



HIGH COURT OF JUDICATURE AT ALLAHABAD
CRIMINAL APPEAL No. - 1246 of 1983

Rakesh

.....Appellant(s)

Versus

State

.....Respondent(s)

Counsel for Appellant(s)	: Imran Syed, D.n.wali
Counsel for Respondent(s)	: A.G.A.

Court No. - 69

Reserved On 29.4.2026
Delivered On 23.6.2026

HON'BLE SANTOSH RAI, J.

1. Heard Sri Imran Syed, learned counsel for the appellant; Sri Purushottam Maurya, learned AGA for State and perused the material on record.
2. This criminal appeal is preferred under Section 374 of Cr.P.C., by the accused appellant Rakesh to set aside the judgment and order dated 23.5.1983, passed by the IV Additional Sessions Judge, Allahabad in Sessions Trial No.245 of 1982 (State of U.P. Vs. Prakash @ Om Prakash & Anr.), arising out of Case Crime No.39 of 1982, under Section 376 IPC, Police Station–Cantt, District–Allahabad, whereby the appellant has been sentenced to three years rigorous imprisonment under Section 376 IPC.

3. In this case, the first informant is PW-2, Basdeo, who is the father of the victim. He submitted a written report (Ex.Ka.2) which was scribed by Ramesh Singh. In his report, he stated that on 22.2.1982 when his daughter went to ease herself in Kachhar across Nala at about 9.30 AM, accused persons namely, Rakesh and Prakash, who are the resident of same mohalla Rajapur, caught hold the victim and committed rape with her one by one in the field of Sri Pal. On the basis of this written report, an FIR was registered under Sections 376, 323 IPC as Case Crime No.39 of 1982 at Police Station Cantt, District Allahabad.

4. The investigation started, and statements of witnesses were recorded. After investigation, charge sheet was filed under Sections 376, 323 IPC. The Magistrate took cognizance of the case and committed it to the Court of Sessions, where it was registered as Sessions Trial No.245 of 1982 (State of U.P. vs. Prakash @ Om Prakash & Another), arising out of Case Crime No.39 of 1982, under Section 376 IPC. Charges were framed against the accused persons. They denied the charges and demanded trial.

5. To prove its case, the prosecution produced the following documentary evidence:-

- "1. Injury Report dated 25.1.1983 (Ex.Ka.1)
2. Written Report dated 1.3.1983 (Ex.Ka.2)
3. Chik FIR dated 7.5.1983 (Ex.Ka.3)
4. Duplicate GD dated 7.5.1983 (Ex.Ka.4)
5. Recovery Memo of dhoti and petticoat dated 7.5.1983 (Ex.Ka.5)
6. Site Plan dated 7.5.1983 (Ex.Ka.6)
7. Charge-sheet dated 7.5.1983 (Ex.Ka.7)"

6. Apart from the documentary evidence, the prosecution also presented oral evidence. The witnesses examined, Pushpa Shukla (PW-1), Basdeo (PW-2), Anita (PW-3), Maharaj Singh (PW-4), in support of the prosecution case.

7. P.W.-1 is Dr. Pushpa Shukla, who conducted the medical examination of the victim on 22.2.1982 and found following injuries on the body of the victim:-

"(1) Abrasion of size 1/2"x1/4", one inch above left wrist joint on the inner side swollen and tender.

(2) Abrasion of size 1/4"x1/4 about 6" above the left wrist on the inner side.

(3) A linear scratch of size 4" in length, on the back above the waste line lying obliquely.

(4) Contusions of size 2"x1/4" two in number on the left shoulder lying obliquely situated posteriorly blue in color.

(5) Abrasion of size 1/4"x1/4" situated on the right leg anteriorly lying 6" and 8" below the right knee joint

(6) A surface area of 3"x4" on the front 3" below the left knee joint is swollen and tender.

