

**REPORTABLE**

**IN THE SUPREME COURT OF INDIA**  
**CRIMINAL APPELLATE JURISDICTION**  
**CRIMINAL APPEAL NO. 1215 OF 2006**

**RAMESH**

**.... APPELLANT**

**Versus**

**STATE OF MADHYA PRADESH**

**.... RESPONDENT**

**ORDER**

1. Appellant aggrieved by his conviction for the offence under Section 363, 366, 342 and 376(2)(g) of the Indian Penal Code and sentence to undergo rigorous imprisonment for the period of five years, five years, one year and ten years respectively and fine, has preferred this appeal with the leave of the Court.

2. According to the prosecution PW.1, Radha Bai, the victim of the crime along with her two sisters, namely, Sunita and PW.4, Anita had gone to witness a movie in a video-hall at 21:00 hours on 8<sup>th</sup> November, 1988. In the midnight, while Radha Bai came out of the hall to answer the call of nature

and went in a lane at that point of time the two accused namely, Ramesh (appellant herein) and Dinesh caught her and took her forcibly inside a tailoring shop and closed its doors. Sunita and Anita, the two sisters of the victim Radha Bai returned to their house and when it was found that she had not reached her home, a search was made to locate her by PW.3, Damaji, the father of the victim girl and other witnesses. Damaji suspected the presence of her daughter in the tailoring -shop of appellant Ramesh as the said tailoring shop had not so far opened and Dinesh and Ramesh were talking outside the shop. Informant-Ramesh, according to the prosecution, went to the said shop, peeped inside and saw the victim there. Informant asked the appellant and the accused Dinesh to open the shop but they declined. The informant gave report in regard to the incident to the Officer-Incharge of the Sausar Police Station at 09:00 hours on 9<sup>th</sup> November, 1988. According to the informant Radha Bai aged about 15 years had been kidnapped and confined in the tailoring shop styled as "Famous Tailors". After registration of the case, the Sausar Police along with the informant and others came to the shop

and in their presence accused Dinesh unlocked the shop and the victim was recovered from the said shop. She was first taken to the Police Station and thereafter sent to the Hospital for medical examination where she was examined by Dr. Paramjit Kaur. She was also examined by PW.9, Dr. S.K. Dubey to ascertain her age. Appellant as also accused Dinesh after arrest were sent for their medical examination and as per the report (Exhibit P-6 and P-7) of Dr. R. Agarwal, both of them were found to be capable of sexual intercourse. The cloth of victim and both the accused were seized and sent to the Forensic Science Laboratory which sent its report (Exhibit P.13).

3. After usual investigation the Police submitted charge-sheet against the two accused, namely, appellant Ramesh and Dinesh and they were ultimately committed to the Court of Sessions to face the trial. Both of them pleaded not guilty to the charge and claimed to be tried. Specific plea of the appellant herein is that he handed over the key of the shop to the accused Dinesh for white-washing and he had no concern whatsoever with the occurrence.

4. Prosecution in order to bring home the charge had altogether examined nine witnesses besides a large number of documentary evidence were exhibited, which included the report (Exhibit P-4) of Dr. Paramjit Kaur who examined the victim, report (Exhibit P-15) of PW.9, Dr. S.K. Dubey in regard to the age of the victim, reports (Exhibits P-6 and P-7) of Dr. R. Agarwal regarding capability of the accused of doing sexual intercourse and the report (Exhibit P-13) of the Forensic Science Laboratory.

5. On appraisal of the oral and documentary evidence on record the trial court came to the conclusion that the victim was below 16 years of age on the date of occurrence. Further after she was kidnapped and confined in the tailoring-shop by both the accused it also held that accused Dinesh had sexual intercourse with her. Accordingly it convicted both of them for offence under Section 363, 366, 342 and 376 (2)(g) of the Indian Penal Code and sentenced them to various terms of imprisonment, which were directed to run consecutively. Appellant was convicted of the offence under Section 376(2)(g)

of the Indian Penal Code taking into account the explanation appended thereto.

6. Appellant Ramesh as also the convict Dinesh aggrieved by their conviction and sentence preferred separate appeals. Both the appeals were heard together and by a common judgment the High Court of Madhya Pradesh dismissed both the appeals affirming the finding of the trial court. The appellate court, however, set aside the order of the trial court directing the sentences to run consecutively and it observed that same would run concurrently.

7. It is in these circumstances that the appellant is before us with the leave of the Court.

8. Mr. P.P. Singh, learned Counsel appearing for the appellant submits that appellant Ramesh is the owner of the tailoring-shop and he is not involved at all in the occurrence. It has been pointed out that the key of the shop was handed over to the convict Dinesh by his nephew DW.1, Rakesh for white-washing in the eve of Deepawali Festival and he had no concern whatsoever with that. It has been pointed out that

according to the prosecution itself the shop was opened in the presence of the Police by the convict Dinesh and in this view of the matter the finding of guilt arrived at against this appellant is erroneous and fit to be set aside. Mr. Sidharth Dave, learned Counsel appearing on behalf of the State, however, supported the judgment of conviction and sentence.

