Aggrieved by the impugned order, all the accused persons except A5 Surendra had approached this Court. While granting leave in this matter, *vide* order dated 09.05.2014, suspension of sentence was granted to the appellants subject to them furnishing respective bail bonds in a sum of Rs. 25,000/- along with two sureties each in the like amount to the satisfaction of the Trial Court concerned. Consequently, since the appellant Sheshmani had since expired in the year 2016, his appeal stood dismissed as abated, as noted *vide* order dated 23.01.2025.
13. We have heard learned counsel for the parties and perused the material on record.
14. The chief contention of the counsel for the appellants hinged on the argument that the prosecutrix had given her consent to the act. The appellants attempted to derive such consent from the fact that she had left her home with the appellants willingly without informing her guardian and that the prosecutrix remained in the company of the appellants for a period of two months and during this period, she visited many places like Siddhi, Rewa, Allahabad and Delhi using public transport where she could have easily raised call or alarm for help, but she did not do so, which clearly showed that prosecutrix was a consenting party. Further, it was submitted that the medical report

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suggested that the prosecutrix was accustomed to sexual intercourse and there were no injuries on her body, thereby supplementing the argument that there was no forcible sexual intercourse, the prosecutrix had consented to the act throughout and there was no offence of rape as alleged.

15. It was also submitted by the appellants that there was a delay of about 2 months in lodging the FIR and such a delay was completely unjustified and unexplained. Lastly, a challenge was also raised as to the age of the prosecutrix, as was also done before both the Courts below, arguing that the prosecutrix had attained the age of majority at the time of the incident and therefore, on account of her being a consenting adult party, no offence of kidnapping or rape was made out.
16. On the other hand, the counsel for the respondent State submitted that the testimony of the prosecutrix is reliable and without any contradictions which inspires complete confidence of the Court. Since it is well settled law that conviction for the offence of rape could be safely recorded on the sole testimony of the prosecutrix provided that her evidence does not suffer from any basic infirmity and probabilities factor² and the Trial Court as well as the High Court had found prosecutrix testimony to be reliable without any infirmities, therefore, the appeal deserves to be dismissed on this ground alone.
17. Further, it was submitted that the delay in lodging the FIR was on account of prosecutrix being held captive/kidnapped by the accused persons for a period of two months. With regard to the issue of consent, it was submitted that even if in arguendo, it is assumed that the prosecutrix came with A1 Sheshmani out of her own will, considering that the Courts below have conclusively found the prosecutrix to be below 17 years of age and therefore, the accused persons would be liable for offences under Sections 366 and 376(2)(g) of the IPC.
18. Considering the facts and circumstances of the case, the statements of the witnesses on record and the findings of the Courts below, we find that the appellants have not made any good ground on the basis of which the concurrent findings of the two Courts below could be interfered with.

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19. Firstly, the most relevant point for consideration is the age of the prosecutrix. The dental examination of the prosecutrix was conducted and the dental surgeon (PW-8) had opined the age of the prosecutrix to be less than seventeen years. There was further evidence produced to prove that the prosecutrix was minor at the relevant point of time, such as photocopies of school register, transfer certificate, which were further corroborated by the statement of the Principal of school. In all such documents, the date of the prosecutrix was shown as 10.08.1988 and the date of the incident was 06.07.2005, therefore the prosecutrix was aged less than seventeen years of age at the starting date of the continuing offence. To further strengthen the finding of the prosecutrix's age, it must be noted that the guardian of the prosecutrix, Premwati (PW-13), had also stated the age of the prosecutrix to be less than 18 years of age in the missing person's report as well as in her deposition before the Trial Court.
20. Once the age of the prosecutrix at the time of the incident is established to be that of minority, the question of consent *per se* becomes irrelevant and the act shall qualify as statutory rape nevertheless. However, even if the argument of consent is to be considered, we cannot lose sight of the fact that the accused-appellants were men who had held the prosecutrix, who was of a tender age, captive for a prolonged period of time by threatening her life. It would be illogical to rule out the role played by constant fear that the prosecutrix was operating under as she was being subjected to rape by the accused persons over the period of two months. Such a subjection to sexual intercourse under fear of accused persons can in no way be understood to mean as consent on part of the prosecutrix.
21. Further, the reliance of the appellants on the medical report which suggested that the prosecutrix was accustomed to sexual intercourse shall not further their contention of the sexual act to be consensual in nature. This is simply for the reason that such an expression as "being accustomed to sexual intercourse" is nothing but an archaic notion of sexual purity which intends to morally shame the victim and downplay the role of consent, or the lack thereof, in an offence of rape. Moreover, the lack of injuries on the body of the prosecutrix shall also not be an important factor in the facts of the case since the offence continued for a period of two months and the medical investigation was conducted much after the first incidence of rape was committed.

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22. The issue of delay shall also be inconsequential to the case since firstly, the normal rule of delay does not apply to rape cases and further, the prosecutrix was held captive by the appellants for a period of two months and had no means to register the FIR earlier.
23. Further, we find it of utmost importance to note here that the statement of the prosecutrix made in the chief-examination regarding sexual assaults committed by the accused persons remained totally unimpeached even after being subjected to a lengthy cross-examination. It is to be noted that none of the so-called discrepancies in the evidence of the prosecutrix with reference to her case diary statement shook the veracity of the prosecution case.
24. Lastly, the counsel for the appellants had argued in favour of reducing the sentence awarded to the period already undergone considering that the accused-appellants have been enlarged on bail for a considerable period of time now. However, we find no mitigating circumstances in the instant case so as to reduce the punishment as lesser than the minimum statutory sentence prescribed in the IPC. We are in no way inclined to trivialize the misery and exploitation that has been suffered by the prosecutrix, a young girl from a village who was kidnapped on the pretext of securing her a job by men in whom she imposed some level of trust, and then subjected to an offence as heinous as gang rape for an elongated period of two months. The ends of justice shall be met only when the accused-appellants have suffered the entire period of sentence that they have been awarded and thereby, no leniency is merited in the facts of the case.
25. Accordingly, the appeals are dismissed and the impugned order is upheld. The accused-appellants, who are currently enlarged on bail, are hereby directed to serve the remaining period of sentence, as awarded by the High Court. As such, eight weeks' time is granted to the appellants to surrender before the concerned Trial Court.
26. Pending application(s), if any, shall stand disposed of.

Result of the case: Appeals dismissed.

[†]Headnotes prepared by: Bibhuti Bhushan Bose