Hymen was torn. Old tears were present. Vagina was lax. Admitted two fingers easily"

8. Basdeo (P.W.-2) is the informant, who deposed that his daughter told her that on 22.2.1982 when she went to ease herself in Kachhar across Nala at about 9.30 AM, accused persons namely, Rakesh and Prakash, who are the resident of same mohalla Rajapur, caught hold and committed rape with her and when she resisted, they assaulted her. This witness stated that age of her daughter at the time of occurrence of incident was

sixteen years and later he corrected himself to say that her age was fifteen years at that time.

9. P.W.-3 is the victim, who deposed briefly in examination-in-chief that when she went to nature's call at 9.30 AM near nala on the date of occurrence accused persons were present there and first of all accused Rakesh committed rape with her and then accused Prakash followed. When she resisted accused persons assaulted her with blows. She stated her age to be fifteen years at the time of occurrence of the incident.

10. P.W.-4 is S.I. Maharaj Singh, who recorded the statements of witnesses, collected evidence during course of investigation on the basis of sufficiency of evidence submitted charge-sheet before the court and proved the formal police papers/documents.

11. Learned counsel for the appellant submit that accused appellant has not committed rape with the daughter of informant and has been falsely implicated in this case. It is submitted that there are material contradictions in the statement of prosecutrix and other prosecution witnesses. Learned counsel for the appellant without going into the merits of the case, argued only on the point of sentence. It is submitted that the benefit of probation be extended to the appellant. Submission is that even if the Court finds that accused appellant is guilty of offence, he may be released on probation by taking a lenient view since the matter is pending before this Court for about 42 years and the age of the accused appellant is more than 60 years.

12. Per contra, learned AGA submits that the trial court has rightly held the accused appellant guilty and awarded

rigorous sentence of three years in the present case on the basis of reliable evidence available on record. Learned AGA informs that no any appeal or revision has been filed by the State before the Appellate Court for enhancement of punishment.

13. The accused appellant is named in the FIR, wherein it is clearly stated that on 22.2.1982 at 9.30 AM when daughter of complainant Vasdeo went to ease herself on the northern side of nala (canal) kacchar of mohalla rajapur accused appellant alongwith co-accused Prakash came and committed rape with the victim one by one and when the victim raised alarm accused appellant alongwith co-accused assaulted her with blows. On hearing the voice of victim, witness Jagdish reached on the spot and accused appellants ran away from there. The FIR was registered on the next day i.e. 23.2.1982, which indicates that the FIR was promptly lodged by the informant, in this specific circumstances wherein broad and relevant facts as well as role and involvement of accused appellants Rakesh and Prakash has been clearly assigned.

14. The victim has been examined before the court concerned as PW-3, wherein she stated that on 22.2.1982 at 9.30 AM when she went to ease herself on the northern side of nala (canal) kacchar of mohalla rajapur accused appellant alongwith co-accused Prakash came and committed rape with her by penetrating their private parts into her private part one by one and when the victim raised alarm accused appellant alongwith co-accused assaulted her with blows. She further stated that she was fifteen years of age at the time of occurrence of the incident. The site plan i.e. place of occurrence was

prepared on the pointing of victim which is duly proved by the I.O. during the course of investigation. This Court finds no material contradiction in this regard. The victim has stated in her cross-examination that she could not see the path from where the accused appellants Rakesh and Prakash came on the spot but it does not mean that victim was unable to identify the accused appellants. The argument of learned counsel for the appellant that the victim could not identify the accused appellant due to darkness is not impressive to this Court. The victim further stated that on the day of occurrence of the incident when she went to ease herself, the sun rose half an hour after incident occurred and at the time of incident many male and female were engaged in bad work but it does not mean that every male and female were engaged in committing 'rape'. Admittedly, the victim is an illiterate lady and she was about fifteen years of age and she was unable to put her signature on the statement recorded before the court concerned that is why her thumb impression was taken on her statement. The statement of victim cannot be considered on the basis of hyper-technical approach.

