REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 287 OF 2007

State of U.P. …Appellant

Vs.

Munshi …Respondent

J U D G M E N T

Dr. ARIJIT PASAYAT, J.

1. Challenge in this appeal is by the State of U.P. questioning the correctness of the judgment rendered by a learned Single Judge of the Allahabad High Court, Lucknow Bench, Lucknow. The learned Additional Sessions Judge, Hardoi in Sessions Trial No.455 of 1985 convicted the two respondents for offence punishable under Sections 363, 366 and 376 of the Indian Penal Code, 1860 (in short the 'IPC'). The High Court by the impugned judgment set aside the conviction and directed acquittal.

2. The factual position need not be narrated in view of the fact that the High Court's order, to say the least, is not only cryptic but also non-reasoned. The High Court for the purpose of directing acquittal only observed as follows:

> "I have heard the learned counsel for the parties at length and I have gone through the record.
>
> My attention has been drawn by the learned counsel for the appellants to the medical evidence on record, which shows that the girl in question was aged about 17 years. She might be thus of 19 years as well. No injury internal or external was found on her body and she was used to sexual intercourse. The girl in question thus appears to be major and was thus a consenting party and there is no reliable evidence on record to show that she was kidnapped by the accused persons or was raped. The girl in question was returned home safely on the same day. The learned Court below was not thus justified in believing the prosecution theory and convicting the appellants."

3. Learned counsel for the appellant-State highlighted the desirability of recording reasons, particularly, when the analysis of the evidence made and the conclusions arrived at

by the trial Court in detailed manner are sought to be upset by the High Court.

4. Learned counsel for the respondent on other hand submitted that though elaborate reasons have not been given, the High Court has found the conclusions of the trial Court to be erroneous.

5. Reasons introduce clarity in an order. On plainest consideration of justice, the High Court ought to have set forth its reasons, howsoever brief, in its order indicative of an application of its mind, all the more when its order is amenable to further avenue of challenge. The absence of reasons has rendered the High Court's judgment not sustainable.

6. Even in respect of administrative orders Lord Denning, M.R. in Breen v. Amalgamated Engg. Union (1971) 1 All ER 1148, observed: "The giving of reasons is one of the fundamentals of good administration." In Alexander

Machinery (Dudley) Ltd. v. Crabtree 1974 ICR 120 (NIRC) it was observed: “Failure to give reasons amounts to denial of justice.” “Reasons are live links between the mind of the decision-taker to the controversy in question and the decision or conclusion arrived at.” Reasons substitute subjectivity by objectivity. The emphasis on recording reasons is that if the decision reveals the “inscrutable face of the sphinx”, it can, by its silence, render it virtually impossible for the courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to reason is an indispensable part of a sound judicial system; reasons at least sufficient to indicate an application of mind to the matter before court. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made; in other words, a speaking-out. The “inscrutable face of the sphinx” is ordinarily incongruous with a judicial or quasi-judicial performance.

7. In the instant case, let alone any discussion of the evidence, the High Court has not even indicated any basis for departing from the conclusions of the trial Court.

8. Even assuming that the victim was previously accustomed to sexual intercourse, that is not a determinative question. On the contrary, the question which was required to be adjudicated was did the accused commit rape on the victim on the occasion complained of. Even if it is hypothetically accepted that the victim had lost her virginity earlier, it did not and cannot in law give licence to any person to rape her. It is the accused who was on trial and not the victim. Even if the victim in a given case has been promiscuous in her sexual behaviour earlier, she has a right to refuse to submit herself to sexual intercourse to anyone and everyone because she is not a vulnerable object or prey for being sexually assaulted by anyone and everyone.

9. It is well settled that a prosecutrix complaining of having been a victim of the offence of rape is not an accomplice after the crime. There is no rule of law that her testimony cannot be

acted upon without corroboration in material particulars. She stands at a higher pedestal than an injured witness. In the latter case, there is injury on the physical form, while in the former it is both physical as well as psychological and emotional. However, if the court of facts finds it difficult to accept the version of the prosecutrix on its face value, it may search for evidence, direct or circumstantial, which would lend assurance to her testimony. Assurance, short of corroboration as understood in the context of an accomplice would do.

10. In our view, the High Court should re-hear the matter and dispose of the appeal by a reasoned judgment. We, therefore, set aside the impugned judgment and remand the matter to the High Court for fresh disposal. We make it clear that we have not expressed any opinion on the merits of the case.

11. The appeal is allowed.

.....J.
(Dr. ARIJIT PASAYAT)

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.....J.

(Dr. MUKUNDAKAM SHARMA)

New Delhi,
August 28, 2008