\2026
ITEM NO.105 Court No.7 SECTION IIA

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS
CRIMINAL APPEAL NO(s). 2245 OF 2009

BALLU Appellant (s)

VERSUS

STATE OF M.P. Respondent(s)

Date: 09/04/2013 This Appeal was called on for hearing today.

CORAM :
HON'BLE DR. JUSTICE B.S. CHAUHAN
HON'BLE MR. JUSTICE FAKKIR MOHAMED IBRAHIM KALIFULLA

For Appellant(s)
Mr. Aftab Ali Khan,Adv.
Mr. M.Z. Chaudhary, Adv.
Mr. S.A. Zaidi, Adv.
Mr. Sandeep Garosa, Adv.
Mr. Rashid Khan, Adv.

For Respondent(s)
Mr. C.D. Singh,Adv.
Ms. Ayesha Chaudhray, Adv.

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

The appeal fails and is accordingly dismissed in terms of the signed order.

| (DEEPAK MANSUKHANI) |(M.S. NEGI) |
| Court Master | Court Master |

(The signed order is placed on the file)

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO(s). 2245 OF 2009

BALLU Appellant (s)

VERSUS

STATE OF M.P. Respondent(s)

O R D E R

The appellant is aggrieved by the judgment of the High Court of Madhya Pradesh dated 6.9.2007 passed in Criminal Appeal No. 771 of 2000. The appellant was convicted for offence under Section 376(1) of IPC and sentenced to undergo rigorous imprisonment for 7 years with a fine of Rs. 300/- and in default of payment of fine to undergo further period of rigorous imprisonment for one month.

According to the prosecution, on 6.1.2000, when the prosecutrix PW 3 went for toilet in the bushwood of Paijan Singh Yadav, the appellant who came from behind caught hold of her and at the point of knife, forcibly committed sexual intercourse with her. The prosecutrix was examined as PW 3 and the Doctor was examined as PW 1. Exhibit P1 medical report was also filed. On the side of the appellant, DW 1 to 4 were examined.

The main plank of the submission of learned counsel for the appellant was that the medical evidence did not support the prosecution theory of forcible intercourse with the prosecutrix, that there was an enmity between the brother in law of the prosecutrix and the appellant due to certain money transactions and out of vengeance, the case was foisted against the appellant.

We perused the judgment of the trial Court as well as of learned Judge of the High Court. Having

heard the submission of learned counsel for the appellant as well as the learned counsel for the State, we do not find any good ground to interfere with the judgment of the Courts below.

The version of the prosecutrix PW 3 disclose that she had no grudge against the appellant and that the sequence of events narrated in her evidence were cogent to the effect that the appellant committed the alleged offence of rape against her. When we examined the evidence of PW 1 the Doctor, we find that the Doctor apparently failed to follow the required procedure while examining a victim of rape and has merely proceeded to state that she did not notice any injury on the body of the lady as well as her vital parts. Unfortunately, the slides from vaginal discharge which were sent for expert opinion were not placed before the Courts below. Going by the evidence of Doctor PW 1, we find that the said version of the Doctor cannot be said to be based on proper examination of the victim and on that score, the evidence of prosecutrix as PW 3 cannot be eschewed from consideration.

The only other defence raised on behalf of the appellant was that the appellant had monetary transaction with the brother in law of the prosecutrix and that out of vengeance, the case was foisted against him. Having examined the evidence of the defence witnesses and examination of the prosecutrix, we find that the prosecutrix family and her brother in law's family were not living together. That apart, there was nothing stated on behalf of the appellant that there

was any past grudge as between the appellant and the prosecutrix or her husband in order to suggest that the prosecutrix had any grievance against the appellant.

One other defence raised was that the appellant was not present in the vilage on the date of the offence. As far as the said version is concerned, the trial Court has noted that DW 1 and DW 2 who were examined to support the said stand stated that 10 days prior to Sakranti, the appellant went along with them to a market at 8.00 a.m. and returned back at 7.30 p.m. The prosecutrix is stated to have went out to the woods to ease her out at 8.00 p.m. Therefore, the theory of alibi relied upon by the appellant was not supported by any legally acceptance evidence.

In the circumstances, the conclusions of the trial Court in holding the appellant guilty of offence under Section 376(1) was fully established and the sentence imposed on him will have to be sustained. Learned counsel for the appellant stated that appellant has already suffered six and half years of sentence. We do not find any scope to interfere with the conviction and the sentence imposed on the appellant.

The appeal fails and is accordingly dismissed.

....................................J.
(Dr. B.S. CHAUHAN)

....................................J.
(FAKKIR MOHAMED IBRAHIM KALIFULLA)

NEW DELHI
APRIL 09, 2013.