15. The statement of victim under Section 164 Cr.P.C. was also recorded in this case, the I.O. has entered gist of the statement of victim recorded under Section 164 Cr.P.C. in the case diary, which is available on record, wherein specific role and involvement of accused appellants Rakesh and Prakash has been clearly mentioned that they have committed rape with the victim by intimidation one by one on the point of knife. In the medical evidence the age of the victim was noted as 18-

19 years and though no school certificate or birth certificate of victim is available in this case but if the victim is minor or major, if someone is committing rape against her will or without her consent it will amount to rape. The victim has stated in her statement that accused appellants have caused injuries to her which is duly corroborated with the medical evidence available on record, wherein six injuries of abrasion, linear scratch, contusion etc are noted. The medical report was prepared on the very same day i.e. on 22.2.1982. As per the medical report the duration of injuries was within 24 hours which corroborates that the accused appellants have caused injuries also during the course of committing rape with the victim.

16. Learned counsel for the appellant submits that in the medical evidence old torn hymen of the victim was noted which indicates that the victim is habitual of making physical relationship with others and on the basis of medical evidence the fact has been proved that accused appellants have not committed rape or gang rape with the victim.

17. The hymen may be torn due to different factors such as sports, cycling, gymnastics, horse-riding, extraneous physical labor or accidental injury etc. Some individuals are born with a perforated or absent hymen, while in some others, it is highly elastic. Thus, if the hymen was old torn, an accused cannot be granted benefit of doubt solely on the aforesaid ground, whereas the statement of victim regarding committing rape is "wholly reliable". Rape is a 'legal term' not 'medical term'. Thus, on the basis of opinion of doctor that hymen was old torn, a

specific finding cannot be drawn that accused appellant has not committed rape with the victim. The offence of rape is normally committed in a secret environment, thus, there is no possibility to be independent eye-witnesses of committing rape. In case of rape, testimony of prosecutrix stands at par with that of a normal witness. It is not really necessary to insist for corroboration if the evidence of the prosecutrix inspires confidence and appears to be credible. An accused can be convicted on the basis of sole testimony of the prosecutrix without any further corroboration provided the evidence of prosecutrix inspires confidence and appears to be natural and truthful. In **Ganga Singh Vs. State of M.P. AIR 2013 SC 3008** the Supreme Court held that where a girl is a victim of offence of rape punishable under Section 376 IPC, it has been held that the victim of rape has to be given the same weight as is given to an injured witness and her evidence needs no corroboration.

18. The argument of learned counsel for the appellant regarding evidence of bad character of victim is also not reliable in the specific facts and circumstances of the case. Admittedly, in this case the victim stated that accused appellants have committed rape with her and they also caused injuries and her statement also corroborates with the medical evidence, wherein six injuries were noted on the body of the victim which also strengthen the statement of victim. Thus, considering all the facts and circumstances of the case, the trial court has rightly held the accused appellants guilty for the offence under Section 376 IPC on the basis of evidence available on record but the trial court has awarded

sentence of only three years rigorous imprisonment under Section 376 IPC. Section 376 Cr.P.C. provides that in case of less than seven years punishment, '*adequate and special reasons*' should be mentioned in the judgment. It is settled position of law that in cases of sexual offences, the imposition of a fine is not merely a discretionary fact but a statutory mandate intended to serve as compensation for victim. The Hon'ble Supreme Court in **State of Punjab Vs. Gurmit Singh & Ors. (1996) 2 SCC 384** and **State of M.P. Vs. Ramesh & Anr. (2011) 4 SCC 786** has emphasized that Courts must strictly adhere to the sentencing provision as the victim's right cannot be disregarded by the omission of mandatory components of the sentence. Furthermore, the object of the legislature in mandating a fine under Section 376 IPC is to ensure that the punitive measures correspond to the gravity of the violation of the victim's bodily integrity.

19. The trial court has committed a grave illegality in the matter of sentencing by not imposing fine while convicting the accused under Section 376 IPC. It is further observed that even the sentence awarded under Section 376 IPC does not appear to be commensurate with the gravity of the offence established on record.

