IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1038 OF 2007

M. Ayoob ..... APPELLANT

VERSUS

State of Kerala ..... RESPONDENT

O R D E R

This is an unfortunate matter and in addition to the various issues on fact and law which have been raised by the learned counsel for the parties, a very human issue also arises.

The appellant before us, M. Ayoob, was charged for an offence punishable under Section 376 of the IPC for having committed rape on P.W. 1 aged about 15 years on the 15th March, 1990. It appears that the factum of rape was not revealed by the prosecutrix to anybody including her parents till a medical examination several months later showed that she had been impregnated on account of the rape. It also appears that at this stage the prosecutrix divulged the entire story to her parents. Attempts were thereafter made by them as also by members of the Panchayat including P.W.

2 – Abdul Qadir, to see if some settlement could be arrived at including a proposal that the prosecutrix and the appellant be married. P.W. 2 – Abdul Qadir also suggested, that as the appellant was denying his paternity of the child, he should undergo a DNA test which would settle the matter once and for all either ways. When all these proposals bore no result, an FIR was lodged after a delay of about eleven months. On the completion of the investigation, the matter was committed for trail. During the trial, several prosecution witnesses including the prosecutrix, her parents, P.W. 2- Abdul Qadir, and several others appeared and gave their depositions. The prosecutrix in order to fix the time of incident, deposed that the rape had been committed on 15th March, 1990 i.e. on the day she was to attend an examination in her school. The trial court relying on the statement of the Head Master of the School that no examination/test was to be held on the 15th March, 1990 held that the prosecutrix had put up a false story and almost exclusively on this basis acquitted the appellant. The State thereupon filed an appeal before the High Court which was allowed by the impugned judgment dated 4th March, 2007. The High Court observed that there was absolutely no reason

whatsoever to disbelieve the prosecutrix in particular, and also the other prosecution evidence and that the delay of about eleven months in the lodging of FIR had been adequately explained as efforts were being made in the interregnum to arrive at a compromise and to persuade the appellant to take the prosecutrix as his wife. Having held as above, the High Court sentenced the appellant to undergo seven years rigorous imprisonment and to pay a fine of Rs. 40,000/- and in default of payment of fine to undergo simple imprisonment for a period of one year for the offence punishable under Section 376 of the IPC. The present matter is before us by way of special leave.

We have gone through the evidence with the help of the learned counsel for the parties and have heard them out on the various issues raised. We find no infirmity in the judgment of the High Court as the delay in the lodging of FIR has been adequately and reasonably explained and the prosecution evidence clearly reveals that it was the accused-appellant who was guilty of having committed the rape on 15.03.1990. The statement of the Headmaster that no test was held in the School on 15th March, 1990 does not, to our mind, advance the defence story as the test had been

held 3 days later and the prosecutrix, who was recording her statement after a delay of three years, had understandably got confused. We also notice that the High Court had again made an offer to the appellant that in case he was willing to undergo the DNA test he could do so even now and that the same could be arranged but the appellant had again declined the test on a technical plea.

We, therefore, confirm the findings against the appellant.

Mr. M.K. Sreegesh, the learned counsel for the appellant, has, further, pointed out on the basis of the record that the incident had happened twenty years ago and that the prosecutrix, was, as of now, happily married with children as well as the child born out of the rape and likewise the appellant was married with three children and that if the sentence was reduced to one already undergone, the appellant would be ready to monetarily help out the unfortunate child. In this connection, the learned counsel has placed reliance on *State of Punjab* v. *Gurmit Singh and Ors.* (1996) 2 SCC 384 and *State of Rajasthan* v. *N.K.* (2000) 5 SCC 30. In Gurmit Singh's case (supra) this Court observed as under:-

> **"The respondents were aged between 21-24 years of age at the time when the offence was committed. We are informed that the respondents have not been involved in any other offence after they were acquitted by the trial court on 1.6.1985, more than a decade ago. All the respondents as well as the prosecutrix must have by now got married and settle down in life. these are some of the factors which we need to take into consideration while imposing an appropriate sentence on the respondents. We accordingly sentence the respondents for the offence under Section 376 IPC to undergo five years' RI each and to pay a fine of Rs. 5000 each and in default of payment of fine to 1 year's RI each. For the offence under Section 363 IPC we sentence them to undergo three years' RI each but impose no separate sentence for the offence under Sections 366/368 IPC. The substantive sentences of imprisonment shall, however, run concurrently."**

Likewise in N.K.'s case (supra) while taking into consideration the huge time gap between the conviction and the hearing of the appeal, the Court came to the conclusion that the ends of justice would be met if the sentence was reduced to that already undergone. Both the matters above referred were under Section 376 of the IPC.

Coming to the facts of the present case, we find that prosecutrix was less than 16 years and the appellant about 20 years of age on the date of the incident. More than 20 years have since elapsed which

would mean that the prosecutrix would be about 35 years and the appellant 40 years of age. Both are said to be happily married with families of their own. We are, therefore, of the opinion that keeping in view the above circumstances and on the principles referred to in the above cited judgments of this Court, we reduce the sentence on the appellant to that already undergone by him (which we are informed is 1 year and 8 months) and to increase the fine to Rs. 2,00,000/- (Rupees Two lacs only) to be paid to the child fathered by the appellant and in the custody of the mother-prosecutrix. The aforesaid sum shall be payable by way of a bank draft made out in the name of the child within a period of three months from today. We make it clear that in case the aforesaid amount is not defrayed as directed, the appeal will be deemed to have been dismissed in toto. Information about the payment or otherwise be conveyed to this Court by the trial court immediately after the expiry of three months.

The appeal is disposed of in the aforesaid terms.

.....J
[HARJIT SINGH BEDI]

.....J
[DR. B.S. CHAUHAN]

NEW DELHI
AUGUST 18, 2009.