9. We do not find any substance in the submission of Mr. Singh. PW.1, Radha Bai, the victim in her evidence has stated that she had gone to witness a movie in the video-hall along with her two sisters Sunita and PW.4, Anita and in the midst of the show she came out of the hall to answer the nature's call in a lane where the appellant and the convict caught her and forcibly brought her to the tailoring-shop. She has further stated that convict Dinesh closed the shop from inside and after removing her cloths subjected her to rape. She further deposed that appellant Ramesh was present there and had pressed her breasts and in the course of ravishment she attempted to raise alarm but nobody came to her rescue. The medical-report (Exhibit P-2) of Dr. Paramjit Kaur reveals that the victim had no mark of injury internal or external on her

person and she being habitual to sexual intercourse no definite opinion of rape could be given. The report of the Forensic Science Laboratory, however, reveals the existence of human semen on the cloths of the victim and convict Dinesh. From the material aforesaid it is evident that the victim was kidnapped, forcibly brought to the tailoring shop and subjected to rape and appellant Ramesh had actively participated in the entire occurrence.

10. The plea of the appellant Ramesh that he had given the key of the shop to the convict Dinesh does not absolve him of the charge. Even if this defence of the appellant is accepted it does not mean that he could not go inside the shop. The victim has clearly stated the role played by this appellant and there does not seem any earthly reason to disbelieve her statement. Therefore, on the basis of the evidence on record it is evident that both the accused had acted in concert and in prearranged plan and in furtherance of their common intention without permission of the lawful guardians of the victim kidnapped a minor with the object of illicit sexual intercourse with her, kept her in detention and ultimately

subjected to rape. Therefore, the plea of the appellant that he has nothing to do with the occurrence is fit to be rejected.

11. Mr. Singh, then contends that conviction of the appellant for offence under Section 376(2)(g) of the Indian Penal Code is bad as according to the case of the prosecution itself this appellant did not rape the victim. In this connection our attention has been drawn to the following finding of the High Court:

“Thereafter, in the facts and circumstances of this case, read with the evidence on the record, it stands established that PW-1 Radha Bai was forcibly brought from the place where she had gone for the nature’s call to the said tailoring shop and she was ravished by the appellant Dinesh and appellant Ramesh had actively participated in the occurrence though he has himself not committed any sexual intercourse.”

12. We do not find any substance in this submission of Mr. Singh also. It is not the case of the prosecution that this appellant himself had actually committed any sexual intercourse with the victim. However, the case of the prosecution is that while the victim had come out from the video-hall to answer the call of the nature she was picked up

by both of them, forcibly taken inside the tailoring shop and subjected to rape by the convict Dinesh and at that time he was pressing her breasts. Explanation 1 to Section 376(2)(g) of the Indian Penal Code, inter alia, provides that where a woman is raped by one or more in a group of persons acting in furtherance of their common intention, each of the persons shall be deemed to have committed gang rape.

13. This appellant had acted in concert with other accused and actively participated in the commission of crime. Both of them in furtherance of their common intention kidnapped and confined the victim in the tailoring-shop and thereafter she was subjected to rape by co-accused and at that point of time this appellant was present and pressing her breasts. This clearly shows that this appellant shared the common intention. Once it is held so, Explanation 1 to Section 376(2)(g) of the Indian Penal Code springs into action and brings the offence within the mischief of gang rape. The fact that this appellant had not actually committed sexual intercourse would not absolve him from the punishment of gang-rape. Reference in this connection can be made to a decision of this

Court in the case of ***Pramod Mahto and others v. State of Bihar, (1989) Supp.(2) SCC 672***, wherein it has been held as follows:-

“**10.** This Explanation has been introduced by the legislature with a view to effectively deal with the growing menace of gang rape. In such circumstances, it is not necessary that the prosecution should adduce clinching proof of a completed act of rape by each one of the accused “on the victim or on each one of the victims where there are more than one in order to find the accused guilty of gang rape and convict them under Section 376 IPC.”

14. Similar view has been expressed by this Court in the case of ***Pradeep Kumar v. Union Administration, Chandigarh, (2006) 10 SCC 608***, in which it has been observed as follows:-

“**10.** To bring the offence of rape within the purview of Section 376(2)(g) IPC, read with Explanation 1 to this section, it is necessary for the prosecution to prove:

(i) that more than one person had acted in concert with the common intention to commit rape on the victim;

(ii) that more than one accused had acted in concert in commission of crime of rape with pre-arranged plan, prior meeting of mind and with element of participation in action. Common intention would be action in concert in pre-arranged plan or a plan formed suddenly at the time of commission of offence which is reflected by the element of participation in action or by the proof of the fact of inaction when the action would be necessary. The prosecution would be required to prove pre-meeting of minds of the accused persons prior to commission of offence of rape by substantial evidence or by circumstantial evidence; and

(iii) that in furtherance of such common intention one or more persons of the group actually commit-

ted offence of rape on victim or victims. Prosecution is not required to prove actual commission of rape by each and every accused forming group.

**11.** On proof of common intention of the group of persons which would be of more than one, to commit the offence of rape, actual act of rape by even one individual forming group, would fasten the guilt on other members of the group, although he or they have not committed rape on the victim or victims.”

Hence, we reject this submission of Mr. Singh.

15. We accordingly find no merit in this appeal and it is dismissed accordingly. The appellant is on bail, his bail bonds are cancelled and he is directed to surrender forthwith to serve out the sentence.

.....**J.**  
( **HARJIT SINGH BEDI** )

.....**J.**  
( **CHANDRAMAULI KR. PRASAD** )

**NEW DELHI,**  
**DECEMBER 15, 2010.**

