



NON-REPORTABLE

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 325 OF 2011**

LOK MAL @ LOKU

Appellant(s).....

VERSUS

THE STATE OF UTTAR PRADESH

Respondent(s).....

J U D G M E N T

PRASANNA B. VARALE, J.

1. The present criminal appeal arises out of a judgement and order dated 22nd July 2010 passed by High Court of Judicature at Allahabad, Lucknow Bench in Crl. Appeal No. 496 of 1986. By the impugned judgment and order, the conviction which was rendered by the trial court under Section 376, 323 Indian Penal Code, 1860

(hereinafter being referred to as 'IPC') was affirmed by the High Court and a sentence of 5 years rigorous imprisonment under Section 376 IPC and 6 months rigorous imprisonment under Section 323 IPC imposed by the trial court was confirmed.

BRIEF FACTS

2. The factual matrix of the case is that on 19.03.1984 at 9.30 A.M, the prosecutrix went to take tuition classes for the girls at the house of the accused. It was stated that out of the two girls. One went to the bathroom and the other was sent by the accused for bringing water. It was further stated that when she was engaged in the work on the first floor of the house, the accused entered the room and latched the door from inside and forced her on the bed. The prosecutrix tried to raise an alarm but her mouth was gagged with a piece of cloth. The accused then removed her salwar to make her naked. It was further stated that she tried to resist and run away from the accused, but he held her by force and committed rape on her. In the meantime, the girls reached there, and they knocked at the door which was not opened. The accused threatened the prosecutrix that if she raises a hue and cry about the incident, he will kill her. The grandmother of the girls eventually came to the rescue and brought the prosecutrix on the ground floor. Due to the

outcry of the prosecutrix, the local people had gathered at the place of the incident. She was taken to her own house by uncle Nand Kishore and she narrated the entire incident to her mother and uncle. When the family members attempted to lodge the report, the inhabitants of the mahalla and family members of the accused threatened them with dire consequences if they tried to intimate the incident to the police. Subsequently, a written report was submitted at the police station by the prosecutrix, and a case was registered under Section 376, 323, 504 and 506 of IPC. After the investigation, a charge sheet was submitted against the accused in the court. The case was committed to the Court of sessions by the learned Magistrate and charges were framed under Section 376,323 506 of IPC.

3. The accused pleaded not guilty and claimed to be tried before the court of law. The prosecutrix was examined as PW1, PW2 Smt. Dada Bai was the mother of the accused. PW3 Kumari Sangeeta was the niece of the accused, PW4 was Dr. Daya Chaturvedi, PW5 was head constable Kishan Niwas Tiwari. PW6 was a person named Chhote Lala Choudhary. PW 7 was the Investigating Officer of the case. PW8 Smt. Asha Devi was the head constable of the police station concerned.

4. Statement of the accused under Section 313 of Criminal Procedure Code, 1973 (hereinafter being referred to as 'CrPC') was recorded. The accused had denied the prosecution case and claimed that he was falsely implicated due to the enmity with the prosecutrix. The Trial Court vide its judgement and order dated 13.08.1986 convicted the accused under Sections 376, 323 IPC and awarded imprisonment for a term of 5 years.

5. On appreciation of evidence of record, the High Court vide its judgement dated 22.03.2010 confirmed the conviction rendered by the Trial Court under Section 376 and Section 323 IPC, while acquitting him under Section 506 IPC.

6. Aggrieved by the said Judgement of the High Court, the appellant is before us.

CONTENTIONS

7. The counsel for the appellant vehemently submitted that there is absolutely no evidence against the appellant. It is submitted that oral evidence is in the form of interested witnesses and as such Trial Court as well as the High Court erred in recording the conviction and awarding sentence to the appellant on such unacceptable evidence. The learned counsel for the appellant also submitted that it is a case

of false implication and that the mother of the prosecutrix has a doubtful character. The Ld. counsel for the appellant submitted that the medical evidence on record does not corroborate with the version of the prosecutrix as there is no injury found in the private parts. Hence, the conviction ought not have been rendered in the present case. Ld. counsel further submitted the sole testimony of PW1 prosecutrix was not trustworthy to sustain a conviction.

8. On the other hand, Ld. counsel for the State of UP argued that the judgement argued that the judgement passed by the High Court is a very well-reasoned judgement. The High Court has rightly convicted the accused persons on appreciation of evidence and the appeal of the appellant needs to be set aside.

ANALYSIS

9. We have heard the arguments from both sides and perused other relevant documents as also the judgment passed by the High Court.

