

ITEM NO.43  
II

COURT NO.11

SECTION

S U P R E M E C O U R T O F  
R E C O R D O F P R O C E E D I N G S

I N D I A

Petition(s) for Special Leave to Appeal (CrI.) No(s). 4658/2013

(Arising out of impugned final judgment and order dated 12/12/2012  
in SBCRA No. 460/2010 passed by the High Court OF Judicature for  
Rajasthan At Jodhpur)

OM PARKASH  
ner(s)

Petitio

VERSUS

STATE OF RAJASTHAN & ANR.  
ent(s)

Respond

(With application for exemption from filing official translation  
and office report)

Date : 04/07/2014 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE FAKKIR MOHAMED IBRAHIM KALIFULLA  
HON'BLE MR. JUSTICE A.K. SIKRI

For Petitioner(s)

Mr. Tarun Shokeen, Adv.  
Mr. Janesh Singh, Adv.  
Mr. Abhishek Atrey ,Adv.

For Respondent(s)  
For State

Mr. Ram Naresh Yadav, Adv.  
Mr. Milind Kumar, Adv.

For RR 2

Mr. Naresh Kumar, Adv.

UPON hearing the counsel the Court made the following  
O R D E R

Leave granted.

The appeal stands allowed in terms of the signed

Signature Not Verified

Digitally signed by  
Kalyani Gupta  
Date: 2014.07.19

order.

The second respondent shall surrender before the

16:11:08 IST  
Reason:

CrI.A. No. Of 2014 @ SLP(CrI.) No. 4658 of 2013  
trail court forthwith failing he be taken into custody

and produced before the court for passing necessary  
order to undergo remaining part of the sentence.

(KALYANI GUPTA)  
COURT MASTER

(SHARDA KAPOOR)  
COURT MASTER

[SIGNED ORDER IS PLACED ON THE FILE.]

Page No. 2  
Crl.A. No. Of 2014 @ SLP(Crl.) No. 4658 of 2013

IN THE SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTION  
CRIMINAL APPEAL NO. 1355 OF 2014  
ARISING OUT OF  
SPECIAL LEAVE PETITION (CRL.) NO. 4658 OF 2013

OM PARKASH ..... APPELLAN

VERSUS

STATE OF RAJASTHAN & ANR. .... RESPONDENT

O R D E R

Leave granted.

2. This appeal by way of special leave has

been preferred by the complainant aggrieved by the judgment of the High Court having interfered with the sentence imposed on respondent No. 2 herein. Respondent No. 2 herein was

proceeded against for the offences committed under Section

376 read with Sections 511, 377 of the Indian Penal Code

and also under Section 3(1)(xii) and 3(2)(v) of

the Scheduled Castes and Scheduled Tribes (Prevention

of Atrocities) Act.

3. The grievance of the appellant-complainant against

the accused - respondent No. 2 herein was that the eight

year old daughter of the appellant by name Neel Kamal was

studying in Upper Primary School.

While returning from

her tuition she was caught hold of by respondent No. 2,  
Crl.A. No. Of 2014 @ SLP(Crl.) No. 4658 of 2013

the accused and was subjected to the offence of rape.  
The

victim was examined as P.W. 3 who narrated the occurrence  
as under:

"...then he took her inside and  
put off her clothes. Then he too put  
off his clothes. Then he opened chain  
of his pant and put his su-su wala  
(penis) in my hand. Then he makes me  
sit in his lap and he himself sat on a  
chair. Then he put his su-su wala  
(penis) on her su-su wali (vagina) then  
pulled me from above. Then it pained  
me. I started weeping. Then he said  
that you don't weep, nothing will  
happen...."

4. She was also examined by the doctor P.W. 5, Dr. Alok

Bhati who produced the Medical Report, which  
also

supported the version of P.W. 3, the prosecutrix.  
In

these circumstances, the trial court by a d  
etailed

analysis of the evidence held that the offence alleged

against the respondent was conclusively proved  
and the

prosecutrix being a scheduled caste girl, the of  
fence

under Section 3(1)(xii) was also made out. The respo  
ndent

No. 2 was therefore, sentenced to undergo te  
n years

rigorous imprisonment and a fine of Rs. 5,000/-  
for

offence under Section 376/511 IPC and a period of two

years rigorous imprisonment and a fine of Rs. 1,000/- with

default clause for the offence under Section 3(1)(xii) and

sentence for five years rigorous imprisonment and fine of

Rs. 2000/- under Section 3(2)(v) of the Scheduled Caste

and Scheduled Tribes (Prevention of Atrocities) Act.

5. Respondent No. 2 herein preferred an appeal as against the said conviction and the sentence imposed

before the High Court. While making submissions on behalf of the second respondent before the High Court, the counsel after arguing for some time made a statement that the second respondent did not want to challenge the conviction on merits and prayed that the accused second respondent may be released by reducing the sentence to the period of imprisonment already undergone. Respondent No.

2 was at that point of time in custody for five years. The above submission made on behalf of respondent No. 2 herein was seriously opposed by the learned Public

Prosecutor. The learned Judge by merely citing decision of the High Court and another decision of this Court without assigning any reason or justifiable grounds straightaway proceeded to hold that the period of five years already undergone by the respondent No. 2 would be sufficient and reduced the punishment on that sole ground. This judgment was not challenged by the respondent-State as far as the merits of the case was concerned. The complainant alone has come forward with this appeal by way of special leave.

6. Having perused the judgment of the High Court, we find that for a serious offence committed on a hapless

girl of eight years old (a school going girl) who has also narrated the gruesome incident before the court below and whose evidence was also duly supported by the doctor who

examined her and the trial court was convinced that it was such a gruesome offence committed by respondent No. 2 the appropriate punishment would be 10 years and various other punishments for other offences. If the said punishment was to be interfered with, the High Court should have given adequate reasons. It could not have passed the impugned judgment in such a casual way for mere asking by reducing the sentence to the period already undergone. We are, therefore, convinced that the judgment of the High Court cannot be sustained and the same is accordingly, set aside and the judgment of the trial court stands restored.

7. The appeal stands allowed and the second respondent shall surrender before the trial court forthwith failing he be taken into custody and produced before the court for passing necessary order to undergo remaining part of the sentence.

.....J  
[FAKKIR MOHAMED IBRAHIM KALIFULLA]

.....J  
[A.K. SIKRI]

NEW DELHI  
JULY 04, 2014.