20. The Apex Court in **Employees' State Insurance Corporation vs. A.K. Abdul Samad and Another, (2016) 4 SCC 785** held that:

"9. In our considered view, the clause "shall also be liable to fine", in the context of the Penal Code may be capable of being treated as directory and thus, conferring on the court, a discretion to impose sentence of fine also in addition to imprisonment although such discretion stands somewhat impaired as per the view taken by this Court in Zunjarrao Bhikaji Nagarkar. But clearly no minimum fine is prescribed for the offences under IPC nor that the Act was

enacted with the special purpose of preventing economic offences as was the case in Chern Taong Shangs. The object of creating offence and penalty under the Employees' State Insurance Act, 1948 is clearly to create deterrence against violation of provisions of the Act which are beneficial for the employees. Non-payment of contributions is an economic offence and therefore the legislature has not only fixed a minimum term of imprisonment but also a fixed amount of fine of five thousand rupees under Section 85(a)(i)(b) of the Act. There is no discretion of awarding less than the specified fee, under the main provision. It is only the proviso which is in the nature of an exception whereunder the court is vested with discretion limited to imposition of imprisonment for a lesser term. Conspicuously, no words are found in the proviso for imposing a lesser fine than that of five thousand rupees. In such a situation the intention of the legislature is clear and brooks no interpretation. The law is well settled that when the wordings of the statute are clear, no interpretation is required unless there is a requirement of saving the provisions from vice of unconstitutionality or absurdity. Neither of the twin situations is attracted herein."

21. Thus, imposition of fine is 'integral part and fundamental aspect' of the punishment, whereas the learned trial court, while awarding sentence, has overlooked the aforesaid legal provision and committed material legal error.

22. The cardinal principle of sentencing policy is that the sentence imposed on an offender should reflect the crime he has committed and it should be proportionate to the gravity of the offence. In operating the sentencing system, law should adopt the corrective machinery or deterrence based on factual matrix. By deft modulation, sentencing process be stern where it should be, and tempered with mercy where it warrants to be. The facts and given circumstances in each case, the nature of the crime, the manner in which it was planned and committed, the motive for commission of the crime, the conduct of the accused, the nature of weapons used, mode of committing the offence and all other attending

circumstances are relevant facts which would enter into the area of consideration.

23. As regard to the sentencing policy, the Apex Court in the case of **Hazara Singh Versus Raj Kumar & Ors. (2013) 9 SCC 516** has highlighted the 'sentencing policy' after taking note of its earlier decisions. Relevant para 16 and 17 of the report, reads as under:-

16. Recently, this Court in Gopal Singh v. State of Uttarakhand [(2013) 7 SCC 545 : (2013) 3 SCC (Cri) 608 : JT (2013) 3 SC 444] held as under: (SCC p. 551, para 18)

"18. Just punishment is the collective cry of the society. While the collective cry has to be kept uppermost in the mind, simultaneously the principle of proportionality between the crime and punishment cannot be totally brushed aside. The principle of just punishment is the bedrock of sentencing in respect of a criminal offence."

"17) We reiterate that in operating the sentencing system, law should adopt the corrective machinery or deterrence based on factual matrix. The facts and given circumstances in each case, the nature of the crime, the manner in which it was planned and committed, the motive for commission of the crime, the conduct of the accused, the nature of weapons used and all other attending circumstances are relevant facts which would enter into the area of consideration. We also reiterate that undue sympathy to impose inadequate sentence would do more harm to the justice system to undermine the public confidence in the efficacy of law. It is the duty of every court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed. The Court must not only keep in view the rights of the victim of the crime but also the society at large while considering the imposition of appropriate punishment."

24. Learned counsel for the appellant submitted that accused appellant is an old aged person. He is suffering from different kind of ailments, infirmities. He is more than 60 years old at present. This criminal appeal is pending since 1983 and the accused appellant has no any previous criminal history. Thus, in the above circumstances accused appellant may be released on probation.