10. Though learned counsel for the appellant, submitted before this Court that the oral evidence is unacceptable being the testimony of interested witnesses, we are unable to accept the submissions of the learned counsel for the simple reason that the evidence of the

prosecutrix is wholly trustworthy, unshaken and inspires confidence. Admittedly, the prosecutrix was a major girl studying in first part of B.A. at the time of the incident. Though she was subjected to detailed cross examination, she stood firm and unshaken disclosing the incident in detail regarding the presence and participation of the accused in ravishing her.

11. Merely because in the medical evidence, there are no major injury marks, this cannot be a reason to discard the otherwise reliable evidence of the prosecutrix. It is not necessary that in each and every case where rape is alleged there has to be an injury to the private parts of the victim and it depends on the facts and circumstances of a particular case. We reiterate that absence of injuries on the private parts of the victim is not always fatal to the case of the prosecution. According to the version of the prosecutrix, the accused overpowered her and pushed her to bed in spite of her resistance and gagged her mouth using a piece of cloth. Thus, considering this very aspect, it is possible that there were no major injury marks. The appellant made an attempt to raise the defence of false implication, however, he was unable to support his defence by any cogent evidence. Ld. counsel for the appellant further submitted that there is an inordinate delay in lodging complaint and registering

FIR. However, considering the evidence on record, we are of the opinion that the said delay in lodging of the complaint and registering FIR has been sufficiently explained and is not fatal to the case of the prosecution.

12. In the present case, the prosecutrix was continuously threatened by the appellant that she will face his wrath if she creates a commotion. The prosecutrix was hence forced to submit to the lust of the appellant and was left with no other alternative than to submit to the evil wish of the appellant.

13. It is a settled principle of criminal jurisprudence that the evidence of a prosecutrix in a case of rape is of the same value as that of an injured witness and conviction can be made on the basis of the sole testimony of the prosecutrix. In the case of ***State of Punjab v. Gurmit Singh***¹, the Supreme Court observed as under:

“**21**... The courts should examine the broader probabilities of a case and not get swayed by minor contradictions or insignificant discrepancies in the statement of the prosecutrix, which are not of a fatal nature, to throw out an otherwise reliable prosecution case. If evidence of the prosecutrix inspires confidence, it must be relied upon without seeking corroboration of her statement in material particulars. If for some reason the court finds it difficult to place implicit reliance on her testimony, it may look for evidence which may lend assurance to her testimony, short of corroboration required in the case of an accomplice. The testimony of the prosecutrix must be appreciated in the background of the entire case

¹ (1996) 2 SCC 384

and the trial court must be alive to its responsibility and be sensitive while dealing with cases involving sexual molestations.”

14. A profitable reference can also be made to the case of ***Bharwada Bhoginbhai Hirjibhai v. State of Gujarat***² where the Supreme Court observed as under:

“9..In the Indian setting, refusal to act on the testimony of a victim of sexual assault in the absence of corroboration as a rule, is adding insult to injury. Why should the evidence of the girl or the woman who complains of rape or sexual molestation be viewed with the aid of spectacles fitted with lenses tinged with doubt, disbelief or suspicion?”

15. Applying the above said principle of law to the facts of the present case, we are of the opinion that the testimony of the prosecutrix is trustworthy and leaves no shadow of doubt to discredit her case. Moreover, the appellant has failed to cause a dent in the testimony of the prosecutrix.

16. Merely by alleging that mother of the prosecutrix was a lady of easy virtue or her husband left her, there is absolutely no supportive material brought by the appellant in his defence so as to explain why he was implicated. The court is separately required to adjudicate whether the accused committed rape on the victim or not. We find

²(1983) 3 SCC 217

no reason to accept the contention that the alleged immoral character of the mother of the prosecutrix has any bearing on the accused being falsely roped in on the basis of a concocted story by the mother of the prosecutrix. The question of conviction of the accused for rape of the prosecutrix is independent and distinct. It has absolutely no connection with the character of the mother of the prosecutrix and seems to be a dire attempt at using it as a license to discredit the testimony of the prosecutrix. We find no merit in these contentions.

17. Guided by law as aforesaid and applying it to the facts and circumstances of the present case, we find no reason to interfere with the judgment of the High Court which is hereby affirmed. The appeal is dismissed accordingly.

18. Considering that the incident is of the year 1984 and the impugned judgment of the High Court was of 2010, we deem it fit to direct the competent authority to consider and decide the case of the accused for the purpose of remission strictly in accordance with applicable state policy, within a period of four weeks from this judgment.

19. Pending application(s), if any, be disposed of accordingly.

.....**J.**
[SANDEEP MEHTA]

.....**J.**
[PRASANNA B. VARALE]

NEW DELHI;
MARCH 7, 2025.