

TEKAN ALIAS TEKRAM

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v.

STATE OF MADHYA PRADESH

(NOW CHHATTISGARH)

(Criminal Appeal No. 884 of 2015)

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FEBRUARY 11, 2016

[M.Y. EQBAL AND ARUN MISHRA, JJ.]

Penal Code, 1860: s.376 – Rape – Prosecutrix-blind girl subjected to sexual intercourse on the promise of marriage – Conviction of accused and 7 years rigorous imprisonment – Challenged – Held: Prosecution proved the guilt of the accused beyond reasonable doubt – Interference with the conviction order not called for – Respondent State is directed to pay Rs.8000 per month till her life time – Crime against women.

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Compensation: Victim Compensation Scheme – Held: No uniform practice followed by States and Union Territories in providing compensation to rape victim for offence and for her rehabilitation – State to consider and formulate uniform scheme – Code of Criminal Procedure, 1973 – ss.357, 357A – Penal Code, 1860 – s.376.

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Dismissing the appeal, the Court

HELD: 1. The prosecution has been able to prove the guilt of the appellant beyond all reasonable doubt. There was no infirmity or illegality in the judgment passed by the two courts. Hence, the judgment of conviction must sustain in law. [Para 7][1063-H; 1064-A]

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2.1. The victim (now aged about 37 years) lives alone in her village. She is unmarried and lives in a kuccha house. She has two brothers who live separately from her. One of the brothers lives in a different village Dhour (distance 12 kms). Another brother lives in district Bhila (distance 22 kms) and works as a daily-labourer. She receives a pension of Rs.300/- per month from the State being a person with disability. She is also a BPL card holder which entitles her 35kg rice per month at

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A the rate of Rs.1/- per kg. and free salt. The financial status of victim's brothers is also not good. [Para 9][1064-D-E]

2.2. Perusal of the Victim compensation schemes of different States and the Union Territories showed that no uniform practice is being followed in providing compensation to the rape victim for the offence and for her rehabilitation. This practice of giving different amount ranging from Rs.20,000/- to Rs.10,00,000/- as compensation for the offence of rape under section 357A needs to be introspected by all the States and the Union Territories. They should consider and formulate a uniform scheme specially for the rape victims in the light of the scheme framed in the State of Goa which has decided to give compensation up to Rs.10,00,000/-. [Para 13][1068-D-E]

2.3 One Scheme is made by the National Commission of Women (NCW) on the direction of this court in Delhi Domestic Working Women's Forum vs. Union of India and Ors. [Writ Petition (Crl) No. 362/93], whereby this Court inter alia had directed the National Commission for Women to evolve a "scheme" so as to wipe out the tears of unfortunate victims of rape. This scheme has been revised by the NCW on 15th April 2010. The application under this scheme will be in addition to any application that may be made under Section 357, 357A of the Code of Criminal Procedure as provided in paragraph 22 of the Scheme. Under this scheme maximum of Rs.3,00,000/- (Three lakhs) can be given to the victim of the rape for relief and rehabilitation in special cases like the present case where the offence is against an handicapped woman who required specialized treatment and care. [Para 14][1068-F-H]

2.4. In the case in hand, victim being physically disadvantaged, she was already in a socially disadvantaged position which was exploited maliciously by the accused for his own ill intentions to commit fraud upon her and rape her in the garb of promised marriage which has put the victim in a doubly disadvantaged situation and after the waiting of many years it has worsened. It would not be possible for the victim to approach the National Commission for Women and follow up for relief and rehabilitation. Accordingly the victim, who has already suffered a lot since the day of the crime till now, needs a

special rehabilitation scheme. [Para 15] [1069-A-B]

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2.5. Indisputably, no amount of money can restore the dignity and confidence that the accused took away from the victim. No amount of money can erase the trauma and grief the victim suffers. This aid can be crucial with aftermath of crime. Since the victim is in a vulnerable position and is not being taken care of by anyone and having no family to support her either emotionally or economically, the respondent-State is not directed to give her any lump sum amount as compensation for rehabilitation as she is not in a position to keep and manage the lump sum amount. From the records, it is evident that no one is taking care of her and she is living alone in her village. Accordingly, in the special facts of this case, the respondent-State is directed to pay Rs.8,000/- per month till her life time, treating the same to be an interest fetched on a fixed deposit of Rs.10,00,000/-. By this, the State will not be required to pay any lump sum amount to the victim and this will also be in the interest of the victim. [Para 17, 18][1069-E-G]

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3. The following directions are passed (1) All the States and Union Territories shall make all endeavour to formulate a uniform scheme for providing victim compensation in respect of rape/sexual exploitation with the physically handicapped women as required under the law taking into consideration the scheme framed by the State of Goa for rape victim compensation; (2) So far as this case is concerned, the respondent-State shall pay a sum of Rs.8,000/- per month as victim compensation to the victim who is physically handicapped, i.e. blind, till her life time. [Para 19][1069-H; 1070-A-B]

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CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 884 of 2015

From the Judgment and Order dated 16.01.2014 of the High Court of Chhattisgarh at Bilaspur in Criminal Appeal No. 2554 of 1997

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D. Bharat Kumar, Vikranth Nilesh Goyal, (for Vishal Arun) for the Appellant.

