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KAILASH

v.

STATE OF M.P.

(Criminal Appeal No. 2260 of 2009)

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JULY 24, 2013

**[A.K. PATNAIK AND FAKKIR MOHAMED  
IBRAHIM KALIFULLA, JJ.]**

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*PENAL CODE, 1860:*

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*s.376(1) - Rape of a girl aged about 15 years - Suicide committed by her - Conviction by courts below u/s 376(1) with sentence of 10 years RI - Held: Keeping in view the evidence of the eye-witness, supported by other witnesses, the medical report and the forensic laboratory report, the conclusion of guilt found proved against appellant by trial court as well as High Court cannot be faulted - Code of Criminal Procedure, 1973 - s.313.*

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**The daughter of PW-2, aged about 15 years, committed suicide by hanging herself in her house. The trial court considering the post-mortem report, forensic laboratory report and the evidence of witnesses, particularly, the eye-witness, (PW-5), convicted the appellant u/s 376(1) IPC and sentenced him to RI for 10 years. He was, however, acquitted of the offence punishable u/s 306 IPC. The High Court affirmed the conviction and the sentence.**

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**In the instant appeal, it was contended for the appellant that there was abnormal delay on recording the statement of PW-5 by the police, who was stated to have disclosed about the occurrence to the grand-mother and mother of the deceased on the following day of the incident.**

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**Dismissing the appeal, the Court**

**HELD: 1.1 It is true that the evidence of PWs-1 and 2 discloses that PW-5 informed them about the rape committed by the appellant on the deceased on the very next day after the funeral had taken place. However, there was nothing on record to suggest that the said information was passed on to the prosecution agency immediately after the receipt of the said information by PWs1 and 2. In such circumstances, it can only be stated that as soon as it was brought to the notice of the prosecution agency as to the commission of the offence by the appellant, through PW- 5, further action was taken by the police by nabbing the appellant and proceeding with the prosecution in accordance with law. With regard to the abnormal delay in proceeding against the appellant, the trial court has held that the witnesses were all of rural background and illiterate persons and, therefore, some allowance will have to be given for their laxity in bringing the factum of the rape committed by the appellant on the deceased. [para 8] [785-F-H; 786-A-C]**

**1.2 The evidence of PW-5, who was aged about 13 to 14 years at the time of occurrence and was the eye-witness of the incident, was found to be natural and he withstood the lengthy cross-examination, which did not bring out any contradiction in his version apart from the fact that he had no axe to grind against the appellant. Moreover, his evidence was also corroborated by PW-7 to considerable extent regarding the involvement of the appellant in the commission of the crime on the deceased. The medical evidence also fully supported the crime alleged against the appellant. As per the report of forensic laboratory with regard to articles seized and the clothes of the deceased, sexual intercourse committed on the deceased, was confirmed. Further, when based on the evidence of PW 5 and the medical reports, the**

A **incriminating circumstances that existed against the appellant were put in 313 questioning, he had no explanation to offer. Therefore, the ultimate conclusion of guilt found proved against the appellant as held by the trial court as well as the High Court cannot be faulted.**

B **[para 7-8] [785-A-C; 786-C-F]**

**CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 2260 of 2009.**

C **From the Judgment and Order dated 08.09.2006 of the High Court of Madhya Pradesh at Indore Bench, in Criminal Appeal No. 1030 of 2003.**

**Ashok Kumar Sharma for the Appellant.**

**The Judgment of the Court was delivered by**

D **FAKKIR MOHAMED IBRAHIM KALIFULLA, J. 1. This appeal by the sole accused is directed against the Single Bench decision of the High Court of Madhya Pradesh, Indore Bench dated 08.09.2006, passed in Criminal Appeal No.1030 of 2003. The appellant, who was initially charged under Section 306 and 376(2)(f) IPC, was convicted by the trial Court only for the offence under Section 376(1) IPC and was imposed with the punishment of 10 years rigorous imprisonment, along with the fine of Rs.500/- and in default of the payment of fine to undergo one more year's rigorous imprisonment.**

F **2. The brief facts which are required to be stated are that on 23.07.2002, PW-2 - the mother of the deceased, when she returned from her day's work in the field at 6 p.m., found her daughter, the deceased Radha Bai, who had returned back from the field at around 3 O'clock, inside the house with the door locked from inside. One Parmanand climbed the roof and found the deceased hanging from the roof with a Saree. The said Parmanand stated to have opened the door, cut the rope and brought the body down. PW-1 reported the matter to Aagar Police Station and thereafter, PW-9 went to the place of incident and prepared the sketch map Ext.P-8 and sent the dead body**

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of the deceased for postmortem. He also stated to have recovered the Saree under seizure letter Ext.P-10. A

3. The postmortem was conducted by PW-4, Dr. Shashank Saxena on 24.07.2002, at 3.45 p.m and in the postmortem report the doctor noted that the deceased was aged about 15 years, that below the neck there was mark of bluishness and on the ligetcher mark, there were marks of abrasion and on one side of the ligetcher mark, ecmyosis was present. From the vagina of the body blood was found oozed out, which was frozen and spread over in the midst of the legs on the front side. On inspecting the vagina, it was found that it was reddish, congested and frozen blood was present. Laceration on the wall of the vagina of 1 cm size was also noted. The doctor in his opinion stated that the cause of the death of the deceased was due to stoppage of breathing, which was due to hanging and the injuries which were present on the body of the deceased were antemortem. The doctor stated to have collected blood stained clothes of the deceased, viscera and pubic hairs, as well as the liquid oozed out from the vagina on the role of cotton, sealed and sent the same to the Station House Officer. The postmortem report was marked as Ext.P-3. According to the doctor, the age of the deceased was 15 years based on the age written in the application form. The further opinion of the doctor was that due to hanging, no injuries could have been caused on the private organs. B  
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4. Based on the investigation, the prosecution came to the conclusion that the deceased was raped and a case under Section 306 and 376(2)(f) IPC was registered against the appellat accused on 04.08.2002. The appellat was arrested and was put to trial. The trial Court after appreciating the evidence placed before it, acquitted the appellat from the charge under Section 306 IPC, but found him guilty for an offence punishable under Section 376(1) IPC and sentenced him as stated above. F  
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5. The prosecution examined PW-1 to PW-10. PW-5 who H

