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STATE OF HARYANA

v.

BASTI RAM

(Criminal Appeal No. 352 of 2006)

APRIL 02, 2013

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[A.K. PATNAIK AND MADAN B. LOKUR, JJ.]

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Penal Code, 1860 - ss.376(2)(g), 366, 342 and 506 - Gang rape of girl below 16 years of age - Conviction by trial court relying on evidence of prosecutrix - High Court acquitted the accused - On appeal, held: High Court committed error of law in ignoring the evidence of prosecutrix - Case remitted to High Court.

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Respondent-accused alongwith another accused was prosecuted for having raped a girl below 16 years of age. In her police statement, the victim girl alleged that both the accused had committed rape on her for a period of six months and they had also confined her for a period of 10 days and raped her several times and thereafter sent her to her parents through two persons.

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Trial Court concluded that the prosecutrix was aged below 16 years and relying on her testimony held that both the accused were guilty of gang rape and convicted them u/s.376(2)(g) and also found them guilty for offences u/ ss.366, 342 and 506 IPC. They were sentenced to 10 years RI and fine with default clause.

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High Court reversed the conviction order and acquitted both the accused. Hence the present appeal by the State against the respondent- accused.

Disposing of the appeal and remitting the matter to the High Court, the Court

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HELD: 1. The High Court erred in not taking into account the statement and testimony of the prosecutrix that the respondent had raped her on several occasions and thereby acquitting him. The High Court committed an error of law in not considering the evidence put forward by the prosecutrix (who was less than 16 years when she was raped) and ignoring the settled position in law that if the sole testimony of the prosecutrix is credible, a conviction can be based thereon without the need for any further corroboration. [Para 1] [852-E-G]

Vijay @ Chinee v. State of Madhya Pradesh (2010) 8 SCC 191; 2010 (8) SCR 1150 State of Rajasthan v. Babu Meena, 2013 (2) SCALE 479 - relied on.

2. The High Court had not discussed the statement of the prosecutrix under Section 164 of the Cr.P.C. before the Magistrate nor her testimony before the Trial Judge. Her statement was detailed and the High Court should have considered that statement. If it was found to be not credible, the High Court was entitled to reject it and also her testimony before the Trial Judge. But, to completely ignore what the prosecutrix had said, merely on the basis of a handful of letters which she had written (even though she had explained the circumstances in which she had written those letters) is a rather unsatisfactory way of dealing with the entire case. [Para 30] [860-H; 861-A-B]

3. Consideration of the case on its merits by this Court without the opinion of the High Court would amount to taking away the right of appeal available to the respondent. For a proper appreciation of the case, it is necessary for this Court to have the views of the High Court on record. This is important since the High Court has reversed a finding of conviction given by the Trial Judge. Therefore, the more appropriate course of action would be to set aside the impugned judgment and order passed by the High Court and remand the matter for

A reconsideration on merits after taking into account the entire evidence on record, including the statement and testimony of the prosecutrix as well as the law on the subject. [Paras 31 and 32] [861-D-F]

Case Law Reference:

B 2010 (8) SCR 1150 relied on Para 29

2013 (2) SCALE 479 relied on Para 29

C CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 352 of 2006.

From the Judgment and Order dated 10.12.2003 of the High Court of Punjab & Haryana at Chandigarh in CrI. A. No. 162-SB of 1988.

D Vikas Sharma, Kamal Mohan Gupta for the Appellant.

Prakash Pandey, Rekha Pandey, Raghav Pandey, Dr. Sushil Balwada for the Respondent.

E The Judgment of the Court was delivered by

MADAN B. LOKUR, J. 1. The question for our consideration is whether the High Court erred in not taking into account the statement and testimony of H.L. that the respondent had raped her on several occasions and thereby acquitting him.

F In our opinion, the High Court committed an error of law in not considering the evidence put forward by the prosecutrix (who was less than 16 years when she was raped) and ignoring the settled position in law that if the sole testimony of the prosecutrix is credible, a conviction can be based thereon without the need
G for any further corroboration.

The facts:

H 2. On 12th March 1990, PW-3 Sardara Singh, a resident of Village Farmana, lodged a complaint with PW-1 ASI Mehar

Singh of Police Station Kharkhoda to the effect that his granddaughter H.L. aged about 14-15 years and staying with him had been missing since 8.00 p.m. on 27th February 1990. According to the complainant, H.L. had left the house for answering the call of nature but did not come back. Efforts were made to trace her out, including at the residence of relatives and at her parental home in Nainital but without success. The complaint of Sardara Singh further stated that he suspected that Mohinder Singh and Satte had enticed her away.