25. In the light of the submission advanced by learned counsel for the appellant, I have considered the above facts and circumstances in totality. I am unable to accept the submission of learned counsel for the appellant to release the accused appellant on probation. It is settled legal principle that the benefit of probation cannot be extended as a matter of right, specially in cases involving heinous offences or offences against human body resulting in the loss of precious life. Offence under Section 376 IPC carries a maximum punishment upto life imprisonment. Extending probation to an individual/accused appellant, who has been convicted for committing rape with the knowledge that his act is likely to cause shame to a women would send a wrong message to the society and dilute the deterrence of criminal law. Admittedly, in this case, the trial court has already adopted the lenient view and awarded only rigorous imprisonment for 3 years whereas charge was framed under Section 376 IPC. Thus, in the above observation, the plea to release the accused appellant on probation is not tenable, hence, rejected accordingly.

26. On the basis of above observations and reasons, in detail in the presiding paragraphs, this Court finds no glaring infirmity, perversity or manifest error in the reasoning adopted by the trial court. Thus, on the basis of facts and circumstance and evidence available on record the trial court has rightly held guilty and convicted the appellant under Section 376 I.P.C. Consequently judgment and order passed by the trial court is hereby upheld regarding holding the appellant guilty of offence under Section 376 IPC.

27. The Trial Court has committed a manifest error of law by imposing a sentence of three years of rigorous imprisonment for an offense under Section 376 of the Indian Penal Code without recording any "adequate and special reasons" for doing so, as is mandatorily required under the proviso to the said section. It is a well-settled principle of criminal jurisprudence that where a statute prescribes a statutory minimum sentence—in this case, seven years—any deviation from such mandate must be founded on exceptional, cogent, and compelling circumstances explicitly detailed in the judgment. By failing to assign any justification for awarding a sentence significantly below the statutory minimum, the Trial Court has acted in contravention of the legislative intent aimed at ensuring proportionality and deterrence in cases of sexual violence, thereby rendering the sentencing exercise legally unsustainable and warranting interference. Ld AGA submitted that no any appeal/revision etc has been filed to enhance the sentence. The trial court has not imposed fine against accused person, whereas awarding fine is part and parcel of sentencing of imprisonment in rape case.

28. Since fine constitutes an 'integral part' of the sentence under Section 376 IPC, this Court finds it expedient to impose the same.

29. Accordingly, in addition to the sentence already awarded, the accused is directed to pay a fine of Rs. 50,000/- (fifty thousand rupees only) for the offence under Section 376 IPC and the above amount of fine shall be paid as compensation to the victim within a period of one month from today. In case of death of victim, the

appellant shall pay the same to her legal representatives. In default of payment of fine, the accused shall undergo further rigorous imprisonment for a period of six months. The rest of the judgment of the trial court shall remain unaltered.

30. The appellant shall deposit the above compensation amount before the trial court concerned within stipulated period and the trial court, after notice and verification, shall distribute the above amount among the victim(s)/her legal heirs through bank accounts.

31. The bail bonds of the accused-appellant stand canceled with intimidate effect. If the appellant is currently on bail, he is directed to surrender before the trial court concerned within a period of ten days from today to serve out the remainder of substantive sentence.

32. If the appellant fails to surrender within stipulated period as above, learned trial court is directed to take immediate legal steps adopting coercive measures including issuance of non bailable warrant to take the appellant into custody for execution of sentence in accordance with law.

33. The appellant shall be entitled to benefit of set up under Section 428 Cr.P.C.

34. Let trial court record along with copy of this judgment be transmitted 'forthwith' to the court concerned for information and necessary compliance.

35. The trial court is directed to submit its compliance report within two months from the date of receipt of this

order. Further more, the registry is also directed to place the compliance report on record.

36. The Registrar (Compliance) is also directed to serve a copy of this order within three days by FAX/e-mail to the concerned court through District & Sessions Judge, Allahabad for compliance.

(Santosh Rai,J.)

June 23, 2026
RA