A STATE OF RAJASTHAN

v.

MUNSHI

OCTOBER 12, 2007

B **[S.B. SINHA AND HARJIT SINGH BEDI, JJ.]**

Penal Code, 1860; Section 376:

Rape of a minor girl—F.I.R.—Investigation—Trial Court found
C *accused guilty of committing the offence punishable u/s. 376 IPC and sentenced him to ten years rigorous imprisonment—Reversed by High Court—On appeal, Held: High Court erred in re-appreciating evidence—Evidence of prosecutrix corroborated by evidence of PW4—Ocular evidence further corroborated from the articles seized*
D *by the Investigating Officer—Which also proves commission of rape and also place of incident—Medical report suggests that the prosecutrix had been subjected to intercourse against her will—Hence, judgment of the trial Court restored but sentence is reduced from ten years rigorous imprisonment to seven years rigorous imprisonment—*
E *Sentencing.*

On the fateful day, the respondent caught the prosecutrix, PW5, when she went to fetch the water from a well outside the village, and raped her. On reaching home, the victim narrated the incident to her mother, PW3 and father, PW2. Father of the victim lodged a report
F **with the Police. The medical examination conducted by PW1, the Medical Officer revealed that there were multiple injuries on the body of the prosecutrix with blood oozing out from her vagina and swelling and rupturing of her hymen. The radiological examination to determine her age indicated that she was above 17 years of age.**
G **Police, after completing the investigation, submitted the report. The trial Court relying on the evidence of prosecution witnesses and taking into consideration that the torn underwear of the victim had been picked up by the Police from the spot, found the accused guilty of committing the offence punishable u/s. 376 IPC and ordered him**

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to undergo rigorous imprisonment for 10 years. The appeal filed by the accused against the order of the trial Court was allowed by the High Court. Hence, the present appeal. A

It was contended for the accused-appellant that the facts of this case revealed that the sexual intercourse had been consensual in nature. B

Allowing the appeal, the Court

HELD: 1.1. This Court is aware of the self imposed limitation which the court must apply while examining the evidence in an appeal against acquittal and if the High Court has given cogent reasons in making its order, interference is not called for. However, in the instant case, High Court has grossly erred in assessing the evidence and the findings recorded are not only wrong but also based on a complete misreading of the evidence. Hence, this Court has chosen to re-evaluate the evidence. [Para 3] [285-F] C D

1.2. It will be seen that the primary evidence is that of PW5, the prosecutrix herself. She unequivocally stated that she had gone to the well outside the village when she was picked up by the respondent, who had taken her into the bajra field where he raped her. She also stated that she had been unable to raise an alarm at the time when the rape was being committed but she had raised the alarm as soon as she was able to do so and that her cries had attracted her grand mother PW4 and another person, PW6 and they too had come to the place of incident and seen the assailant running away. This story is corroborated by the evidence of PW-4 as well. It has also come in the evidence that after the victim returned home she told her parents about what had transpired, on which the First Information Report had been lodged without delay and she had also been sent for her medical examination, which too indicated fresh marks and indications of sexual intercourse which had occurred within 24 hours. It is found that the ocular evidence is further corroborated by the fact that the police officer had picked up a torn piece of underwear from the site which matched the underwear that the victim had been wearing. This recovery when read with the evidence that the bajra field had been trampled upon clearly proves E F G H

A **not only the factum of rape but also the place of incident.**

[Para 4] [285-G; 286-A-D]

1.3. The fact that the hymen was freshly ruptured and the vagina could take only one finger with difficulty shows that the victim was not habituated to sexual intercourse and had been subjected to
B **intercourse against her will more particularly as in a case of consent her underwear would not have been found to have been torn. Hence, judgment of the trial Court is restored. But, the sentence awarded by the trial court is reduced from 10 years R.I. to 7 years R.I, the other part of the sentence shall remain as it is.**

C **[Paras 5 and 6] [286-E, F, G]**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 928 of 2001.

From the Judgment and final Order dated 17.5.1999 of the High
D Court of Judicature for Rajasthan at Jaipur in S.B. Crl. Appeal No. 72 of 1996.

Navin Singh (for Aruneshwar Gupta, AAG) for the Appellant.

K.L. Janjani and Pankaj Kumar Singh for the Respondent.