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3. The complaint was registered as a First Information Report and investigations commenced to trace out H.L.

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4. On 20th March 1990 the investigating officer examined Mohinder Singh and he stated that on 27th February 1990 he and Satté took H.L. from Village Farmana to the Interstate Bus Terminal in Delhi. Their intention was to sell her to somebody through Satte and then to equally divide the proceeds. As a consequence of this, Satte took H.L. to Bareilly and sold her to Jamaluddin.

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5. It appears that Sardara Singh had wrongly (and perhaps deliberately) accused Mohinder Singh of enticing away H.L. and even Mohinder Singh had given a false statement.

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6. Be that as it may on 6th April 1990, PW-22 ASI Jaidev Singh located H.L. and her father and on 7th April 1990 H.L. was produced before the Judicial Magistrate 1st Class, Sonapat where her statement was recorded under Section 164 of the Criminal Procedure Code (for short the Cr.P.C.).

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7. In her statement given before the Judicial Magistrate, H.L. stated that her father worked in Nainital. Her maternal uncle Satish Prakash who got her admitted in a school at Bhainswal sometime in June 1989 had brought her to Village Farmana.

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A 8. Satish Prakash used to take H.L. to her school every morning on his scooter. From sometime in August 1989 he started misbehaving with her. She complained about the misbehaviour to her grandmother and to her aunt (wife of Satish Prakash) but to no effect. In her statement H.L. stated that from
B September 1989 onwards Satish Prakash began to rape her and did so several times. He was subsequently transferred to Panipat but in the meanwhile Basti Ram (the Respondent before us) came to Bhainswal and joined a Veterinary Hospital. H.L. further stated that apart from Satish Prakash, she was also
C raped by Basti Ram and fed up with this unpleasant situation, she expressed a desire to go back to her parental home at Nainital.

D 9. H.L. then stated that on 27th February 1990 Satish Prakash and Basti Ram confined her in a quarter near the Veterinary hospital where they were working and they raped her several times. Eventually on 8th March 1990 she was taken by them to Delhi and handed over to two persons who were going to Nainital with the instructions that she should be dropped off at her parental home.

E 10. In her statement H.L. stated that when she went to her parental home she found that it was locked and therefore from 9th March 1990 to 20th March 1990 she lived with a neighbor, PW-19 Ram Singh who informed her father in Pant Nagar of
F her arrival in Nainital. On 21st March 1990 the lock of her parental home was broken and she lived there till 4th April 1990 and came to Delhi along with her father on 6th April 1990.

G 11. Upon completion of investigations, the police authorities filed a charge sheet and on 3rd August 1990 the case was committed to the Sessions Court and registered as Sessions Case No. 22 of 6.11.1990/Sessions Trial No. 30 of 1990 before the Additional Sessions Judge, Sonapat (Haryana).

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Proceedings in the Trial Court:

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12. The Additional Sessions Judge charged Satish Prakash and Basti Ram for offences punishable under Sections 366, 376, 363, 506 and 342 of the Indian Penal Code (for short the IPC) on 7th November 1990 to which they pleaded not guilty. It appears that the charge of raping H.L. prior to 27th February 1990 was inadvertently left out and therefore additional charges were framed against Satish Prakash and Basti Ram to include the commission of rape of H.L. prior to 27th February 1990. The two accused pleaded not guilty to the additional charges also.

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The charges framed read as follows:

1. That you both on 27.2.90 in the area of Vill. Bhainswal Kalan kidnapped Kumari H.L. aged 15/16 years, a minor by taking her out of legal guardianship of her maternal grandfather Sh. Sardara Ram S/o Jai Pal R/o Farmana with intent that she may be forced or seduced to illicit intercourse and thereby committed an offence punishable u/s 366 IPC and within cognizance of this Court.
2. Secondly, you both, between 27.2.90 to 08.3.90, in the aforesaid area committed rape on the above named H.L. by committing sexual intercourse against her will or consent and thereby committed an offence punishable u/s 376 IPC and within cognizance of this Court.
3. Thirdly, you both on the aforesaid date kidnapped Kumari H.L. a minor under the age of 18 years from the lawful guardianship of her maternal grandfather Sardara Ram and thereby committed an offence punishable u/s 363 IPC and within cognizance of this Court.