Atul Jha, Sandeep Jha, (for Dharmendra Kumar Sinha) for the Respondent.

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A The Judgment of the Court was delivered by

M.Y. EQBAL, J. 1. Aggrieved by the judgment and order dated 16th January, 2014 passed by the High Court of Chhattisgarh in Criminal Appeal No. 2554 of 1997 affirming the judgment dated 29.11.1997 passed by the Sixth Additional Sessions Judge, Durg, in Sessions Trial No. 342
B of 1996, whereby the appellant has been convicted under Section 376 IPC and sentenced to 7 years R.I., the accused-appellant has preferred this appeal challenging the conviction and sentence.

2. This is a case where the prosecutrix, who is blind and an illiterate girl, was subjected to sexual intercourse on the promise of marriage.

C 3. The case of the prosecution in brief is that the prosecutrix was residing with her father at Village Nandini Khundini. Her mother had left and married somewhere else and, thereafter, the prosecutrix was living with her three brothers Nand Kumar, Iswari and Baldau. Along with brother of prosecutrix Iswari, the accused Tikendra was also
D studying. Because of the friendship, the accused used to visit the house of the prosecutrix and was in conversation with her. It is the case of the prosecution that when the prosecutrix used to remain alone in her house, the accused used to visit her and expressed her that he is in love with her. Further, the case of the prosecution is that about one year before the incident, the accused came to the house of the prosecutrix when she
E was alone. Thereafter, the accused had told her that he is in love with her and will marry her and wanted to commit sexual intercourse with her. The prosecutrix tried to avoid it since she was a blind girl, but the prosecutrix was told by the accused that he will marry her and will give her all support and, therefore, she submitted herself to the accused.
F Thereafter, the accused committed sexual intercourse with her. It is the case of the prosecution that whenever the prosecutrix remained alone in the house, the accused used to come and commit sexual intercourse with her. By such course of action, when the prosecutrix became pregnant, the prosecutrix told the accused to marry her. At that point of time, the accused stopped visiting the house of the prosecutrix.
G Subsequent to it, the incident was disclosed to the father of the prosecutrix who called the meeting of the Panchayat in the Village. In the Panchayat, the accused was also called. It is the case of the prosecution that in the Panchayat, the accused admitted the fact that he had committed sexual intercourse with the prosecutrix but refused to marry her and left the
H Panchayat. It was the specific case of prosecution that though the

prosecutrix was blind, she could recognize the accused person by his voice and by touch. A

4. It reveals that the matter was investigated by the police and the prosecutrix was also subjected to medical examination and finally a charge-sheet was filed under Section 376 IPC. Number of witnesses was examined from the prosecution side including the Doctor who submitted the medical examination report (Ex.P2 and P3) and the radiologist who obtained X-Ray of the prosecutrix and gave his report (Ex. P4) confirming the age of the prosecutrix as approximately 18 years. The prosecutrix was also examined as PW-1, who narrated the entire incident and the manner in which she was subjected to sexual abuse. In her evidence, she has categorically stated that she is blind but she could recognize a person by his voice. She has also stated that the accused-appellant had told her that he will keep her. She has further stated that the accused committed rape on her and, thereafter, whenever she used to stay alone in the house the accused-appellant used to come and committed sexual intercourse with her on the pretext of marriage. It has further come in evidence that when the prosecutrix became pregnant the accused stopped visiting her house. She has further stated that after the incident was disclosed by her the accused was called before the Panchayat. B
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5. The trial court after appreciating the entire evidence including the evidence of the Doctor and the persons who attended the Panchayat and the medical reports, recorded a finding and held that the prosecution was able to prove the guilt of the accused-appellant. Accordingly, the accused was convicted under Section 376 IPC and was sentenced to 7 years rigorous imprisonment. E

6. As against the judgment of the trial court, the appellant filed an appeal before the High Court being Criminal Appeal No.2554 of 1997. The High Court examined the facts and re-appreciated the entire evidence adduced from the side of the prosecution and recorded an independent finding and affirmed the judgment of conviction passed by the trial court. F

7. We have heard learned counsel for the appellant and the respondent State. We have also meticulously examined the finding recorded by the two courts on the basis of the evidence brought on record by the prosecution side. After giving our anxious consideration to the matter we are of the definite view that the prosecution has been G

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A able to prove the guilt of the appellant beyond all reasonable doubt. We, therefore, do not find any infirmity or illegality in the judgment passed by the two courts. Hence, the judgment of conviction must sustain in law.

