

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1820 of 2017
(Arising out of SLP(Crl.)No.2172 of 2014)

THE STATE OF MAHARASHTRA

Appellant(s)

VERSUS

BANDU @ DAULAT

Respondent(s)

ORDER

1. Leave granted. We have heard learned counsel for the parties and perused the record.

2. The respondent was tried and convicted under Section 376 I.P.C. by the trial court for the alleged offence of rape committed on 29th June, 2008 but has been acquitted by the High Court.

3. The victim is deaf and dumb and mentally challenged to some extent. Main evidence on record is of PW-1, Asha Ramratan Bangar @ Asha Panchu Dhurve, the mother of the victim. She lodged FIR on the next day i.e. 30th June, 2008 to the effect that the accused was the landlord of the house in which they were living. The victim was lured away by the accused by offering some sweet meat and was taken to the

market. She did not return home and it was at 9.30 p.m. in the night that two boys brought her home. The victim explained to her mother by gesture as to what happened. On this version, FIR was registered and investigation was carried out. Medical examination of the victim confirmed the commission of rape. The age of the victim at the time of the commission of the offence was about 14 years.

4. The High Court held that since the victim herself was not examined, the factum of rape and involvement of the accused could not be held to have been proved. This is the basis of the order of the High Court.

5. Mr. Nishant R. Katneshwarkar, learned counsel for the State, submitted that even though the victim may be the best witness to establish the charge of rape, having regard to the fact that the victim in the present case was deaf and dumb and mentally retarded, even in absence of her being examined as a witness, there was sufficient evidence warranting conviction of the accused.

6. Though respondent was served, he has not put in appearance in this Court. We requested Ms. Shirin Khajuria, Advocate, to assist the Court as Amicus. Accordingly Ms. Khajuria assisted the Court after thorough preparation. We

record our appreciation for Ms. Khajuria for painstaking assistance.

7. The evidence of the mother of the victim clearly shows that it was the respondent-accused who took away the victim. The victim and the accused were seen together by PW-2, Gajanan Marutrao Sonule on the date of commission of offence. The victim immediately after the occurrence narrated the same to her mother as to what happened as reflected in the FIR and the version of the PW-1. Rape has been confirmed by medical evidence. Identity of accused is not in dispute. In these circumstances the trial court having convicted the respondent, the High Court was not justified in setting aside the conviction.

8. Accordingly, we restore conviction of the respondent under Section 376 IPC and sentence him to undergo rigorous imprisonment for seven years. He may be taken into custody to serve out the remaining sentence.

9. The appeal is accordingly allowed.

10. Before parting with this order we may deal with the suggestion of learned amicus that there should be special centres for examination of vulnerable witnesses in criminal cases in the interest of conducive environment in Court so as to encourage a vulnerable victim to make a statement. Such

centres ought to be set up with all necessary safeguards. Our attention has been drawn to guidelines issued by the Delhi High Court for recording evidence of vulnerable witnesses in criminal matters and also the fact that four special centres have been set up at Delhi for the purpose.

11. We find merit in the above suggestion. In **Sakshi v. Union of India and Ors (2004) 5 SCC 518** this Court, after due consideration of the above issue, issued following directions:

“(1) The provisions of sub-section (2) of Section 327 Cr.PC shall, in addition to the offences mentioned in the sub-section, also apply in inquiry or trial of offences under Sections 354 and 377 IPC.

(2) In holding trial of child sex abuse or rape:

(i) a screen or some such arrangements may be made where the victim or witnesses (who may be equally vulnerable like the victim) do not see the body or face of the accused;

(ii) the questions put in cross-examination on behalf of the accused, insofar as they relate directly to the incident, should be given in writing to the presiding officer of the court who may put them to the victim or witnesses in a language which is clear and is not embarrassing;

(iii) the victim of child abuse or rape, while giving testimony in court, should be allowed sufficient breaks as and when required.

These directions are in addition to those given in State of Punjab v. Gurmit Singh (1996) 2 SCC 384.”

12. The directions of Delhi High Court and setting up of special centres for vulnerable witnesses as noted above are consistent with the decision of this Court and supplement the same. We are of the view that all High Courts can adopt such guidelines if the same have not yet been adopted with such modifications as may be deemed necessary. Setting up of one centre for vulnerable witnesses may be perhaps required almost in every district in the country. All the High Courts may take appropriate steps in this direction in due course in phases. At least two such centres in the jurisdiction of each High Court may be set up within three months from today. Thereafter, more such centres may be set up as per decision of the High Courts.

A copy of this order be sent to all the High Courts for necessary action.

.....J.
(ADARSH KUMAR GOEL)

.....J.
(UDAY UMESH LALIT)

New Delhi,
October 24, 2017.