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- A 4. Fourthly, you both on same date and place committed criminal intimidation by threatening H.L. to cause death and thereby committed offence punishable u/s 506 IPC and within cognizance of this Court.
- B 5. Fifthly, you both on the same date and place wrongly confined H.L. in Govt. Quarter of Veterinary Hospital Bhainswal Kalan from 27.2.90 to 08.3.90 and thereby committed an offence punishable u/s 342 IPC and within cognizance of this Court.
- C 6. Sixthly that you accused Satish Kumar committed rape on aforesaid H.L. by committing sexual intercourse against her will or consent several times from September, 1989 to February, 1990 at your house in the area of village Farmana and thereby committed an offence punishable under Section 376 I.P.C. and within cognizance of this Court.
- D 7. Seventhly, that you accused Basti Ram committed rape on aforesaid H.L. against her consent or will several times between October, 1989 and February, 1990 in Veterinary Hospital quarter Bhainswal and thereby you committed an offence punishable under Section 376 I.P.C. and within cognizance of this Court.
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13. The prosecution examined as many as 24 witnesses while the defence examined one witness.

G 14. The Trial Court first of all considered the issue regarding the age of H.L. It was noted that her birth certificate Exhibit PF gave her date of birth as 10th June 1974 but the school record as well as the evidence of one of the teachers in the school in Bhainswal indicated that her date of birth was 27th June 1975. The father of the prosecutrix gave her date of birth as 10th June 1974 while her mother gave the date of birth as 27th June 1975. However, on an appreciation of the

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evidence and relying upon the birth certificate Exhibit PF the Trial Court concluded that the date of birth of H.L. was 10th June 1974. Therefore, when she was raped between September 1989 and March 1990 she was below 16 years of age.

15. The Trial Court then considered the issue of the improbability of H.L. having been raped by Satish Prakash and Basti Ram. The Trial Court was of the view that the statement of the prosecutrix was credible. She had complained to her grandmother and to her aunt about being raped by Satish Prakash and Basti Ram, but it had no effect on them. As such, she had little or no option but to submit to the demands of Satish Prakash and Basti Ram. The Trial Judge held that in any case since H.L. was below 16 years of age her consent to have sexual intercourse with Satish Prakash and Basti Ram was meaningless.

16. On the basis of these findings the Trial Judge concluded that Satish Prakash and Basti Ram had subjected H.L. to rape and gang rape.

17. On the issue whether Satish Prakash had kidnapped H.L., the Trial Judge concluded that H.L. was under the guardianship of her grandfather Sardara Singh and since Satish Prakash had taken her away from the lawful guardianship of her grandfather, he was guilty of kidnapping her. As such, it was held that Satish Prakash was guilty of an offence punishable under Sections 363 and 366 of the I.P.C. Basti Ram was, however, found not guilty of the charge of kidnapping H.L.

18. The Trial Judge considered the statement of PW-3 Sardara Singh and found that he was related to both Satish Prakash and Basti Ram. In fact Satish Prakash is his nephew (brother's son) while Basti Ram is the cousin of Satish Prakash. Under these circumstances, Sardara Singh tried to save Satish Prakash and Basti Ram from being involved in the kidnapping and rape of H.L. and he also went to the extent of cooking up a story to implicate Mohinder Singh and Satte. In these

A circumstances, the Trial Judge did not give weightage to the evidence of Sardara Singh and relied primarily on the testimony of H.L. as well as the statement that she gave before the Magistrate under Section 164 of the Cr.P.C.

B 19. The Trial Judge also considered some letters said to have been written by H.L. to Mohinder Singh professing intimacy with him but the prosecution version was accepted that these letters were written at the instance of Satish Prakash so as to put the blame on Mohinder Singh.

C 20. The defence witness DW-1 Dr. S.S. Wadhwa was disbelieved by the Trial Judge on the question of the age of the prosecutrix. According to this witness, H.L. was between 16 and 17 years of age, but he did not have the original medical report on the basis of which he had come to this conclusion.

D 21. In their statement under Section 313 of the Cr.P.C. the accused stated that H.L. was a girl of 'bad character' and that they had been falsely implicated at the instance of the investigating agency.

E 22. After going through the evidence on record, the Additional Sessions Judge, Sonapat by a judgment and order dated 1st April 1992 convicted Satish Prakash and Basti Ram of having committed gang rape on H.L. from 27th February 1990 to 8th March 1990. Satish Prakash was also found guilty of having raped H.L. from September 1989 to February 1990. Basti Ram was found guilty of having raped H.L. from October 1989 to February 1990. Both the accused were also found guilty of offences punishable under Sections 366, 342 and 506 of the IPC.

