PRAHLAD SINGH

v.

STATE OF MADHYA PRADESH

AUGUST 13, 1997

[G.N. RAY AND G.B. PATTANAIK, JJ.]

Criminal Law—Indian Penal Code—S. 376—Rape of a minor girl—Acquittal by Sessions Court—Reversed by High Court—Held, the High Court can not interfere on mere surmises and conjectures unless there is an acceptable evidence—Conviction set aside.

The Appellant was charged for an offence of committing rape of a minor girl. The Sessions Court relying on the evidence of the Doctor, the victim and her parents, though held that the victim had been raped on the said date, yet could not find any reliable evidence as regards the involvement of the Appellant and acquitted him. On Appeal by the prosecution, the High Court reversed the finding and convicted the Appellant, relying upon the evidence of the victim.

Before this Court, the Appellant contended that there is no iota of acceptable evidence before the court which can be said to have brought home the charge against the Appellants; that the High Court committed an error in altering an order of acquittal to one of conviction by mere surmises and conjectures; that so far as the identification parade was concerned no credence can be given to the same in as much as the same parade was held two months after the incident; that the accused was shown to the prosecutrix earlier to the identification in question; and that the substantive evidence of the prosecutrix in court identifying the accused is of no relevance and is wholly unacceptable and no conviction can be based on the same.

The Respondents contended that the accused being an army jawan and a colleague of the father of the prosecutrix and that she was sexually assaulted by the accused, there was no reason for her to unnecessarily involve an innocent man and that since the fact of rape had been established beyond reasonable doubt the High Court rightly convicted the Appellant.

A **Allowing the Appeal, the Court**

HELD : 1. The High Court interfered with an order of acquittal on mere surmises and conjectures without having an *iota* of acceptable evidence bringing complicity of the accused and as such the said conviction and sentence cannot be sustained in law. The conviction and sentence B **passed by the High Court is set aside and Appellant is acquitted of the charges. [431-B-C]**

2. The contentions of the Respondents cannot be accepted since until and unless there is reliable and acceptable evidence to come to a con- C **clusion that it is accused who committed rape he cannot be convicted even if the factum of rape on the prosecutrix is established beyond reasonable doubt. [431-A]**

3. No credence can be given to the identification said to have been made since none of the identification parade witnesses were examined. D **[430-C]**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 51 of 1993.

From the Judgment and Order dated 7.9.92 of the Madhya Pradesh E High Court in Crl.A. No. 34 of 1986.

Manoj Prasad for the Appellant.

K.N. Shukla, Mrs. Shushila Shukla and Uma Nath Singh for the Respondents.

F The Judgment of the Court was delivered by

PATTANAIK, J. This appeal is directed against the judgment of the Madhya Pradesh High Court dated 7th September, 1992 in Criminal Appeal No. 34 of 1986. The High Court by the impugned judgment set aside G the order of acquittal of the appellant passed by the 2nd Additional Sessions Judge, Sagar (MP), in Sessions Trial No. 185 of 1984 and convicted the appellant under Section 376 I.P.C. and sentenced to undergo rigorous imprisonment for 10 years.

The appellant stood charged of the offence of committing rape on H the allegation that on 26th May, 1984 he committed rape on a minor girl

Kumari Sarvesh, PW-5 when the girl was playing outside her house in the company of her two younger sisters. The prosecution alleged that while the prosecutrix PW-5 was playing, the appellant induced her and then took her outside the military camp and subjected her to sexual assault on account of which the girl started profusely bleeding. Her father, Siyaram. PW-9 went in search of the girl and found her standing on the road and crying, as the accused had left her near that place. The girl then narrated the incident to her father who lodged a report which was treated as F.I.R. and police thereafter started investigation. The further prosecution case is that on suspicion the appellant who was also an army jawan was arrested and his identification-parade was held on 23.7.1984 by PW-2 wherein the appellant was identified by the prosecutrix. On completion of investigation the charge-sheet was submitted and the accused stood the trial. The learned Sessions Judge relying upon the evidence of Doctor PW-4, prosecutrix - PW-5 and her parents PWs 7 and 9 came to the conclusion that on the relevant date of occurrence the prosecutrix was raped. But so far as the complicity of the appellant with the incident is concerned, the learned Sessions Judge could not find any reliable evidence and acquitted him of the charge. On an appeal being carried, the High Court by the impugned judgment interfered with the order of acquittal and relying upon the evidence of the prosecutrix more particularly the identification of the appellant by the prosecutrix convicted the appellant as already stated.