A is the cousin of the deceased, was an eye-witness to the occurrence and, therefore, his evidence became imperative. According to PW-5, who was aged about 15 to 16 years on the date of the occurrence, deposed that on the date of the incident he went to the field around 11 a.m for discharging excreta, when he heard the crying sound of his sister, the deceased Radha Bai. On hearing the cries of his sister, when he rushed to the place he found the deceased lying on the ground and the appellant was mounted on her by putting off his pant and the petticoat of the deceased was also lifted, while the appellant was sitting over her. It was also stated by him that the appellant was thrusting his penis and was indulging in some shameful activity. According to PW-5, when he questioned the appellant as to what he did to his sister, the appellant stated to have slapped him twice by catching hold of his shirt and asked him not to speak to anyone about that or else he would be killed. PW-5 further deposed that his sister returned back home, while PW-5 went to Tanodiya and when he returned back from Tanodiya he came to know that the deceased committed suicide by hanging.

E 6. PW-5 stated to have narrated what he saw on the morning of 23.07.2002 to PW-2 and PW-1 on the day after the cremation of the deceased was over. Thereafter, PW-2 stated to have informed based on the version of PW-5 that she came to know that it was the appellant who was responsible for the commission of rape on the deceased Radha Bai. The above fact was also supported by the evidence of PW-7, Babulal who in his evidence stated that the deceased Radha Bai was his niece, that on the date of the occurrence he had also gone to the field, where he saw PW-5, Pappu, going towards his house weeping and he also saw the deceased Radha Bai going from the bushes weeping towards her house. PW-7 stated to have seen the appellant also going towards his house and that when he asked the appellant as to what had happened, the appellant stated to have silenced PW-7 or else threatened to beat him. Though, PW-7 was treated as hostile, some part of the

evidence did support the version of PW-5.

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7. The medical evidence also to a large extent confirmed that the deceased Radha Bai was raped prior to the suicide committed by her. It has also come in evidence that the seized articles of the deceased, which were sent to the forensic laboratory, were returned back with the report Ext.P-15. As per the report of the forensic laboratory the slides of the deceased Radha Bai, her clothes, underwear, petticoat and Saree contained spots of sperm and in the slide of the deceased on her pubic hair, clothes etc., human blood was found and such human blood was also found on the underwear and petticoat, as well as Saree of the deceased. As per the report, sexual intercourse committed on the deceased Radha Bai was confirmed. The trial Court has observed that though there was a lengthy cross-examination of PW-5, nothing was brought out and his evidence was natural and did not create any doubt as to the veracity of his statement.

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8. Keeping the above findings of the trial Court, as well as that of the High Court on the commission of the offence of rape by the appellant on the deceased Radha Bai, when we heard learned counsel for the appellant, the only submission placed before us was that PW-5, stated to have informed PWs-1 and 2, namely, the grand-mother and mother of the deceased Radha Bai on the very next day after the funeral had taken place, but yet the statement of PW-5, was recorded by the police only on 04.08.2002. In so far as the said submission is concerned, it was true that the evidence of PWs-1 and 2 disclose that PW-5 informed them about the alleged rape committed by the appellant on the deceased Radha Bai, on 24.07.2002 i.e. on the very next day after the funeral had taken place. However, there was nothing on record to suggest that the said information was passed on to the prosecution agency immediately after the receipt of the said information by PWs1 and 2. In such circumstances, it can only be stated that as soon as it was brought to the notice of the prosecution agency as to the commission of the offence by the appellant through PW-5,

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A further action was taken by the police by nabbing the appellant and proceeding with the prosecution in accordance with law. Therefore, when we consider the submission of the learned counsel about the abnormal delay in proceeding against the appellant up to the alleged date of occurrence, the trial Court  
B has also held that the witnesses were all of rural background and illiterate persons and, therefore, some allowance will have to be given for their laxity in bringing the factum of the rape alleged to have been committed by the appellant on the deceased Radha Bai. When we consider the evidence of PW-  
C 5, who was a child witness, who was stated to be between 13 to 14 years at the time of occurrence, we find that his evidence was found to be natural and he withstood the lengthy cross-examination, which did not bring out any contradiction in his version apart from the fact that he had no axe to grind against the appellant. Further when based on the evidence of PW 5 and  
D the medical reports, the incriminating circumstances that existed against the appellant were put in 313 questioning, he had no explanation to offer. The medical evidence also fully supported the crime alleged against the appellant. Moreover,  
E the evidence of PW-7, also corroborated the version of PW-5 to considerable extent regarding the involvement of the appellant in the commission of the crime on the deceased Radha Bai. Therefore, the ultimate conclusion of guilt found proved against the appellant as held by the trial Court as well as the High Court cannot be faulted.

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9. Having regard to our above conclusion, we do not find any merit in the appeal. The appeal fails and the same is dismissed.

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10. The appellant is on bail. The bail bond stands cancelled and he shall be taken into custody forthwith to serve out the remaining part of sentence, if any.

R.P.

Appeal dismissed.