

State of M.P.

Vs

Sunder Lal

Criminal Appeal No. 539 of 1983

(Kuldip Singh, B. P. Jeevan Reddy JJ)

13.03.1992

JUDGEMENT

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 Ss. 366 and 376, I.P.C. and sentenced to three years and five years rigorous imprisonment respectively.
2. On 4-12-1979, the parents of P.W. 2 (Prosecutrix) had left for Chhindwara. P.W. 2 and other minor children were left in the house along with servant Baban (P.W. 4). The house of P.W. 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 P.W. 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 P.Ws. 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 P.Ws. 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 the evidence of P.Ws. 2 and 4. We are of the opinion that the High Court was in error in disbelieving the testimony of P.W. 2 with respect to the identity of the accused. The girl was 13 years' old and she could not have forgotten the face 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 P.W. 4 prepare lamps, and light them, before taking away P.W. 2. It is not a case where P. W. 2 had a mere fleeting glimpse of the accused. We are, therefore, of opinion that the identity of the accused has been amply established by the evidence of P.Ws. 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.

5. The Criminal Appeal is allowed in the above terms. Appeal allowed.

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