G 23. Subsequently by an order dated 3rd April 1992 Satish Prakash and Basti Ram were sentenced under Section 376(2)(g) of the IPC to 10 years rigorous imprisonment for the gang rape of H.L. They were also asked to pay a fine of Rs.2,000/- and in default thereof to undergo further rigorous

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imprisonment for one year. For the remaining offences, they were sentenced to various terms of imprisonment, but all sentences were to run concurrently and, therefore, we are not going into the details of the punishment awarded.

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Proceedings in the High Court:

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24. Feeling aggrieved by the conviction and sentence, both the convicts preferred an appeal in the High Court of Punjab and Haryana, being Criminal Appeal No. 162-SB/1992.

25. The High Court examined the evidence in a rather cursory manner and after noting the contentions urged by learned counsel for the parties, the High Court held as follows:

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"After going through the contention of learned counsel for both the parties, I am of the opinion that ASI Jai Dev PW 22 has admitted that he recorded the statement of Mohinder who has stated that he and Sat Narain had enticed away H.L. and, thereafter, sent her to Bareilly with somebody else and that he can get H.L. recovered. In Ex.D1 H.L. has clearly written to Mohinder that she was absent from School for four days while accompanying Mohinder to Delhi and she also admitted that she has been questioned by Satish Kumar appellant and her maternal grandfather and grand-mother with regard to absence for four days. Satish also reprimanded her that she had been missing for four days without disclosing her whereabouts and he would stop her from going to School and send her to her father's house after performing betrothal to some boy. In letter Ex. D8 also she has named Dr. Satya asking help from him for making a programme in the day time as it is difficult to come out of the house at night.

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Taking the totality of facts and the circumstances of the case into consideration the above evidence casts heavy doubt on the prosecution version and does not inspire any confidence. Therefore, I have no option but to accept this

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A appeal and acquit both the appellants of the charges framed against them after setting aside the order of conviction and sentence passed by the Trial Court. Bail bonds tendered before the trial Court stand discharged."

B 26. On the above basis, the learned Single Judge allowed the appeal and set aside the conviction of Satish Prakash and Basti Ram.

C 27. The State of Haryana has challenged the judgment and order passed by the learned Single Judge of the High Court.

Discussion and conclusion:

D 28. During the pendency of the appeal before us, Satish Prakash expired and the appeal only survives as against Basti Ram.

E 29. The law on the issue whether a conviction can be based entirely on the statement of a rape victim has been settled by this Court in several decisions. A detailed discussion on this subject is to be found in *Vijay @ Chinee v. State of Madhya Pradesh*, (2010) 8 SCC 191. After discussing the entire case law, this Court concluded in paragraph 14 of the Report as follows:-

F "Thus, the law that emerges on the issue is to the effect that the statement of the prosecutrix if found to be worthy of credence and reliable, requires no corroboration. The Court may convict the accused on the sole testimony of the prosecutrix."

G This decision was recently adverted to and followed in *State of Rajasthan v. Babu Meena*, 2013 (2) SCALE 479.

H 30. A reading of the judgment and order of the High Court indicates that it has not discussed the statement of H.L. under Section 164 of the Cr.P.C. before the Magistrate nor her testimony before the Trial Judge. On going through her

statement recorded by the Magistrate, we find that it is rather detailed and the least that was expected of the High Court was to consider that statement. If it was found to be not credible, the High Court was entitled to reject it and also her testimony before the Trial Judge. But, to completely ignore what the prosecutrix had said, merely on the basis of a handful of letters which she had written (even though she had explained the circumstances in which she had written those letters) is a rather unsatisfactory way of dealing with the entire case.

31. Normally, we would have gone through the entire evidence on record and decided whether the acquittal of Basti Ram should be sustained or not. However, in the absence of any discussion or analysis of the evidence by the High Court in first appeal, we are of the opinion that a right of appeal available to Basti Ram would be taken away if we were to consider the case on its merits without the opinion of the High Court. Additionally, for a proper appreciation of the case, it is necessary for us to have the views of the High Court on record. This is important since the High Court has reversed a finding of conviction given by the Trial Judge.

32. Under the circumstances, the more appropriate course of action would be to set aside the impugned judgment and order passed by the High Court and remand the matter for reconsideration on merits after taking into account the entire evidence on record, including the statement and testimony of H.L. as well as the law on the subject. We do so accordingly.

33. Since the allegation of rape is of the year 1989-1990, we request the High Court to accord high priority to the disposal of the case.

34. Appeal is disposed of.

K.K.T.

Appeal disposed of & Matter
remitted to High Court.