8. Now the question that arises for consideration is as to whether in the facts and circumstances of the case the prosecutrix is entitled to victim compensation and, if so, to what extent? During the course of hearing, this Court by order dated 01.07.2015 directed the learned counsel appearing for the respondent-State to file a copy of the Victim Compensation Scheme applicable in the State of Chhattisgarh and to inquire about the financial status of the victim, her brothers and also of the accused-appellant. Pursuant to the aforesaid order, learned counsel for the State has filed an additional affidavit giving details of the inquiries made to ascertain the financial status of the victim and the accused and also has placed on record a copy of Notification/ Compensation Scheme.

9. From the inquiry, it reveals that the victim (now aged about 37 years) lives alone in Village Nandini Kundini, District-Durg, Chhattisgarh. She is unmarried and lives in a *kuccha* house. She has two brothers who lives separately from her. One of the brothers Ishwari Sahu lives in a different village Dhour (distance 12 kms from Nandini Kundini). Another brother Baldau Sahu lives in district Bhila (distance 22 kms from Nandini Kundini) and works as a daily-labourer. She receives a pension of Rs.300/- per month from the State being a person with disability. She is also a BPL card holder which entitles her 35kg rice per month at the rate of Rs.1/- per kg. and free salt. The financial status of victim's brothers is also not good.

10. It further reveals from the inquiry regarding financial status of the accused that the accused lives in the same village i.e. Nandini Kundini where the victim lives. He is married and has four children. Mother of the accused also lives with him. He has inherited about 2 acres of land being ancestral property which is also the source of his livelihood. Further, the wife of the accused is a blue card holder which entitles the family to receive 35 kg. rice per month at the rate of Rs.2/- per kg. The accused lives in a *pucca* house.

11. Learned counsel for the State submitted that the State of Chhattisgarh has notified Victim Compensation Scheme under Section 357-A, Cr.P.C for providing fund for the purpose of compensation to the victim or his dependents who has have suffered loss or injury as a result

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of crime and who require rehabilitation. Relevant part of the Schedule appended to the aforesaid notification is extracted herein for easy reference, A

SCHEDULE

S.No.	Details of Loss or Injury	Maximum Limit of Compensation
4.	Rape of Minor	50,000/-
5.	Rape	25,000/-
6.	Rehabilitation	20,000/-

12. Before dealing with the present matter it is pertinent to mention briefly the amount payable to the rape victim and for rehabilitation under Victim Compensation Schemes notified by the other State Governments and Union Territories under Section 357A of the Cr.P.C., 1973. D

Sr.no.	State/ UT	Details of Loss or Injury	Maximum Limit of Compensation(Rs.)
1.	Arunachal Pradesh	Rape	50,000/-
		Rehabilitation	20,000/-
2.	Assam	Rape	75,000/-
		Rape of Minor/Gang Rape	1,00,000/-
3.	Bihar	Rape	50,000/-
4.	Delhi	Rape	3,00,000/-
		Rehabilitation	20,000/-
5.	Goa	In case of injury causing, severe mental agony to women and child (eg. Rape cases etc.)	10,00,000/- (Ten Lakh)

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	6.	Gujarat	Rape	1,00,000/-
			Rehabilitation	50,000/-
B	7.	Haryana	Rape	3,00,000/-
			Medical expenses on account of injury	15,000/-
C	8.	Himachal Pradesh	Rape	50,000/-
			9.	Jammu & Kashmir
D	10.	Karnataka	Rape	50,000/-
			Rape of minor	3,00,000/-
E	11.	Kerala (50 % extra if the victim is 14 years or less)	Rape other than minor	1,50,000/-
			Rape	3,00,000/-
F	12.	Maharashtra	Rehabilitation	1,00,000/-
			No amount for the offence of rape	Nil
G	13.	Manipur	Rape of Minor	30,000/-
			Rape	20,000/-
			Rehabilitation	20,000/-
H	14.	Nagaland	Rape of Minor	1,00,000/-
			Rape	50,000/-
			Rehabilitation	50,000/-

