

A THE STATE OF MADHYA PRADESH

v.

RAJARAM @ RAJA

(Criminal Appeal No. 637 of 2016)

B OCTOBER 24, 2018

[N. V. RAMANA AND

MOHAN M. SHANTANAGOUDAR, JJ.]

Appeal: Appeal against acquittal – Scope of interference – Prosecution case was that the respondent committed rape on the victim-deceased due to which she was under depression and committed suicide by consuming poison – Conviction of respondent under ss.376(1) and 306 IPC – High Court allowed the appeal filed by respondent and set aside his conviction – Appeal by State challenging acquittal relying on the evidence of 12 year old sister of the deceased and her father – Held: PW-4, sister of the deceased who is 12 years of age, categorically stated in her cross-examination that she was threatened by the police and due to that, she had made a statement in support of the prosecution case – The uncorroborated evidence of 12 year old girl is likely to have been tutored or under influence while giving her testimony and, therefore, cannot be relied upon – The evidence of PW-3-father of deceased is also not credible – PW-3 who lodged Merg intimation on the day of incident had stated therein that he had scolded her daughter i.e. the deceased and resultantly she took poisonous substance – There was no mention in the Merg Intimation that the deceased told her father about the commission of rape by respondent and that as a result deceased committed suicide due to depression or self-torment – No case made out for interference with the order of High Court – Penal Code, 1860 – ss.376(1) and 306.

Dismissing the appeal, the Court

HELD: 1. PW-4, sister of the deceased who is stated to be 12 years of age, categorically stated in her cross-examination that on the next day of incident, when the police came, she did not tell anything about the incident to the police. Subsequently, after a week, police came again and at the instance of police, she

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made a statement. She also admitted that she was threatened by the police and due to that, she has made a statement in support of the prosecution case. [Para 10][297-E] A

2. Another evidence relied upon by the appellant was that PW-3, father of the deceased who lodged Merg intimation on the same day of incident in which *inter alia* he stated that he scolded her daughter i.e. the deceased and resultantly she took poisonous substance. There is no mention in the *Merg Intimation* that the deceased told PW-3 about commission of rape by respondent and as a result deceased committed suicide due to depression or self-torment, after being raped by respondent. In view of this the evidence of PW-3 is not reliable at all. In the instant case, except the evidence of PW-3 and PW-4, there was no other material or medical evidence to support or substantiate the case of prosecution. In a case of acquittal by the High Court, the State has to make out a strong case to interfere with the impugned order. Until and unless, there is some perversity or non-consideration of the material facts, it is not proper to interfere with the order of acquittal passed by the High Court. [Paras 11, 12][297-G-H; 298-A-B] B C D

Bhagwan Singh and Others v. State of M.P. (2003) 3 SCC 21 : [2003] 1 SCR 506 ; State of Kerala & Anr. v. C.P. Rao (2011) 6 SCC 450 : [2011] 6 SCR 864 ; State of U.P. v. Punni & Ors. (2008) 11 SCC 153 : [2008] 1 SCR 85 ; State of Punjab v. Ajaib Singh (1995) 2 SCC 486 : [1995] 1 SCR 496 – relied on. E

Case Law Reference F

[2003] 1 SCR 506	relied on	Para 10	
[2011] 6 SCR 864	relied on	Para 12	
[2008] 1 SCR 85	relied on	Para 13	
[1995] 1 SCR 496	relied on	Para 14	G

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 637 of 2016.

From the Judgment and Order dated 12.01.2009 of the High Court of Madhya Pradesh at Jabalpur in Criminal Appeal No. 923 of 2005.

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A Ms. Swarupama Chaturvedi, B. N. Dubey, Mukesh, Adv. for the Appellant.

Ms. Nidhi, Adv. for the Respondent.

The Judgment of the Court was delivered by

B **N. V. RAMANA, J.**

C 1. This criminal appeal is preferred by the Appellant-State of Madhya Pradesh by special leave against the impugned order dated 12.01.2009 passed by the High Court of Madhya Pradesh, Bench at Jabalpur in Criminal Appeal No. 923 of 2005, wherein, High Court allowed the appeal preferred by respondent herein and set aside the order of conviction & sentence passed by the trial court on 05.04.2005 under Sections 376(1) and 306 of the Indian Penal Code.

D 2. The factual matrix as advanced by the prosecution, necessary for disposal of this case is that on 13.04.2004, at around 6.00 P.M., Rinky @ Inky (hereinafter referred as 'deceased') started vomiting. The deceased was taken to Dr. Tripathi's dispensary, but he was not available therein. Therefore, deceased was taken to the quarter of Dr. Tripathi. After being examined by Dr. Tripathi, deceased was declared dead.

