

# **SUPREME COURT OF INDIA**

Gul Singh @ Guliya

Vs.

State of M.P.

Crl.A.No.667 of 2011

(V.Gopala Gowda and Adarsh Kumar Goel JJ.)

16.09.2014

## **JUDGMENT**

### **ADARSH KUMAR GOEL, J.**

1. This appeal has been preferred against the conviction and sentence of the appellants under Section 302/34 of the Indian Penal Code (IPC) for the murder of Mishribai for which they stand sentenced to life imprisonment apart from conviction and sentence of appellant Gul Singh @ Gulia under Section 376 IPC and conviction of appellants for other offences as appearing from the operative part of the order of the trial Court and the High Court which is clear from the impugned Judgment of the High Court as follows :

The appellants have preferred this appeal against the judgment dated 07/10/1999 of the Vth Additional Sessions Judge, Indore, passed in Session Trial No.331/1998 by which the appellants have been convicted under Sections 366, 368 read with Section 34 of the Indian Penal Code to rigorous imprisonment for ten yeas and fine of Rs.1,000/-, in default of payment of fine to rigorous imprisonment of six months, under Section 376(2)(g) of the IPC to rigorous imprisonment for ten years and fine of Rs.1000/- in default of payment of fine to further rigorous imprisonment for six months under Section 302/34 to imprisonment for life and fine of Rs.1,000/-, in default of payment of fine to further rigorous imprisonment for six months; and, under Section 307/34 to

rigorous imprisonment for five years and fine of Rs.500/-, in default of payment of fine to rigorous imprisonment for three months. All the substantive sentences have been directed to run concurrently.

The operative portion of the High Court judgment is as follows:

The Appeal of Gul Singh @ Guliya is dismissed and his conviction and the sentence passed against him are maintained except that his conviction u/s 376 (2)(g) is altered to Sec. 376(1) and the punishment awarded thereunder is maintained; the appeal as regards appellant No.2 “ Roomal s/o Dalsingh Bhil, No.3 Gulab s/o Thavriya Bhil and No.4 “ Mohan s/o Gobriya Bhil is partly allowed. While their conviction u/s 366, 368/34, 302/34 and 307/34 and the sentence awarded thereunder are maintained, their conviction u/s 376(2)(g) is set aside.

2. Case of the prosecution is that on the night intervening 24th /25th of May, 1998, while Girdhari had gone to the farm of his employer for driving the Tractor and other family members were asleep in his house, at 02.00 mid-night, the accused persons with a view to kidnap Parubai (PW 3), arrived, armed with weapons like Dharia, Falia and Lathi and started assaulting Setulbai, Mishribai, Mohan and Sunderlal. As a result of the deadly assault, Mishribai succumbed to the injuries on the spot, Sunderlal (PW 6) sustained a fracture in his hand, Mohan (PW 1) sustained injury on his head and both shoulders and Setulbai (PW 5) also sustained two incised wounds and two lacerated wounds,. Thereafter the accused persons dragged away Parubai (PW 3). Later, she was subjected to rape.

3. Accordingly, First Information Report (FIR) was lodged by Mohan (PW-1) and the accused were apprehended. Though in the FIR only Gul Singh was named, in the statement of Sunder Lal (PW 6) to the police all other accused were immediately named. After investigation, the accused was sent up for trial.

4. A post mortem was conducted on the body of Mishribai and the death was found to be homicidal with following injuries:

(1) Incised wound on the forehead to nose on right side 2 x ½ x muscle deep;

(2) Incised wound on the face over the upper lip 1 x ½ x cutting of the lip;

(3) Incised wound on the chin 2 x ½ x bone deep; (4) Penetrating wound on the right side of neck 1 x ½ x 1 cutting carotid artery.

5. Injured Mohan (PW 1) was found to be having following injuries :

(1) Incised wound extending from neck to right shoulder to the left 15 x 1 cm x ? (2) Incised wound over right ear extending to the skull 8 cm x 1 cm x ? (3) Incised wound 2 cm x ½ cm x ? anterior to the left ear; (4) Incised wound 2 cm x 1 cm x ? on occipital region; (5) Incised wound 3 cm x 1 cm x ? over the occipital region; (6) Incised wound 4 cm x 1 cm x ? over the occipital region.

