

2009 (8) SCR 276
JAKIR
v.
STATE OF M.P.
(Criminal Appeal No. 189 of 2003)
MAY 6, 2009

[DR. ARIJIT PASAYAT AND ASOK KUMAR GANGULY, JJ.]

The Judgment of the Court was delivered by

DR. ARIJIT PASAYAT, J. 1. Challenge in this appeal is to the correctness of the Judgment rendered by a Learned Single Judge of the Madhya Pradesh High Court dismissing the appeal filed by the present appellant who was appellant in Criminal Appeal No. 2750/98 before the High Court. The present appellant was convicted after alleged commission of rape and abduction in terms of Section 366 A and 376 (2) of the Indian Penal Code, 1860 (IPC). Out of the five accused persons tried, two absconded and the rest three were convicted by the Trial Court. Trial Court imposed sentence of 10 years for each of the concerned, he preferred an appeal, as also two co-accused who were convicted by the Trial Court.

2. So far as the appellant is concerned his primary stand before the Trial Court and the High Court was that the prosecutrix having not identified him to be one of the persons who subjected her to rape, his conviction cannot be maintained. The High Court did not deal with this aspect but confirmed the conviction and sentences as imposed by the Trial Court. In support of the learned counsel for the appellant submitted that in the examination in chief itself the victim (PW-6) stated as follows :-

‘I recognise the accused Raju and Pancham Present in the Court. The witness after seeing the accused Jakir states that “I do not recognise him because I have never been him”

3. Learned counsel for the State referred to letter parte of the evidence where in generalised manner the role of the five accused persons was described.

4. Both the Trial Court and the High Court ignored the statement of the victim who in court categorically stated that she did not recognise him as she had never seen him.

5. That being so the conviction so far as the present appellant is concerned cannot be maintained. The appeal is allowed. The bail warrant executed to give effect to the order of bail in terms of the order of 10.2.2003 shall stand discharged.