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15.	Odisha	Loss or injury causing severe mental agony to women and child victims in case like Human Trafficking	10,000/-
16.	Rajasthan	Rape of Minor	3,00,000/-
		Rape	2,00,000/-
		Rehabilitation	1,00,000/-
17.	Sikkim	Rape	50,000/-
		Rehabilitation	30,000/-
18.	Tripura	Rape	50,000/- of which Rs.5,000/- shall be paid after preliminary verification of the complaint and the balance amount shall be sanctioned on the filling of charge sheet.
19.	Uttar Pradesh	Rape	2,00,000/-
20.	Uttarakhand	Rape of Minor	2,50,000/-
		Rape	2,00,000/-
		Rehabilitation in case of rape victim	1,00,000/-
21.	West Bengal	Rape of Minor	30,000/-
		Rape	20,000/-
		Rehabilitation	20,000/-
22.	UT of Chandigarh	Rape	3,00,000/-
		Rehabilitation	20,000/-

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23.	UT of Dadar and Nagar Haveli	Rape	3,00,000/-
		Rehabilitation	20,000/-
24.	UT of Daman	Rape	3,00,000/-
		Rehabilitation	20,000/-
25.	UT of Puducherry	Rape	3,00,000/-
		Rehabilitation	20,000/-

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13. Perusal of the aforesaid victim compensation schemes of different States and the Union Territories, it is clear that no uniform practice is being followed in providing compensation to the rape victim for the offence and for her rehabilitation. This practice of giving different amount ranging from Rs.20,000/- to Rs.10,00,000/- as compensation for the offence of rape under section 357A needs to be introspected by all the States and the Union Territories. They should consider and formulate a uniform scheme specially for the rape victims in the light of the scheme framed in the State of Goa which has decided to give compensation up to Rs.10,00,000/-.

14. While going through different schemes for relief and rehabilitation of victims of rape, we have also come across one Scheme made by the National Commission of Women (NCW) on the direction of this court in *Delhi Domestic Working Women's Forum vs. Union of India and Ors.* [Writ Petition (Crl) No. 362/93], whereby this Court *inter alia* had directed the National Commission for Women to evolve a "scheme" so as to wipe out the tears of unfortunate victims of rape. This scheme has been revised by the NCW on 15th April 2010. The application under this scheme will be in addition to any application that may be made under Section 357, 357A of the Code of Criminal Procedure as provided in paragraph 22 of the Scheme. Under this scheme maximum of Rs.3,00,000/- (Three lakhs) can be given to the victim of the rape for relief and rehabilitation in special cases like the present case where the offence is against an handicapped woman who required specialized treatment and care.

15. Coming to the present case in hand, victim being physically disadvantaged, she was already in a socially disadvantaged position which was exploited maliciously by the accused for his own ill intentions to commit fraud upon her and rape her in the garb of promised marriage which has put the victim in a doubly disadvantaged situation and after the waiting of many years it has worsened. It would not be possible for the victim to approach the National Commission for Women and follow up for relief and rehabilitation. Accordingly the victim, who has already suffered a lot since the day of the crime till now, needs a special rehabilitation scheme. A
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16. Mr. Atul Jha, learned counsel appearing for the Respondent-State, on instructions received from the Superintendent of Police, District Durg, submitted that for the rehabilitation of the victim the Home Secretary, Department of Home has taken decision to keep the victim in Nari Niketan, to provide her food, clothes and shelter and the monthly pension of Rs.300/- throughout her life. For the said rehabilitation programme, the State has to incur about Rs.8,000/- to Rs.10,000/- per month. C
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17. Indisputably, no amount of money can restore the dignity and confidence that the accused took away from the victim. No amount of money can erase the trauma and grief the victim suffers. This aid can be crucial with aftermath of crime. E

18. The victim, being in a vulnerable position and who is not being taken care of by anyone and having no family to support her either emotionally or economically, we are not ordering the respondent-State to give her any lump sum amount as compensation for rehabilitation as she is not in a position to keep and manage the lump sum amount. From the records, it is evident that no one is taking care of her and she is living alone in her Village. Accordingly, we in the special facts of this case are directing the respondent-State to pay Rs.8,000/- per month till her life time, treating the same to be an interest fetched on a fixed deposit of Rs.10,00,000/-. By this, the State will not be required to pay any lump sum amount to the victim and this will also be in the interest of the victim. F
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19. In the result, we dismiss the appeal having no merit and issue the following directions:-

1) All the States and Union Territories shall make all endeavour to H

- A formulate a uniform scheme for providing victim compensation in respect of rape/sexual exploitation with the physically handicapped women as required under the law taking into consideration the scheme framed by the State of Goa for rape victim compensation;
- B 2) So far as this case is concerned, the respondent-State shall pay a sum of Rs.8,000/- per month as victim compensation to the victim who is physically handicapped, i.e. blind, till her life time.

Devika Gujral

Appeal dismissed.