6. Parubai (PW 3) had following injuries:

(1) Swelling on right temporal, chin margins tender; size 1 x 1 (2) Abrasion with swelling anterior left side of knee 1 x 1;

On internal examination there was an older tear of hymen 10, 6, 1 O<sup>TM</sup>clock margins tender in the region and vaginal slide was prepared for further investigation.

7. Fracture was also found on the hand of Sunder Lal (PW 6). Prosecutrix was recovered by the police after 4-5 days of the incident. She was also medically examined by Dr. Alka Verma (PW 18) who found an injury on the right side of her head which was a contusion 1 x 1. She was complaining of pain. There was also an abrasion on the left side of the knee measuring 1 x 1 and swelling. In her internal examination, she found that her hymen was torn at 1, 6 and 10 O<sup>TM</sup>clock position and the vulva had signs of injuries, but there was no tenderness. She, therefore, opined that though there was evidence that sexual intercourse had taken place with the prosecutrix, it could not be stated with any exactitude whether she was subjected to recent intercourse.

8. Considering the evidence of injured witnesses, Sunder Lal (PW 6), Mohan (PW 1), Setulbai (PW 5) and Parubai (PW 3) and other corroborating evidence, the courts below have convicted and sentenced the appellants.

9. We have heard learned counsel for the parties.

10. Learned counsel for the appellants submitted that all the accused were not named in the FIR by Mohan (PW 1) and prosecutrix (PW 3) did not know the accused and learnt about their names only from their conversation. PW 6 was child witness and his testimony could not be accepted.

11. Learned counsel for the State supported the conviction and sentence of all the appellants.

12. We have carefully perused the record and find no reason to interfere with the findings recorded by the courts below with regard to the conviction of the appellants for the murder of Mishribai and also other offences and also for the offence of rape committed by Gul Singh. We find the evidence of Mohan (PW 1), Sunder Lal (PW 6), Setulbai (PW 5) and prosecutrix (PW 3) to be credible. The evidence of Sunder Lal (PW 6) who is said to be 15-16 years of age, also inspires confidence and is corroborated by other evidence on record, particularly the evidence of the prosecutrix.

It is well settled that evidence of child witness cannot be rejected unless the same is tutored or unless the same is unreliable. In *Prakash and Anr. vs. State of Madhya Pradesh*[1], it was observed :

11..We do not think that a boy of about 14 years of age cannot give a proper account of the murder of his brother if he has an occasion to witness the same and simply because the witness was a boy of 14 years it will not be proper to assume that he is likely to be tutored. Again, in *Dattu Ramrao Sakhare and Ors. vs. State of Maharashtra*[2], it was observed :

5. .A child witness if found competent to depose to the facts and reliable one such evidence could be the basis of conviction. In other words even in the absence of oath the evidence of a child witness can be considered under Section 118 of the Evidence Act provided that such witness is able to understand the questions and able to give rational answers thereof. The evidence of a child witness and credibility thereof would depend upon the circumstances of each case. The only precaution which the court should bear in mind while assessing

the evidence of a child witness is that the witness must be a reliable one and his/her demeanour must be like any other competent witness and there is no likelihood of being tutored. There is no rule or practice that in every case the evidence of such a witness be corroborated before a conviction can be allowed to stand but, however as a rule of prudence the court always finds it desirable to have the corroboration to such evidence from other dependable evidence on record. In the light of this well-settled principle we may proceed to consider the evidence of Sarubai (PW 2). In the present case not only the evidence of the child witness is reliable and not tutored, it is corroborated by other testimony. The complainant and prosecutrix have no axe to grind against the accused persons. The accused had the motive to kidnap Parubai and they trespassed into her house armed with various weapons and caused death of one family member and caused injuries to other family members and abducted the prosecutrix who was recovered after 4-5 days. All the accused have thus been rightly convicted and sentenced.

13. Accordingly, we do not find any ground to interfere. The appeal is dismissed.

[1] (1992) 4 SCC 225

[2] (1997) 5 SCC 341