The learned counsel for the appellant contended that there is not an *iota* of acceptable evidence before the Court which can be said to have brought home the charge against the appellant and the High Court committed an error in altering an order of acquittal to one of conviction by mere surmises and conjectures. The learned counsel urged that so far as the so-called identification-parade which was held on 23.7.1984 is concerned no credence can be given to the same as inasmuch as the same identification-parade was held two months after the incident and that the accused was shown to the prosecutrix earlier to the identification in question. According to the learned counsel the Sessions Judge rightly did not give any credence to the identification. In this Court also the counsel appearing for the appellant stated that no credence can be given to the so-called identification that was held two months after the occurrence wherein the prosecutrix is alleged to have identified the accused. It may be appropriate to extract in this connection the statement of the prosecutrix in cross-examination wherein she stated :

A "The accused was kept in custody in the Quarter Guard, where my father had taken me and Major Raizada was also present there. Thereafter, my father had taken me again to the camp for re-identification of the accused. My father had told me to move to the place of identification and to identify the accused."

B It may be stated that though the prosecution had sought to establish a case that the accused had been identified even prior to the test identification-parade before one Major Raizada but no evidence was laid in that regard and even Major Raizada was not examined as a witness. The identification was supposed to have been made also in the presence of one C Subedar Harphool Singh but said Harphool Sigh also was not examined by the prosecution. In the aforesaid circumstances, in our opinion no credence can be given to the identification said to have been made before the test identification-parade on 23.7.1984.

The learned counsel for the appellant further urged that the only D other item of evidence to prove the complicity of the appellant with the offence is the substantive evidence of the prosecutrix in the Court as inasmuch as she identified the appellant to be the person who committed the sexual assault on her on the date of occurrence. But that evidence is also wholly unacceptable in view of the statement of the prosecutrix in the E cross-examination wherein she stated :

"Today, I have come alongwith my father. The Police uncle was also with me outside. Now when the accused entered into the court, then the Policewala and my further had told me that he is the accused and that is why that I have stated that he is the accused. F The Policewala uncle had tutored my statement outside today and accordingly I am deposing my same tutored statement."

In view of the aforesaid evidence of the prosecutrix, in our opinion the learned counsel for the appellant is wholly justified in making his submission that the substantive evidence of the prosecutrix in court iden- G tifying the accused is absolutely of no relevance and is wholly unacceptable and no conviction can be based on the same. Mr. Shukla, the learned senior counsel appearing for the respondent, however, submitted that the accused being an army jawan and a colleague of the father of the prosecutrix and prosecutrix having been sexually assaulted by the accused, there is no H reason for the prosecutrix to unnecessarily involve an innocent man and

since the fact of rape on the prosecutrix has been established beyond reasonable doubt the High Court rightly convicted the appellant. We are, however unable to accept this contention since until and unless there is reliable and acceptable evidence to come to a conclusion that it is accused - appellant who committed rape he cannot be convicted even if the factum of rape on the prosecutrix is established beyond reasonable doubt. In our considered opinion, therefore, the High Court interfered with an order of acquittal on mere surmises and conjectures without having an *iota* of acceptable evidence bringing complicity of the accused and as such the said conviction and sentence cannot be sustained in law. Accordingly we set aside the conviction and sentence passed by the High Court of Madhya Pradesh and acquit the appellant of the charges levelled against him. The criminal appeal is allowed. The bail bond furnished by the appellant shall stand discharged.

A B C

V.M. Appeal allowed.