The Judgment of the Court was delivered by

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HARJIT SINGH BEDI, J. 1. This appeal by way of special leave arises out of the following facts:

2. Munshi, the respondent herein was charged, convicted and sentenced for an offence punishable under section 376 of the Indian Penal
F Code by the Additional Sessions Judge, Karoli and ordered to undergo rigorous imprisonment for 10 years and to a fine of Rs.1000/- on the allegation that he had, on 18th September 1994, caught hold of PW5 Raj Kumari when she had gone to the well outside the village at 3 p.m. to bring water and had thereafter raped her. Raj Kumari on reaching home
G narrated the incident to her mother PW3 Sharda and father PW2 Ramesh on which a report was lodged with the Police by the latter at 6.30 p.m. on the same day. PW13 S.I. Kamlesh Kumar Sharma then visited the place of occurrence and observed that the Bajra crop had been trampled upon at the site where the rape had been committed and also retrieved
H some pieces of Rajkumari's torn underwear. A medical examination

conducted by PW1 Dr. Nand Lal Sharma revealed multiple injuries on her body with oozing of blood from her vagina and swelling and rupturing of her hymen. The radiological examination to determine her age indicated that she was above 17 years but below 19 years of age. The trial court in its judgment dated 5th September 1995 observed that the prosecution story rested on the evidence of Rajkumari herself and the statements of Swarupi PW4 her grand mother (as Umesh PW6 had been declared hostile) who had been attracted to the place of incident when she had shouted for help and had also seen the accused running away after having committed the assault. It was also observed that the aforesaid evidence had been corroborated by the statements of Ramesh PW2 the first informant and PW3 Sharda who deposed that Rajmukari had returned home with bruise and scratch marks all over and had narrated the entire story. The court relying on the aforesaid evidence and the circumstance that the torn underwear had been picked up from the spot, convicted the accused. The High Court however in appeal set aside the conviction by holding that Rajkumari's story appeared to be unnatural more particularly as it would have been difficult for her to have been raped at 3 p.m. in the vicinity of the village. It also observed that the statement of PW4 could not be believed. The court also held that the prosecution story that the torn underwear which had been picked up by the police at the time of site inspection was also not believable as the statement of PW13 K.K. Sharma was discrepant *vis-a-vis* the statement of Rajkumari on this aspect. The present appeal at the instance of the State of Rajasthan is before us in these circumstances.

3. We are aware of the self imposed limitation which the court must apply while examining the evidence in an appeal against acquittal and if the High Court has given cogent reasons in making its order, interference is not called for. We find, however, that High Court has grossly erred in assessing the evidence and that the findings recorded are not only wrong but based on a complete misreading of the evidence. We have accordingly chosen to re-evaluate the evidence ourselves.

4. It will be seen that the primary evidence is that of PW5 Raj Kumari, the prosecutrix herself. She unequivocally stated that she had gone to the well outside the village at about 3.30 p.m. and had been set upon by the respondent, carried into the bajra field where her clothes had

been ripped away, and then raped. She also stated that she had been unable to raise an alarm at the time when the rape was being committed but she had called out as soon as she was able to do so and that her cries had attracted her grand mother PW4 and Umesh PW6 and they too had come to the place of incident and seen the assailant running away. This story is corroborated by the evidence of PW-4 as well. It has also come in the evidence that after Rajkumari returned home she told her parents about what had transpired on which the First Information Report had been lodged without delay and she had also been sent for her medical examination at 11 a.m. on 19th September 1994 which too indicated fresh marks and indications of sexual intercourse which had occurred within 24 hours. We find that the ocular evidence is further corroborated by the fact that the police officer had picked up (vide seizure Memo EX.P-7) a torn piece of underwear from the site which matched the underwear that Rajkumari had been wearing. This recovery when read with the evidence that the bajra field had been trampled upon clearly proves not only the factor of rape but also the place of incident.

5. Faced with this situation, the learned counsel for the respondent accused has argued that the facts of this case revealed that the sexual intercourse had been consensual in nature. We are of the opinion, however, that this submission is not borne out from the circumstances that are before us. The fact that the hymen was freshly ruptured and the vagina could take only one finger with difficulty shows that Raj Kumari was not habituated to sexual intercourse and had been subjected to intercourse against her will more particularly as in a case of consent her underwear would not have been found to have been torn. We are therefore of the opinion that the judgment of the learned Additional Sessions Judge needs to be restored. We accordingly set aside the acquittal.

6. The learned counsel for the accused has finally pointed out that the incident had occurred way back in 1994 and some mitigation therefore in the quantum of sentence was called for especially as the High Court had found that no case had been made out against the accused. We accordingly reduce the sentence awarded by the trial court from 10 years R.I. to 7 years R.I, the other part of the sentence shall remain as it is.

7. The appeal is allowed to the above extent.

S.K.S. Appeal allowed.