E 3. On the basis of Merg intimation/information of death of the deceased (Ex. P/3) by Dinesh Prasad Kushwaha (PW-3), father of the deceased, Merg No. 25/04 was registered by J.B. Singh Chandel (PW-9). The post mortem of deceased was conducted by Dr. S.D. Kanwar (PW-6).

F 4. Thereafter, on Merg Inquiry, it was found that respondent herein committed rape on the deceased, who under depression, committed suicide by consuming poisonous substance. On this basis, K.N. Banjare (PW-7) registered Crime No. 181/04 for the offence punishable under Sections 376 and 305 of IPC at Police Station, Jaisingh Nagar and the case was investigated. Respondent was apprehended in the crime and he was arrested accordingly. Thereafter, medical examinations were conducted by Dr. Piyush Nigam (PW-1) and other investigations by K.N. Banjare (PW-7) took place. On completion of investigation, charge sheet was filed against the respondent and the case was committed to Sessions Court for trial.

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5. Learned Additional Sessions Judge, in Sessions Trial No. 173 of 2004, vide order dated 05.04.2005, convicted the respondent under Sections 376(1) and 306 of I.P.C. and sentenced him to undergo 10 year Rigorous Imprisonment and imposed fine of Rs. 500/-, and in default, three months Simple Imprisonment in both the counts. Further, each of the sentence(s) was ordered to run concurrently. A

6. Being aggrieved by the order of conviction and sentence, respondent approached the High Court in appeal and the High Court vide impugned order dated 12.01.2009, allowed the appeal and set aside the conviction and sentence imposed on respondent by the Trial Court. B

7. Heard Ms. Swarupama Chaturvedi, learned counsel for the appellant and Ms. Nidhi, learned counsel for the respondent. C

8. Learned counsel for appellant i.e. State of Madhya Pradesh mainly relied upon the evidence of Anju Kumari (PW-4), sister of the deceased and Dinesh Prasad Kushwaha (PW-3), father of the deceased.

9. We have thoroughly examined the evidence of abovementioned witnesses and also the evidence of Dr. Piyush Nigam (PW-1) and Dr. S.D. Kanwar (PW-6). D

10. Anju Kumari (PW-4), who is stated to be 12 years of age, categorically stated in Para 12 of her cross-examination that on the next day of incident, when the police came, she did not tell anything about the incident to the police. Subsequently, after a week, police came again and at the instance of police, she made a statement. She also admitted that she was threatened by the police and due to that, she has made a statement in support of the prosecution case. It has been held in ***Bhagwan Singh and Others vs. State of M.P.*** (2003) 3 SCC 21, that 'if the case is based on evidence of child witness, court should seek corroboration from other evidence'. Further, it was also held that 'if possibility of tutoring the child witness appears to the court, it should be careful in accepting the evidence'. Therefore, it is difficult for this court to rely on uncorroborated testimony/evidence of a 12 year old girl, who is very likely to have been tutored or under influence while giving her testimony. E
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11. Another evidence relied upon by the appellant is that of Dinesh Prasad Kushwaha (PW-3), who lodged Merg intimation (Ex. P/3) on the same day of incident i.e. 13.04.2004 at about 4.00 P.M., in which *inter alia* he stated that he scolded her daughter i.e. the deceased and H

A resultantly she took poisonous substance. It is also worthwhile to note here that there is no mention in the *Merg Intimation* that the deceased told PW-3 about commission of rape by respondent and as a result deceased committed suicide due to depression or self-torment, after being raped by respondent. In view of the above, we are of the considered opinion that the evidence of PW-3 is not reliable at all.

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12. In the instant case, except the evidence of PW-3 and PW-4, there is no other material or medical evidence to support or substantiate the case of prosecution. In a case of acquittal by the High Court, the State has to make out a strong case to interfere with the impugned order. Until and unless, there is some perversity or non-consideration of the material facts, it is not proper to interfere with the order of acquittal passed by the High Court. Similar view was taken by this Court in the case of *State of Kerala & Anr. vs. C.P. Rao* (2011) 6 SCC 450.

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13. Similarly, in the case of '*State of U.P. vs. Punni & Ors.*' (2008) 11 SCC 153, it was held that-

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"11. In any view of the matter, we are of the view that **this Court, while dealing with the order of acquittal of the High Court, would not ordinarily interfere with the findings of the High Court unless it is satisfied that such finding is vitiated by some glaring infirmity in the appraisalment of evidence or such finding was perverse or arbitrary.**"

(emphasis supplied)

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14. In *State of Punjab vs. Ajaib Singh* (1995) 2 SCC 486, this Court, on the same lines, held that "*if the order of acquittal was not perverse or palpably erroneous, this Court would not interfere with such finding of the High Court acquitting the accused/respondents from the offences charged against them*".

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15. In the light of above-stated findings, reasons and discussions, we find no merits in this appeal to interfere with the impugned order passed by the High Court. Accordingly, the instant appeal is dismissed being devoid of merits.